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**SERVICE AGREEMENT**

This Service Agreement (“Agreement”) is dated June 18, 2024 and is between J Melton & Associates, a General Partnership (“Contractor”), and the County of Fresno, a political subdivision of the State of California (“County”).

**Recitals**

A. The California Welfare and Institutions Code (W&I Code), Section 5256 mandates a certification review hearing for adults and children involuntarily detained due to mental illness.

B. County, through its Department of Behavioral Health (DBH), has a need for a Certification Review Hearing Officer to perform certification hearings at various psychiatric hospitals/acute psychiatric programs in the County of Fresno for adults, adolescents and children in order to comply with the Lanterman-Petris-Short Act (LPS) as set forth in the W&I Code.

C. The purpose of the Agreement is for the Certification Review Hearing Officer to conduct hearings on behalf of the County for those adults, adolescents, or children involuntarily detained due to a mental disability and/or are gravely disabled or a danger to themselves or others, and who should be certified for further involuntary treatment.

The parties therefore agree as follows:

**Article 1**

**Contractor’s Services**

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

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1 cancellation.

2 For the period of July 1, 2025, through June 30, 2026, County agrees to pay  
3 Contractor and Contractor agrees to receive compensation at the rate of three hundred sixty-  
4 seven and No/100 Dollars (\$367.00) per in-person Certification Review Hearing, and three  
5 hundred fifty-seven and No/100 Dollars (\$357.00) per subsequent in-person Certification  
6 Review Hearing. County agrees to pay Contractor and Contractor agrees to receive  
7 compensation at the rate of two hundred sixty-two and No/100 Dollars (\$262.00) per virtual  
8 Certification Review Hearing, and two hundred fifty-two and No/100 Dollars (\$252.00) per  
9 subsequent virtual Certification Review Hearing. County agrees to pay Contractor and  
10 Contractor agrees to receive compensation at the rate of one hundred and No/100 Dollars  
11 (\$100.00) per Certification Review Hearing cancellation.

12 For the period of July 1, 2026, through June 30, 2027, County agrees to pay  
13 Contractor and Contractor agrees to receive compensation at the rate of three hundred eighty-  
14 five and No/100 Dollars (\$385.00) per in-person Certification Review Hearing, and three  
15 hundred seventy-five and No/100 Dollars (\$375.00) per subsequent in-person Certification  
16 Review Hearing. County agrees to pay Contractor and Contractor agrees to receive  
17 compensation at the rate of two hundred seventy-five and No/100 Dollars (\$275.00) per virtual  
18 Certification Review Hearing, and two hundred sixty-five and No/100 Dollars (\$265.00) per  
19 subsequent virtual Certification Review Hearing. County agrees to pay Contractor and  
20 Contractor agrees to receive compensation at the rate of one hundred and No/100 Dollars  
21 (\$100.00) per Certification Review Hearing cancellation.

22 For the period of July 1, 2027, through June 30, 2028, County agrees to pay  
23 Contractor and Contractor agrees to receive compensation at the rate of four hundred four and  
24 No/100 Dollars (\$404.00) per in-person Certification Review Hearing, and three hundred ninety-  
25 four and No/100 Dollars (\$394.00) per subsequent in-person Certification Review Hearing.  
26 County agrees to pay Contractor and Contractor agrees to receive compensation at the rate of  
27 two hundred eighty-nine and No/100 Dollars (\$289.00) per virtual Certification Review Hearing,  
28 and two hundred seventy-nine and No/100 Dollars (\$279.00) per subsequent virtual Certification

1 Review Hearing. County agrees to pay Contractor and Contractor agrees to receive  
2 compensation at the rate of one hundred and No/100 Dollars (\$100) per Certification Review  
3 Hearing cancellation.

4 For the period of July 1, 2028, through June 30, 2029, County agrees to pay  
5 Contractor and Contractor agrees to receive compensation at the rate of four hundred twenty-  
6 four and No/100 Dollars (\$424.00) per in-person Certification Review Hearing, and four hundred  
7 fourteen and No/100 Dollars (\$414.00) per subsequent in-person Certification Review Hearing.  
8 County agrees to pay Contractor and Contractor agrees to receive compensation at the rate of  
9 three hundred three and No/100 Dollars (\$303.00) per virtual Certification Review Hearing, and  
10 two hundred ninety-three and No/100 Dollars (\$293.00) per subsequent virtual Certification  
11 Review Hearing. County agrees to pay Contractor and Contractor agrees to receive  
12 compensation at the rate of one hundred and No/100 Dollars (\$100.00) per Certification Review  
13 Hearing cancellation.

14 It is acknowledged and agreed between the parties that Contractor shall make  
15 separate arrangements with non-County inpatient facilities, other than CBHC. Contractor shall  
16 be compensated by County for services rendered at Emergency Departments and Crisis  
17 Stabilization Centers (CSC) of Fresno County.

18 **2.2 Maximum Compensation.** The maximum amount payable to Contractor under this  
19 Agreement for the period of July 1, 2024, through June 30, 2025, shall not exceed Seven  
20 Hundred Twelve Thousand and No/100 Dollars (\$712,000.00).

21 The maximum amount payable to Contractor under this Agreement for the period of  
22 July 1, 2025, through June 30, 2026, shall not exceed Seven Hundred Forty-Six Thousand and  
23 No/100 Dollars (\$746,000.00).

24 The maximum amount payable to Contractor under this Agreement for the period of  
25 July 1, 2026, through June 30, 2027, shall not exceed Seven Hundred Eighty-Two Thousand  
26 and No/100 Dollars (\$782,000.00).

27 The maximum amount payable to Contractor under this Agreement for the period of  
28 July 1, 2027, through June 30, 2028, shall not exceed Eight Hundred Twenty Thousand and

1 No/100 Dollars (\$820,000.00).

2 The maximum amount payable to Contractor under this Agreement for the period of  
3 July 1, 2028, through June 30, 2029, shall not exceed Eight Hundred Sixty Thousand and  
4 No/100 Dollars (\$860,000.00).

5 In no event shall the maximum contract amount for all the services provided by the  
6 Contractor to County under the terms and conditions of this Agreement be in excess of Three  
7 Million Nine Hundred Twenty Thousand and No/100 Dollars (\$3,920,000.00) during the total  
8 Five (5) year term of the Agreement. It is understood that all expenses incidental to Contractor's  
9 performance of services under this Agreement shall be borne by Contractor.

10 The Contractor acknowledges that the County is a local government entity and does  
11 so with notice that the County's powers are limited by the California Constitution and by State  
12 law, and with notice that the Contractor may receive compensation under this Agreement only  
13 for services performed according to the terms of this Agreement and while this Agreement is in  
14 effect, and subject to the maximum amount payable under this section. The Contractor further  
15 acknowledges that County employees have no authority to pay the Contractor except as  
16 expressly provided in this Agreement.

17 2.3 **Invoices.** The Contractor shall submit monthly invoices, in arrears by the fifteenth  
18 (15th) day of each month, in the format directed by the County. The Contractor shall submit  
19 invoices electronically to: 1) dbhinvoicereview@fresnocountyca.gov, 2) dbh-  
20 invoices@fresnocountyca.gov; and 3) dbhcontractedservicesdivision@fresnocountyca.gov with  
21 a copy to the assigned County's DBH Staff Analyst. At the discretion of County's DBH Director  
22 or designee, if an invoice is incorrect or is otherwise not in proper form or substance, County's  
23 DBH Director, or designee, shall have the right to withhold payment as to only the portion of the  
24 invoice that is incorrect or improper after five (5) days prior notice to Contractor. Contractor  
25 agrees to continue to provide services for a period of ninety (90) days after notification of an  
26 incorrect or improper invoice. If after the ninety (90) day period, the invoice is still not corrected  
27 to County satisfaction, County's DBH Director, or designee, may elect to terminate this  
28 Agreement, pursuant to the termination provisions stated in Article 6 of this Agreement.

1       2.4     **Payment.** Payments shall be made by County to Contractor in arrears, for  
2 services provided during the preceding month, within forty-five (45) days after the date of  
3 receipt, verification, and approval by County. All final invoices and/or any final budget  
4 modification requests shall be submitted by Contractor within sixty (60) days following the  
5 final month of service for which payment is claimed. No action shall be taken by County on  
6 claims submitted beyond the sixty (60) day closeout period. Any compensation which is not  
7 expended by Contractor pursuant to the terms and conditions of this Agreement shall  
8 automatically revert to County.

9       2.5     **Recoupments and Audits.** County shall recapture from Contractor the value of any  
10 services or other expenditures determined to be ineligible based on the County or State  
11 monitoring results. The County reserves the right to enter into a repayment agreement with  
12 Contractor, with total monthly payments not to exceed twelve (12) months from the date of the  
13 repayment agreement, to recover the amount of funds to be recouped. The County has the  
14 discretion to extend the repayment plan up to a total of twenty-four (24) months from the date of  
15 the repayment agreement. The repayment agreement may be made with the signed written  
16 approval of County's DBH Director, or designee, and respective Contractor through a  
17 repayment agreement. The monthly repayment amounts may be netted against the Contractor's  
18 monthly billing for services rendered during the month, or the County may, in its sole discretion,  
19 forego a repayment agreement and recoup all funds immediately. This remedy is not exclusive,  
20 and County may seek recoupment from any other means, including, but not limited to, a separate  
21 contract or agreement with Contractor.

22             Contractor shall be held financially liable for any and all future disallowances/audit  
23 exceptions due to Contractor's deficiency discovered through the State audit process and  
24 County utilization review for services provided during the course of this Agreement. At County's  
25 election, the disallowed amount will be remitted within forty-five (45) days to County upon  
26 notification or shall be withheld from subsequent payments to Contractor.

27       2.6     **Incidental Expenses.** The Contractor is solely responsible for all of its costs and  
28 expenses that are not specified as payable by the County under this Agreement. If Contractor

1 fails to comply with any provision of this Agreement, County shall be relieved of its obligation for  
2 further compensation.

### 3 **Article 3**

#### 4 **Reports**

5 3.1 Reports. The Contractor shall submit the following reports:

6 (A) Outcome Reports

7 Contractor shall submit to County program performance outcome reports, as  
8 requested. Outcome reports and outcome requirements are subject to change at  
9 County's discretion.

10 (B) Staffing Report

11 Contractor shall submit monthly staffing reports due by the 10th of each month  
12 that identify all direct service and support staff by first and last name, applicable  
13 licensure/certifications, and full-time hours worked to be used as a tracking tool to  
14 determine if Contractor's program is staffed according to the requirements of this  
15 Agreement.

16 (C) Additional Reports

17 Contractor shall also furnish to County such statements, records, reports, data,  
18 and other information as County may request pertaining to matters covered by this  
19 Agreement. In the event that Contractor fails to provide such reports or other information  
20 required hereunder, it shall be deemed sufficient cause for County to withhold monthly  
21 payments until there is compliance. In addition, Contractor shall provide written  
22 notification and explanation to County within five (5) days of any funds received from  
23 another source to conduct the same services covered by this Agreement.

24 3.2 **Monitoring.** Contractor agrees to extend to COUNTY's DBH and the State  
25 Department of Health Care Services (DHCS), Mental Health Division, or their designees, the  
26 right to review and monitor records or procedures at any time, in regard to the hearings, as well  
27 as the operation of Contractor's hearing process, in order to ensure compliance with the terms  
28 and conditions of this Agreement and with all State and Federal mandates and regulations.

1 **Article 4**

2 **Term of Agreement**

3 4.1 **Term.** This Agreement is effective on July 1, 2024, and terminates on June 30, 2027,  
4 except as provided in section 4.2, "Extension," or Article 6, "Termination and Suspension,"  
5 below.

6 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-  
7 year periods only upon written approval of both parties at least 30 days before the first day of  
8 the next one-year extension period. The County's DBH Director or his or her designee is  
9 authorized to sign the written approval on behalf of the County based on the Contractor's  
10 satisfactory performance. The extension of this Agreement by the County is not a waiver or  
11 compromise of any default or breach of this Agreement by the Contractor existing at the time of  
12 the extension whether or not known to the County.

13 **Article 5**

14 **Notices**

15 5.1 **Contact Information.** The persons and their addresses having authority to give and  
16 receive notices provided for or permitted under this Agreement include the following:

17 **For the County:**

18 Director  
19 County of Fresno  
20 1925 E. Dakota Avenue  
21 Fresno, CA 93726

22 **For the Contractor:**

23 J Melton & Associates  
24 6060 N. Harrison Avenue  
25 Fresno, CA 93711  
26 jmeltonandassociates@gmail.com  
27 (559) 283-0921

28 5.2 **Change of Contact Information.** Either party may change the information in section  
5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the County and the Contractor provided  
for or permitted under this Agreement must be in writing, state that it is a notice provided under

1 this Agreement, and be delivered either by personal service, by first-class United States mail, by  
2 an overnight commercial courier service, by telephonic facsimile transmission, or by Portable  
3 Document Format (PDF) document attached to an email.

4 (A) A notice delivered by personal service is effective upon service to the recipient.

5 (B) A notice delivered by first-class United States mail is effective three County  
6 business days after deposit in the United States mail, postage prepaid, addressed to the  
7 recipient.

8 (C) A notice delivered by an overnight commercial courier service is effective one  
9 County business day after deposit with the overnight commercial courier service,  
10 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to  
11 the recipient.

12 (D) A notice delivered by PDF document attached to an email is effective when  
13 transmission to the recipient is completed (but, if such transmission is completed outside  
14 of County business hours, then such delivery is deemed to be effective at the next  
15 beginning of a County business day), provided that the sender maintains a machine  
16 record of the completed transmission.

## 17 **Article 6**

### 18 **Termination and Suspension**

19 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are  
20 contingent on the approval of funds by the appropriating government agency. If sufficient funds  
21 are not allocated, then the County, upon at least 30 days' advance written notice to the  
22 Contractor, may:

23 (A) Modify the services provided by the Contractor under this Agreement; or

24 (B) Terminate this Agreement.

### 25 **6.2 Termination for Breach.**

26 (A) Upon determining that a breach (as defined in paragraph (C) below) has  
27 occurred, the County may give written notice of the breach to the Contractor. The written  
28 notice may suspend performance under this Agreement, and must provide at least 30

1 days for the Contractor to cure the breach.

2 (B) If the Contractor fails to cure the breach to the County's satisfaction within the  
3 time stated in the written notice, the County may terminate this Agreement immediately.

4 (C) For purposes of this section, a breach occurs when, in the determination of the  
5 County, the Contractor has:

6 (1) Obtained or used funds illegally or improperly;

7 (2) Failed to comply with any part of this Agreement;

8 (3) Submitted a substantially incorrect or incomplete report to the County; or

9 (4) Improperly performed any of its obligations under this Agreement.

10 **6.3 Termination without Cause.** In circumstances other than those set forth above, the  
11 County may terminate this Agreement by giving at least 30 days advance written notice to the  
12 Contractor.

13 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County  
14 under this Article 6 is without penalty to or further obligation of the County.

15 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article  
16 6, the County may demand repayment by the Contractor of any monies disbursed to the  
17 Contractor under this Agreement that, in the County's sole judgment, were not expended in  
18 compliance with this Agreement. The Contractor shall promptly refund all such monies upon  
19 demand. This section survives the termination of this Agreement.

## 20 **Article 7**

### 21 **Independent Contractor**

22 **7.1 Status.** In performing under this Agreement, the Contractor, including its officers,  
23 agents, employees, and volunteers, is at all times acting and performing as an independent  
24 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint  
25 venturer, partner, or associate of the County.

26 **7.2 Verifying Performance.** The County has no right to control, supervise, or direct the  
27 manner or method of the Contractor's performance under this Agreement, but the County may  
28 verify that the Contractor is performing according to the terms of this Agreement.



1 County agrees to indemnify, save, hold harmless, and at Contractor's request,  
2 defend Contractor, its officers, agents and employees from any and all costs and expenses  
3 including attorney fees and court costs, damages, liabilities, claims and losses occurring or  
4 resulting to Contractor in connection with the negligent performance, or failure to perform, by  
5 County, its officers, agents or employees under this Agreement, and from any and all costs and  
6 expenses, including attorney fees and court costs, damages, liabilities, claims and losses  
7 occurring or resulting to any person, firm or corporation who may be injured or damaged by the  
8 negligent performance, or failure to perform, of County, their officers, agents or employees  
9 under this Agreement.

10 Contractor agrees to indemnify County for Federal and/or State of California audit  
11 exceptions resulting from noncompliance herein on the part of Contractor.

12 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

13 **Article 9**

14 **Insurance**

15 9.1 The Contractor shall comply with all the insurance requirements in Exhibit C to this  
16 Agreement.

17 **Article 10**

18 **Compliance with State Requirements**

19 10.1 Contractor recognizes that County operates its Mental Health programs under an  
20 agreement with the State of California Department of Health Care Services, and that under said  
21 agreement the State imposes certain requirements on the County and its subcontractors.  
22 Contractor shall adhere to all State of California requirements, including those identified in  
23 Exhibit D, as applicable, attached hereto and by this reference incorporated herein.

24 **Article 11**

25 **Inspections, Audits, and Public Records**

26 11.1 **Inspection of Documents.** The Contractor shall make available to the County, and  
27 the County may examine at any time during business hours and as often as the County deems  
28 necessary, all of the Contractor's records and data with respect to the matters covered by this

1 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon  
2 request by the County, permit the County to audit and inspect all of such records and data to  
3 ensure the Contractor's compliance with the terms of this Agreement.

4 11.2 **State Audit Requirements.** If the compensation to be paid by the County under this  
5 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the  
6 California State Auditor, as provided in Government Code section 8546.7, for a period of three  
7 years after final payment under this Agreement. This section survives the termination of this  
8 Agreement.

9 11.3 **Public Records.** The County is not limited in any manner with respect to its public  
10 disclosure of this Agreement or any record or data that the Contractor may provide to the  
11 County. The County's public disclosure of this Agreement or any record or data that the  
12 Contractor may provide to the County may include but is not limited to the following:

13 (A) The County may voluntarily, or upon request by any member of the public or  
14 governmental agency, disclose this Agreement to the public or such governmental  
15 agency.

16 (B) The County may voluntarily, or upon request by any member of the public or  
17 governmental agency, disclose to the public or such governmental agency any record or  
18 data that the Contractor may provide to the County, unless such disclosure is prohibited  
19 by court order.

20 (C) This Agreement, and any record or data that the Contractor may provide to the  
21 County, is subject to public disclosure under the Ralph M. Brown Act (California  
22 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

23 (D) This Agreement, and any record or data that the Contractor may provide to the  
24 County, is subject to public disclosure as a public record under the California Public  
25 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning  
26 with section 6250) ("CPRA").

27 (E) This Agreement, and any record or data that the Contractor may provide to the  
28 County, is subject to public disclosure as information concerning the conduct of the

1 people's business of the State of California under California Constitution, Article 1,  
2 section 3, subdivision (b).

3 (F) Any marking of confidentiality or restricted access upon or otherwise made with  
4 respect to any record or data that the Contractor may provide to the County shall be  
5 disregarded and have no effect on the County's right or duty to disclose to the public or  
6 governmental agency any such record or data.

7 **11.4 Public Records Act Requests.** If the County receives a written or oral request  
8 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,  
9 and which the County has a right, under any provision of this Agreement or applicable law, to  
10 possess or control, then the County may demand, in writing, that the Contractor deliver to the  
11 County, for purposes of public disclosure, the requested records that may be in the possession  
12 or control of the Contractor. Within five business days after the County's demand, the  
13 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's  
14 possession or control, together with a written statement that the Contractor, after conducting a  
15 diligent search, has produced all requested records that are in the Contractor's possession or  
16 control, or (b) provide to the County a written statement that the Contractor, after conducting a  
17 diligent search, does not possess or control any of the requested records. The Contractor shall  
18 cooperate with the County with respect to any County demand for such records. If the  
19 Contractor wishes to assert that any specific record or data is exempt from disclosure under the  
20 CPRA or other applicable law, it must deliver the record or data to the County and assert the  
21 exemption by citation to specific legal authority within the written statement that it provides to  
22 the County under this section. The Contractor's assertion of any exemption from disclosure is  
23 not binding on the County, but the County will give at least 10 days' advance written notice to  
24 the Contractor before disclosing any record subject to the Contractor's assertion of exemption  
25 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs  
26 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,  
27 failure to produce any such records, or failure to cooperate with the County with respect to any  
28 County demand for any such records.

1 **Article 12**

2 **Disclosure of Self-Dealing Transactions**

3 12.1 **Applicability.** This Article 12 applies if the Contractor is operating as a corporation,  
4 or changes its status to operate as a corporation.

5 12.2 **Duty to Disclose.** If any member of the Contractor’s board of directors is party to a  
6 self-dealing transaction, he or she shall disclose the transaction by completing and signing a  
7 “Self-Dealing Transaction Disclosure Form” (Exhibit B to this Agreement) and submitting it to the  
8 County before commencing the transaction or immediately after.

9 12.3 **Definition.** “Self-dealing transaction” means a transaction to which the Contractor is  
10 a party and in which one or more of its directors, as an individual, has a material financial  
11 interest.

12 **Article 13**

13 **Federal and State Laws**

14 13.1 **Health Insurance Portability and Accountability Act.** County and Contractor  
15 each consider and represent themselves as covered entities as defined by the U.S. Health  
16 Insurance Portability and Accountability Act of 1996, Public Law 104-191(HIPAA) and agree to  
17 use and disclose Protected Health Information (PHI) as required by law.

18 County and Contractor acknowledge that the exchange of PHI between them is only for  
19 treatment, payment, and health care operations. County and Contractor intend to protect the  
20 privacy and provide for the security of PHI pursuant to the Agreement in compliance with  
21 HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law  
22 111-005 (HITECH), and regulations promulgated thereunder by the U.S. Department of Health  
23 and Human Services (HIPAA Regulations) and other applicable laws.

24 As part of the HIPAA Regulations, the Privacy Rule and the Security Rule require  
25 Contractor to enter into a agreement containing specific requirements prior to the disclosure of  
26 PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e)  
27 of the Code of Federal Regulations. The parties agree to the terms of the Business Associate  
28 Agreement in Exhibit J.

1 **Article 14**

2 **Disclosure of Ownership and/or Control Interest Information**

3 14.1 **Applicability.** This provision is only applicable if Contractor is disclosing entities,  
4 fiscal agents, or managed care entities, as defined in Code of Federal Regulations (C.F.R.),  
5 Title 42 §§ 455.101, 455.104 and 455.106(a)(1),(2).

6 14.2 **Duty to Disclose.** Contractor must disclose the following information as requested in  
7 the Provider Disclosure Statement, Disclosure of Ownership and Control Interest  
8 Statement, Exhibit E:

9 (A) Disclosure of 5% or More Ownership Interest:

10 (1) In the case of corporate entities with an ownership or control interest in the  
11 disclosing entity, the primary business address as well as every business location  
12 and P.O. Box address must be disclosed. In the case of an individual, the date of  
13 birth and Social Security number must be disclosed.

14 (2) In the case of a corporation with ownership or control interest in the  
15 disclosing entity or in any subcontractor in which the disclosing entity has a five  
16 percent (5%) or more interest, the corporation tax identification number must be  
17 disclosed.

18 (3) For individuals or corporations with ownership or control interest in any  
19 subcontractor in which the disclosing entity has a five percent (5%) or more interest,  
20 the disclosure of familial relationship is required.

21 (4) For individuals with five percent (5%) or more direct or indirect ownership  
22 interest of a disclosing entity, the individual shall provide evidence of completion of a  
23 criminal background check, including fingerprinting, if required by law, prior to  
24 execution of Contract. (42 C.F.R. § 455.434)

25 (B) Disclosures Related to Business Transactions:

26 (1) The ownership of any subcontractors with whom Contractor has had  
27 business transactions totaling more than \$25,000 during the 12-month period ending  
28 on the date of the request.

1 (2) Any significant business transactions between Contractor and any wholly  
2 owned supplier, or between Contractor and any subcontractor, during the 5-year  
3 period ending on the date of the request. (42 C.F.R. § 455.105(b).)

4 (C) Disclosures Related to Persons Convicted of Crimes:

5 (1) The identity of any person who has an ownership or control interest in the  
6 provider or is an agent or managing employee of the provider who has been  
7 convicted of a criminal offense related to that person's involvement in any program  
8 under the Medicare, Medicaid, or the Title XXI services program since the inception  
9 of those programs. (42 C.F.R. § 455.106.)

10 (2) County shall terminate the enrollment of Contractor if any person with five  
11 percent (5%) or greater direct or indirect ownership interest in the disclosing entity  
12 has been convicted of a criminal offense related to the person's involvement with  
13 Medicare, Medicaid, or Title XXI program in the last 10 years.

14 14.3 Contractor must provide disclosure upon execution of Contract, extension for  
15 renewal, and within 35 days after any change in Contractor ownership or upon request of  
16 County. County may refuse to enter into an agreement or terminate an existing agreement with  
17 Contractor if Contractor fails to disclose ownership and control interest information,  
18 information related to business transactions and information on persons convicted of crimes, or  
19 if Contractor did not fully and accurately make the disclosure as required.

20 14.4 Contractor must provide the County with written disclosure of any prohibited  
21 affiliations under 42 C.F.R. § 438.610. Contractor must not employ or subcontract with providers  
22 or have other relationships with providers Excluded from participation in Federal Health Care  
23 Programs, including Medi-Cal/Medicaid or procurement activities, as set forth in 42 C.F.R.  
24 §438.610.

25 14.5 **Reporting.** Submissions shall be scanned pdf copies and are to be sent via email to  
26 DBHContractedServices@fresnocountyca.gov. County may deny enrollment or terminate this  
27 Agreement where any person with five (5) percent or greater direct or indirect ownership interest  
28 in Contractor has been convicted of a criminal offense related to that person's involvement with

1 the Medicare, Medicaid, or Title XXI program in the last ten (10) years. County may  
2 terminate this Agreement where any person with five (5) percent or greater direct or indirect  
3 ownership interest in the Contractor did not submit timely and accurate information and  
4 cooperate with any screening method required in CFR, Title 42, Section 455.416.

5 **Article 15**

6 **Disclosure of Criminal History and Civil Actions**

7 15.1 **Applicability.** Contractor is required to disclose if any of the following conditions  
8 apply to them, their owners, officers, corporate managers, or partners (hereinafter collectively  
9 referred to as "Contractor"):

10 (A) Within the three (3) year period preceding the Agreement award, they have been  
11 convicted of, or had a civil judgment tendered against them for:

12 (1) Fraud or criminal offense in connection with obtaining, attempting to obtain,  
13 or performing a public (federal, state, or local) transaction or contract under a public  
14 transaction;

15 (2) Violation of a federal or state antitrust statute;

16 (3) Embezzlement, theft, forgery, bribery, falsification, or destruction of records;

17 or

18 (4) False statements or receipt of stolen property.

19 (B) Within a three (3) year period preceding their Agreement award, they have had a  
20 public transaction (federal, state, or local) terminated for cause or default.

21 15.2 **Duty to Disclose.** Disclosure of the above information will not automatically  
22 eliminate Contractor from further business consideration. The information will be considered as  
23 part of the determination of whether to continue and/or renew this Agreement and any additional  
24 information or explanation that Contractor elects to submit with the disclosed information will be  
25 considered. If it is later determined that the Contractor failed to disclose required information,  
26 any contract awarded to such Contractor may be immediately voided and terminated for  
27 material failure to comply with the terms and conditions of the award.

28 Contractor must sign a "Certification Regarding Debarment, Suspension, and Other

1 Responsible Matters – Primary Covered Transactions” in the form set forth in Exhibit F attached  
2 hereto and by this reference incorporated herein. Additionally, Contractor must immediately  
3 advise the County in writing if, during the term of the Agreement: (1) Contractor becomes  
4 suspended, debarred, excluded or ineligible for participation in Federal or State funded  
5 programs or from receiving federal funds as listed in the excluded parties list system  
6 (<http://www.epls.gov>); or (2) any of the above listed conditions become applicable to Contractor.  
7 Contractor shall indemnify, defend, and hold County harmless for any loss or damage resulting  
8 from a conviction, debarment, exclusion, ineligibility, or other matter listed in the signed  
9 Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## 10 **Article 16**

### 11 **Publicity Prohibition**

12 16.1 None of the funds, materials, property or services provided directly or indirectly under  
13 this Agreement shall be used for Contractor’s advertising, fundraising, or publicity (i.e.,  
14 purchasing tickets/tables, silent auction donations, etc.) for the purpose of self-promotion.  
15 Notwithstanding the above, publicity of the services described in Section One (1) of this  
16 Agreement shall be allowed as necessary to raise public awareness about the availability of  
17 such specific services when approved in advance by County’s DBH Director or designee for  
18 such items as written/printed materials, the use of media (i.e., radio, television, newspapers)  
19 and any other related expense(s).

## 20 **Article 17**

### 21 **Complaints**

22 17.1 Contractor shall log complaints and the disposition of all complaints from a client or a  
23 client’s family. CONTRACTOR shall provide a copy of the detailed complaint log entries  
24 concerning County-sponsored clients to COUNTY at monthly intervals by the tenth (10th) day of  
25 the following month, in a format that is mutually agreed upon. In addition, Contractor shall  
26 provide details and attach documentation of each complaint with the log. Contractor shall post  
27 signs informing clients of their right to file a complaint or grievance. Contractor shall notify  
28 County of all incidents reportable to State licensing bodies that affect County clients within



1       18.7 **Headings.** The headings and section titles in this Agreement are for convenience  
2 only and are not part of this Agreement.

3       18.8 **Severability.** If anything in this Agreement is found by a court of competent  
4 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in  
5 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of  
6 this Agreement with lawful and enforceable terms intended to accomplish the parties' original  
7 intent.

8       18.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall  
9 not unlawfully discriminate against any employee or applicant for employment, or recipient of  
10 services, because of race, religious creed, color, national origin, ancestry, physical disability,  
11 mental disability, medical condition, genetic information, marital status, sex, gender, gender  
12 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to  
13 all applicable State of California and federal statutes and regulation.

14       18.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation  
15 of the Contractor under this Agreement on any one or more occasions is not a waiver of  
16 performance of any continuing or other obligation of the Contractor and does not prohibit  
17 enforcement by the County of any obligation on any other occasion.

18       18.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
19 between the Contractor and the County with respect to the subject matter of this Agreement,  
20 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,  
21 publications, and understandings of any nature unless those things are expressly included in  
22 this Agreement. If there is any inconsistency between the terms of this Agreement without its  
23 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving  
24 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the  
25 exhibits.

26       18.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
27 create any rights or obligations for any person or entity except for the parties.

28       18.13 **Authorized Signature.** The Contractor represents and warrants to the County that:

1 (A) The Contractor is duly authorized and empowered to sign and perform its  
2 obligations under this Agreement.

3 (B) The individual signing this Agreement on behalf of the Contractor is duly  
4 authorized to do so and his or her signature on this Agreement legally binds the  
5 Contractor to the terms of this Agreement.

6 18.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by  
7 electronic signature as provided in this section.

8 (A) An “electronic signature” means any symbol or process intended by an individual  
9 signing this Agreement to represent their signature, including but not limited to (1) a  
10 digital signature; (2) a faxed version of an original handwritten signature; or (3) an  
11 electronically scanned and transmitted (for example by PDF document) version of an  
12 original handwritten signature.

13 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed  
14 equivalent to a valid original handwritten signature of the person signing this Agreement  
15 for all purposes, including but not limited to evidentiary proof in any administrative or  
16 judicial proceeding, and (2) has the same force and effect as the valid original  
17 handwritten signature of that person.

18 (C) The provisions of this section satisfy the requirements of Civil Code section  
19 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,  
20 Part 2, Title 2.5, beginning with section 1633.1).

21 (D) Each party using a digital signature represents that it has undertaken and  
22 satisfied the requirements of Government Code section 16.5, subdivision (a),  
23 paragraphs (1) through (5), and agrees that each other party may rely upon that  
24 representation.

25 (E) This Agreement is not conditioned upon the parties conducting the transactions  
26 under it by electronic means and either party may sign this Agreement with an original  
27 handwritten signature.

28 ///

1 18.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
2 original, and all of which together constitute this Agreement.

3 [SIGNATURE PAGE FOLLOWS]  
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28

1 The parties are signing this Agreement on the date stated in the introductory clause.

2 J MELTON & ASSOCIATES

COUNTY OF FRESNO

3  
4 Janice M. Melton  
5 Janice M. Melton, Chief Executive Officer

Nathan Magsig  
Nathan Magsig, Chairman of the Board of  
Supervisors of the County of Fresno

6  
7 Joseph V. Melton  
8 Joseph V. Melton, Chief Hearing Officer

**Attest:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

9  
10 Elisabeth M. Byers  
11 Elisabeth M. Byers, Managing Partner

By: Alexandra V. V...  
Deputy

12  
13  
14  
15 Mailing Address:  
16 J Melton & Associates  
17 6060 N. Harrison Ave.  
18 Fresno, CA 93711  
19 Phone No. 559-283-0921  
20 Contact: Joseph and Janice Melton

21 For accounting use only:

22 Org No.: 5630/2494/2112/2666  
23 Account No.: 7295  
24 Fund No.: 0001  
25 Subclass No.: 10000

26  
27  
28 E.G.

## Certification Hearing Review Officer

### Scope of Work

ORGANIZATION: J. Melton & Associates

ADDRESS: 6060 N. Harrison Ave, Fresno, CA 93711

SERVICES FOR: Conduct certification Review Hearings for adults and children involuntarily detained as required by the Lanterman-Petris-Short Act.

CONTRACT PERIOD: July 1, 2024 – June 30, 2029

CONTRACT AMOUNT:

FY 2024-2025	\$712,000
FY 2025-2026	\$746,000
FY 2026-2027	\$782,000
FY 2027-2028	\$820,000
FY 2028-2029	\$860,000

TARGET POPULATION: Adults and children involuntarily detained pursuant to the provisions of the Lanterman-Petris-Short Act of the California Welfare & Institutions Code.

SERVICES: Conduct Certification Hearings

1. The primary activity of the Certification Hearing Review Officer (Contractor) is to conduct hearings of those adults, adolescents, or children involuntarily detained due to being gravely disabled and/or danger to self or others because of mental illness and who have been certified for additional involuntary treatment.
2. Hearings shall be held in the manner as prescribed by section 5256 through and including 5270.15 of the California Welfare and Institutions Code, Division 5.
3. Certification Review Hearings shall be held within seven (7) days from initial detainment when a person has not been certified for intensive treatment pursuant to WIC 5250 and remains detained pursuant to WIC 5150.
4. Certification Review Hearings shall be held within four (4) days of a certification for additional 14-day involuntary hold of the person certified, pursuant to Welfare and Institution Code 5250. Additional certification review hearings will be held within four (4) days of the date on which the consumer is certified for a thirty (30) day period of intensive treatment (California Welfare and Institutions Code §§ 5270.15 and 5270.55).

5. Hearings shall be held either in-person or virtually at various psychiatric hospitals/acute psychiatric programs in the County of Fresno that are designated as Seventy-Two (72) hour treatment and evaluation facilities and non-designated facilities.
6. Contractor shall maintain all required documentation and shall submit any required documentation in compliance with all applicable State and Federal confidentiality laws in the manner determined by the County.
7. Contractor will provide approximately one hundred sixty (160) hearings per month although no minimum is guaranteed.
8. County will be responsible to provide for and compensate the Contractor for all hearings performed in accordance with Articles 4, 4.5, and 4.7 of the Welfare and Institutions Code at a location/space that allows for confidentiality and is compatible with and is least disruptive to the treatment being provided to the Beneficiary or Recipient.
9. Review hearings will be conducted each week on Tuesday and Friday or on other days of the week as may be necessary to complete said hearings within State required timelines. If a hearing falls on a County observed holiday, the Contractor will issue notification to the DBH on the alternate date chosen. Depending on the number of hearings scheduled for the day and the complexity of each hearing, the time taken to complete all hearings scheduled may extend past the customary 8:00 a.m. 5:00 p.m. business day.
10. Contractor shall provide monthly data including but not limited to the following:
  - Number of scheduled hearings, by each facility (CRMC, Saint Agnes, Coalinga Hospital, CSC, PHF, etc.)
  - Number of scheduled hearings, by each facility, that are cancelled
  - Reasons for cancellations
11. Contractor shall provide coordination of hearing schedule between all facilities, Patient's Rights, and Hearing Officers to assure timely hearings within the time frames required by law.

**PROJECTED OUTCOMES:**

Provide approximately one hundred sixty (160) review hearings per month.

## Exhibit B

### Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

#### Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

## Exhibit B

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	

# Exhibit C

## Insurance Requirements

### 1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.

### 2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or [HRRiskManagement@fresnocountyca.gov](mailto:HRRiskManagement@fresnocountyca.gov), and by mail or email to the person identified to receive notices under this Agreement,

## Exhibit C

certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
  - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
  - (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
  - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
  - (v) The technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
  - (vi) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in

## Exhibit C

advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

## Exhibit D

### BEHAVIORAL HEALTH REQUIREMENTS

#### 1. CONTROL REQUIREMENTS

The County and its subcontractors shall provide services in accordance with all applicable Federal and State statutes and regulations.

#### 2. PROFESSIONAL LICENSURE

All (professional level) persons employed by the County Mental Health Plan (directly or through contract) providing Short-Doyle/Medi-Cal services have met applicable professional licensure requirements pursuant to Business and Professions and Welfare and Institutions Codes.

#### 3. CONFIDENTIALITY

Contractor shall conform to and County shall monitor compliance with all State of California and Federal statutes and regulations regarding confidentiality, including but not limited to confidentiality of information requirements at 42, Code of Federal Regulations sections 2.1 *et seq*; California Welfare and Institutions Code, sections 14100.2, 11977, 11812, 5328; Division 10.5 and 10.6 of the California Health and Safety Code; Title 22, California Code of Regulations, section 51009; and Division 1, Part 2.6, Chapters 1-7 of the California Civil Code.

#### 4. NON-DISCRIMINATION

##### A. Eligibility for Services

Contractor shall prepare and make available to County and to the public all eligibility requirements to participate in the program plan set forth in the Agreement. No person shall, because of ethnic group identification, age, gender, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed, political belief or sexual preference be excluded from participation, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal or State of California assistance.

##### B. Employment Opportunity

Contractor shall comply with County policy, and the Equal Employment Opportunity Commission guidelines, which forbids discrimination against any person on the grounds of race, color, national origin, sex, religion, age, disability status, or sexual preference in employment practices. Such practices include retirement, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

## Exhibit D

- C. Suspension of Compensation  
If an allegation of discrimination occurs, County may withhold all further funds, until Contractor can show clear and convincing evidence to the satisfaction of County that funds provided under this Agreement were not used in connection with the alleged discrimination.
- D. Nepotism  
Except by consent of County's Department of Behavioral Health Director, or designee, no person shall be employed by Contractor who is related by blood or marriage to, or who is a member of the Board of Directors or an officer of Contractor.

### 5. PATIENTS' RIGHTS

Contractor shall comply with applicable laws and regulations, including but not limited to, laws, regulations, and State policies relating to patients' rights.

### STATE CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the non-discrimination program requirements. (Gov. Code § 12990 (a-f) and CCR, Title 2, Section 111 02) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the person's or organization's policy of maintaining a drug-free workplace;
    - 3) any available counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on this Agreement will:
    - 1) receive a copy of the company's drug-free workplace policy statement; and,
    - 2) agree to abide by the terms of the company's statement as a condition of employment on this Agreement.

## Exhibit D

Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. **SWEATFREE CODE OF CONDUCT:**

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on

## Exhibit D

the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

- b. Contractor agrees to cooperate fully in providing reasonable access to the Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).
7. **DOMESTIC PARTNERS**: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code Section 10295.3.
8. **GENDER IDENTITY**: For contracts of \$100,000 or more, Contractor certifies that CONTRACTOR is in compliance with Public Contract Code Section 10295.35.

### DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST**: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with this Agreement, the awarding agency must be contacted immediately for clarification.

#### Current State Employees (Pub. Contract Code §10410):

- a). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b). No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

#### Former State Employees (Pub. Contract Code §10411):

- a). For the two (2) year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

## Exhibit D

- b). For the twelve (12) month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. **LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and CONTRACTOR affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. **CONTRACTOR NAME CHANGE:** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**
  - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the CONTRACTOR is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the state not be subject to the franchise tax.
  - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

## Exhibit D

6. **RESOLUTION:** A County, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. **AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
8. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all Contractors that are not another state agency or other governmental entity.
9. **INSPECTION AND AUDIT OF RECORDS AND ACCESS TO FACILITIES:**

The State, CMS, the Office of the Inspector General, the Comptroller General, and their designees may, at any time, inspect and audit any records or documents of Contractor or its subcontractors, and may, at any time, inspect the premises, physical facilities, and equipment where Medicaid-related activities or work is conducted. The right to audit under this section exists for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.

### Federal database checks.

Consistent with the requirements at § 455.436 of this chapter, the State must confirm the identity and determine the exclusion status of Contractor, any subcontractor, as well as any person with an ownership or control interest, or who is an agent or managing employee of Contractor through routine checks of Federal databases. This includes the Social Security Administration's Death Master File, the National Plan and Provider Enumeration System (NPPES), the List of Excluded Individuals/Entities (LEIE), the System for Award Management (SAM), and any other databases as the State or Secretary may prescribe. These databases must be consulted upon contracting and no less frequently than monthly thereafter. If the State finds a party that is excluded, it must promptly notify the Contractor and take action consistent with § 438.610(c).

The State must ensure that Contractor with which the State contracts under this part is not located outside of the United States and that no claims paid by a Contractor to a network provider, out-of-network provider, subcontractor or financial institution located outside of the U.S. are considered in the development of actuarially sound capitation rates.

## Exhibit D

### CALIFORNIA ADVANCING AND INNOVATING MEDI-CAL (CAL-AIM) REQUIREMENTS

#### 1. SERVICES AND ACCESS PROVISIONS

##### a. CERTIFICATION OF ELIGIBILITY

- i. Contractor will, in cooperation with County, comply with Section 14705.5 of California Welfare and Institutions Code to obtain a certification of an individual's eligibility for Specialty Mental Health Services (SMHS) under Medi-Cal.

##### b. ACCESS TO SPECIALTY MENTAL HEALTH SERVICES

- i. In collaboration with the County, Contractor will work to ensure that individuals to whom the Contractor provides SMHS meet access criteria, as per Department of Health Care Services (DHCS) guidance specified in BHIN 21-073. Specifically, the Contractor will ensure that the clinical record for each individual includes information as a whole indicating that individual's presentation and needs are aligned with the criteria applicable to their age at the time of service provision as specified below.
- ii. For enrolled individuals under 21 years of age, Contractor shall provide all medically necessary SMHS required pursuant to Section 1396d(r) of Title 42 of the United States Code. Covered SMHS shall be provided to enrolled individuals who meet either of the following criteria, (I) or (II) below. If an individual under age 21 meets the criteria as described in (I) below, the beneficiary meets criteria to access SMHS; it is not necessary to establish that the beneficiary also meets the criteria in (b) below.
  1. The individual has a condition placing them at high risk for a mental health disorder due to experience of trauma evidenced by any of the following: scoring in the high-risk range under a trauma screening tool approved by DHCS, involvement in the child welfare system, juvenile justice involvement, or experiencing homelessness.  
OR
  2. The individual has at least one of the following:
    - a. A significant impairment
    - b. A reasonable probability of significant deterioration in an important area of life functioning
    - c. A reasonable probability of not progressing developmentally as appropriate.
    - d. A need for SMHS, regardless of presence of impairment, that are not included within the mental health benefits that a Medi-Cal Managed Care Plan (MCP) is required to provide.

**AND** the individual's condition as described in subparagraph (II a-d) above is due to one of the following:

## Exhibit D

- a. A diagnosed mental health disorder, according to the criteria in the current editions of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases and Related Health Problems (ICD).
  - b. A suspected mental health disorder that has not yet been diagnosed.
  - c. Significant trauma placing the individual at risk of a future mental health condition, based on the assessment of a licensed mental health professional.
- iii. For individuals 21 years of age or older, Contractor shall provide covered SMHS for clients who meet both of the following criteria, (a) and (b) below:
1. The individual has one or both of the following:
    - a. Significant impairment, where impairment is defined as distress, disability, or dysfunction in social, occupational, or other important activities.
    - b. A reasonable probability of significant deterioration in an important area of life functioning.
  2. The individual's condition as described in paragraph (a) is due to either of the following:
    - a. A diagnosed mental health disorder, according to the criteria in the current editions of the DSM and ICD.
    - b. A suspected mental disorder that has not yet been diagnosed.
- c. ADDITIONAL CLARIFICATIONS
- i. Criteria
    1. A clinically appropriate and covered mental health prevention, screening, assessment, treatment, or recovery service listed within Exhibit A of this Agreement can be provided and submitted to the County for reimbursement under any of the following circumstances:
      - a. The services were provided prior to determining a diagnosis, including clinically appropriate and covered services provided during the assessment process;
      - b. The service was not included in an individual treatment plan; or
      - c. The individual had a co-occurring substance use disorder.
  - ii. Diagnosis Not a Prerequisite
    1. Per BHIN 21-073, a mental health diagnosis is not a prerequisite for access to covered SMHS. This does not eliminate the requirement that all Medi-Cal claims, including SMHS claims, include a current Centers for

## Exhibit D

Medicare & Medicaid Services (CMS) approved ICD diagnosis code

### d. MEDICAL NECESSITY

- i. Contractor will ensure that services provided are medically necessary in compliance with BHIN 21-073 and pursuant to Welfare and Institutions Code section 14184.402(a). Services provided to a client must be medically necessary and clinically appropriate to address the individual's presenting condition. Documentation in each individual's chart as a whole will demonstrate medical necessity as defined below, based on the client's age at the time of service provision.
- ii. For individuals 21 years of age or older, a service is "medically necessary" or a "medical necessity" when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain as set forth in Welfare and Institutions Code section 14059.5.
- iii. For individuals under 21 years of age, a service is "medically necessary" or a "medical necessity" if the service meets the standards set forth in Section 1396d(r)(5) of Title 42 of the United States Code.

### e. COORDINATION OF CARE

- i. Contractor shall ensure that all care, treatment and services provided pursuant to this Agreement are coordinated among all providers who are serving the individual, including all other SMHS providers, as well as providers of Non-Specialty Mental Health Services (NSMHS), substance use disorder treatment services, physical health services, dental services, regional center services and all other services as applicable to ensure a client-centered and whole-person approach to services.
- ii. Contractor shall ensure that care coordination activities support the monitoring and treatment of comorbid substance use disorder and/or health conditions.
- iii. Contractor shall include in care coordination activities efforts to connect, refer and link individuals to community-based services and supports, including but not limited to educational, social, prevocational, vocational, housing, nutritional, criminal justice, transportation, childcare, child development, family/marriage education, cultural sources, and mutual aid support groups.
- iv. Contractor shall engage in care coordination activities beginning at intake and throughout the treatment and discharge planning processes.
- v. To facilitate care coordination, Contractor will request a HIPAA and California law compliant client authorization to share the individual's information with and among all other providers involved in the individual's care, in satisfaction of state and federal privacy laws and regulations.

### f. CO-OCCURRING TREATMENT AND NO WRONG DOOR

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- i. Per BHIN 22-011, Specialty and Non-Specialty Mental Health Services can be provided concurrently, if those services are clinically appropriate, coordinated, and not duplicative. When a client meets criteria for both NSMHS and SMHS, the individual should receive services based on individual clinical need and established therapeutic relationships. Clinically appropriate and covered SMHS can also be provided when the individual has a co-occurring mental health condition and substance use disorder.
- ii. Under this Agreement, Contractor will ensure that individuals receive timely mental health services without delay. Services are reimbursable to Contractor by County even when:
  1. Services are provided prior to determination of a diagnosis, during the assessment or prior to determination of whether SMHS access criteria are met, even if the assessment ultimately indicates the individual does not meet criteria for SMHS.
  2. If Contractor is serving a individual receiving both SMHS and NSMHS, Contractor holds responsibility for documenting coordination of care and ensuring that services are non-duplicative.

## **2. AUTHORIZATION AND DOCUMENTATION PROVISIONS**

### a. SERVICE AUTHORIZATION

- i. Contractor will collaborate with County to complete authorization requests in line with County and DHCS policy.
- ii. Contractor shall have in place, and follow, written policies and procedures for completing requests for initial and continuing authorizations of services, as required by County guidance.
- iii. Contractor shall respond to County in a timely manner when consultation is necessary for County to make appropriate authorization determinations.
- iv. County shall provide Contractor with written notice of authorization determinations within the timeframes set forth in BHINs 22-016 and 22-017, or any subsequent DHCS notices.
- v. Contractor shall alert County when an expedited authorization decision (no later than 72 hours) is necessary due to an individual's specific needs and circumstances that could seriously jeopardize the individual's life or health, or ability to attain, maintain, or regain maximum function.

### b. DOCUMENTATION REQUIREMENTS

- i. Contractor will follow all documentation requirements as specified in Article 4.2-4.8 inclusive in compliance with federal, state and County requirements.
- ii. All Contractor documentation shall be accurate, complete, and legible, shall list each date of service, and include the face-to-face time for each service. Contractor shall document travel and documentation time for each service separately from face-to-face time and provide this information to County upon request.

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Services must be identified as provided in-person, by telephone, or by telehealth.

- iii. All services shall be documented utilizing County-approved templates and contain all required elements. Contractor agrees to satisfy the chart documentation requirements set forth in BHIN 22-019 and the contract between County and DHCS. Failure to comply with documentation standards specified in this Article require corrective action plans.

### c. ASSESSMENT

- i. Contractor shall ensure that all individuals' medical records include an assessment of each individual's need for mental health services.
- ii. Contractor will utilize the seven uniform assessment domains and include other required elements as identified in BHIN 22-019 and document the assessment in the individual's medical record.
- iii. For individuals aged 6 through 21, the Child and Adolescent Needs and Strengths (CANS), and for individuals aged 3 through 18, the Pediatric Symptom Checklist-35 (PSC-35) tools are required at intake, every six months during treatment, and at discharge, as specified in DHCS MHSUDS INs 17-052 and 18-048.
- iv. The time period for providers to complete an initial assessment and subsequent assessments for SMHS are up to clinical discretion of County; however, Contractor's providers shall complete assessments within a reasonable time and in accordance with generally accepted standards of practice.

### d. ICD-10

- i. Contractor shall use the criteria set forth in the current edition of the DSM as the clinical tool to make diagnostic determinations.
- ii. Once a DSM diagnosis is determined, the Contractor shall determine the corresponding mental health diagnosis in the current edition of ICD. Contractor shall use the ICD diagnosis code(s) to submit a claim for SMHS to receive reimbursement from County.
- iii. The ICD Tabular List of Diseases and Injuries is maintained by CMS and may be updated during the term of this Agreement. Changes to the lists of ICD diagnoses do not require an amendment to this Agreement, and County may implement these changes as provided by CMS

### e. PROBLEM LIST

- i. Contractor will create and maintain a Problem List for each individual served under this Agreement. The problem list is a list of symptoms, conditions, diagnoses, and/or risk factors identified through assessment, psychiatric diagnostic evaluation, crisis encounters, or other types of service encounters.
- ii. Contractor must document a problem list that adheres to industry standards utilizing at minimum current SNOMED International,

## Exhibit D

Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®) U.S. Edition, September 2022 Release, and ICD-10-CM 2023.

- iii. A problem identified during a service encounter may be addressed by the service provider during that service encounter and subsequently added to the problem list.
  - iv. The problem list shall include, but is not limited to, all elements specified in BHIN 22-019.
  - v. County does not require the problem list to be updated within a specific timeframe or have a requirement about how frequently the problem list should be updated after a problem has initially been added. However, Contractor shall update the problem list within a reasonable time such that the problem list reflects the current issues facing the client, in accordance with generally accepted standards of practice and in specific circumstances specified in BHIN 22-019.
- f. TREATMENT AND CARE PLANS
- i. Contractor is not required to complete treatment or care plans for clients under this Agreement, except in the circumstances specified in BHIN 22-019 and additional guidance from DHCS that may follow after execution of this Agreement.
- g. PROGRESS NOTES
- i. Contractor shall create progress notes for the provision of all SMHS services provided under this Agreement.
  - ii. Each progress note shall provide sufficient detail to support the service code selected for the service type as indicated by the service code description.
  - iii. Progress notes shall include all elements specified in BHIN 22-019, whether the note be for an individual or a group service.
  - iv. Contractor shall complete progress notes within three business days of providing a service, with the exception of notes for crisis services, which shall be completed within 24 hours.
  - v. Providers shall complete a daily progress note for services that are billed on a daily basis, such as residential and day treatment services, if applicable.
- h. TRANSITION OF CARE TOOL
- i. Contractor shall use a Transition of Care Tool for any individual whose existing services will be transferred from Contractor to an Medi-Cal Managed Care Plan (MCP) provider or when NSMHS will be added to the existing mental health treatment provided by Contractor, as specified in BHIN 22-065, in order to ensure continuity of care.
  - ii. Determinations to transition care or add services from an MCP shall be made in alignment with County policies and via a person-centered, shared decision-making process.
  - iii. Contractor may directly use the DHCS-provided Transition of Care Tool, found at <https://www.dhcs.ca.gov/Pages/Screening-and->

## Exhibit D

[Transition-of-Care-Tools-for-Medi-Cal-Mental-Health-Services.aspx](#), or obtain a copy of that tool provided by the County. Contractor may create the Transition of Care Tool in its Electronic Health Record (EHR). However, the contents of the Transition of Care Tool, including the specific wording and order of fields, shall remain identical to the DHCS provided form. The only exception to this requirement is when the tool is translated into languages other than English.

### i. TELEHEALTH

- i. Contractor may use telehealth, when it deems clinically appropriate, as a mode of delivering behavioral health services in accordance with all applicable County, state, and federal requirements, including those related to privacy/security, efficiency, and standards of care. Such services will conform to the definitions and meet the requirements included in the Medi-Cal Provider Manual: Telehealth, available in the DHCS Telehealth Resources page at:  
<https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthResources.aspx>.
- ii. All telehealth equipment and service locations must ensure that client confidentiality is maintained.
- iii. Licensed providers and staff may provide services via telephone and telehealth as long as the service is within their scope of practice.
- iv. Medical records for individuals served by Contractor under this Agreement must include documentation of written or verbal consent for telehealth or telephone services if such services are provided by Contractor. Such consent must be obtained at least once prior to initiating applicable health care services and consent must include all elements as specified in BHIN 22-019.
- v. County may at any time audit Contractor's telehealth practices, and Contractor must allow access to all materials needed to adequately monitor Contractor's adherence to telehealth standards and requirements.

## 3. CLIENT PROTECTIONS

### a. GRIEVANCES, APPEALS AND NOTICES OF ADVERSE BENEFIT DETERMINATION

- i. All grievances (as defined by 42 C.F.R. § 438.400) and complaints received by Contractor must be immediately forwarded to the County's Managed Care Department or other designated persons via a secure method (e.g., encrypted email or by fax) to allow ample time for the Managed Care staff to acknowledge receipt of the grievance and complaints and issue appropriate responses.
- ii. Contractor shall not discourage the filing of grievances and individuals do not need to use the term "grievance" for a complaint to be captured as an expression of dissatisfaction and, therefore, a grievance.

## Exhibit D

- iii. Aligned with MHSUDS IN 18-010E and 42 C.F.R. §438.404, the appropriate and delegated Notice of Adverse Benefit Determination (NOABD) must be issued by Contractor within the specified timeframes using the template provided by the County.
  - iv. NOABDs must be issued to individuals anytime the Contractor has made or intends to make an adverse benefit determination that includes the reduction, suspension, or termination of a previously authorized service and/or the failure to provide services in a timely manner. The notice must have a clear and concise explanation of the reason(s) for the decision as established by DHCS and the County. The Contractor must inform the County immediately after issuing a NOABD.
  - v. Procedures and timeframes for responding to grievances, issuing and responding to adverse benefit determinations, appeals, and state hearings must be followed as per 42 C.F.R., Part 438, Subpart F (42 C.F.R. §§ 438.400 – 438.424).
  - vi. Contractor must provide individuals any reasonable assistance in completing forms and taking other procedural steps related to a grievance or appeal such as auxiliary aids and interpreter services.
  - vii. Contractor must maintain records of grievances and appeals and must review the information as part of its ongoing monitoring procedures. The record must be accurately maintained in a manner accessible to the County and available upon request to DHCS.
- b. Advanced Directives
    - i. Contractor must comply with all County policies and procedures regarding Advanced Directives in compliance with the requirements of 42 C.F.R. §§ 422.128 and 438.6(i) (l), (3) and (4).
  - c. Continuity of Care
    - i. Contractor shall follow the County's continuity of care policy that is in accordance with applicable state and federal regulations, MHSUDS IN 18-059 and any BHINs issued by DHCS for parity in mental health and substance use disorder benefits subsequent to the effective date of this Agreement (42 C.F.R. § 438.62(b)(1)-(2).)

#### **4. QUALITY IMPROVEMENT PROGRAM**

- a. QUALITY IMPROVEMENT ACTIVITIES AND PARTICIPATION
  - i. Contractor shall implement mechanisms to assess person served/family satisfaction based on County's guidance. The Contractor shall assess individual/family satisfaction by:
    - 1. Surveying person served/family satisfaction with the Contractor's services at least annually.
    - 2. Evaluating person served's grievances, appeals and State Hearings at least annually.
    - 3. Evaluating requests to change persons providing services at least annually.

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4. Informing the County and individuals of the results of client/family satisfaction activities.
- ii. Contractor, if applicable, shall implement mechanisms to monitor the safety and effectiveness of medication practices. This mechanism shall be under the supervision of a person licensed to prescribe or dispense prescription drugs, at least annually and as required by DBH.
- iii. Contractor shall implement mechanisms to monitor appropriate and timely intervention of occurrences that raise quality of care concerns. The Contractor shall take appropriate follow-up action when such an occurrence is identified. The results of the intervention shall be evaluated by the Contractor at least annually and shared with the County.
- iv. Contractor shall assist County, as needed, with the development and implementation of Corrective Action Plans.
- v. Contractor shall collaborate with County to create a County's QI Work Plan with documented annual evaluations and documented revisions as needed. The QI Work Plan shall evaluate the impact and effectiveness of its quality assessment and performance improvement program.
- vi. Contractor shall attend and participate in the County's Quality Improvement Committee (QIC) to recommend policy decisions, review and evaluate results of QI activities, including PIPs, institute needed QI actions, and ensure follow-up of QI processes. Contractor shall ensure that there is active participation by the Contractor's practitioners and providers in the QIC.
- vii. Contractor shall participate, as required, in annual, independent external quality reviews (EQR) of the quality, timeliness, and access to the services covered under this Contract, which are conducted pursuant to Subpart E of Part 438 of the Code of Federal Regulations. (42 C.F.R. §§ 438.350(a) and 438.320)

### b. TIMELY ACCESS

- i. Timely access standards include:
  1. Contractor must have hours of operation during which services are provided to Medi-Cal individuals that are no less than the hours of operation during which the provider offers services to non-Medi-Cal individuals. If the Contractor's provider only serves Medi-Cal clients, the provider must provide hours of operation comparable to the hours the provider makes available for Medi-Cal services that are not covered by the Agreement or another County.
  2. Appointments data, including wait times for requested services, must be recorded and tracked by Contractor, and submitted to the County on a monthly basis in a format specified by the County. Appointments' data should be submitted to the County's Quality Management Department or other designated persons.

## Exhibit D

3. Urgent care appointments for services that do not require prior authorization must be provided to individuals within 48 hours of a request. Urgent appointments for services that do require prior authorization must be provided to clients within 96 hours of request.
  4. Non-urgent non-psychiatry mental health services, including, but not limited to Assessment, Targeted Case Management, and Individual and Group Therapy appointments (for both adult and children/youth) must be made available to Medi-Cal individuals within 10 business days from the date the individual or a provider acting on behalf of the individual, requests an appointment for a medically necessary service. Non-urgent psychiatry appointments (for both adult and children/youth) must be made available to Medi-Cal individuals within 15 business days from the date the client or a provider acting on behalf of the individual, requests an appointment for a medically necessary service.
  5. Applicable appointment time standards may be extended if the referring or treating provider has determined and noted in the individual's record that a longer waiting period will not have a detrimental impact on the health of the individual.
  6. Periodic office visits to monitor and treat mental health conditions may be scheduled in advance consistent with professionally recognized standards of practice as determined by the treating licensed mental health provider acting within the scope of their practice.
- c. PROVIDER APPLICATION AND VALIDATION FOR ENROLLMENT (PAVE)
- i. Contractor shall ensure that all of its required clinical staff, who are rendering SMHS to Medi-Cal individuals on behalf of Contractor, are registered through DHCS' Provider Application and Validation for Enrollment (PAVE) portal, pursuant to BHIN 20-071 requirements, the 21st Century Cures Act and the CMS Medicaid and Children's Health Insurance Program (CHIP) Managed Care Final Rule.
  - ii. SMHS licensed individuals required to enroll via the "Ordering, Referring and Prescribing" (ORP) PAVE enrollment pathway (i.e. PAVE application package) available through the DHCS PED Pave Portal, include: Licensed Clinical Social Worker (LCSW), Licensed Marriage and Family Therapist (LMFT), Licensed Professional Clinical Counselor (LPCC), Psychologist, Licensed Educational Psychologist, Physician (MD and DO), Physician Assistant, Registered Pharmacist/Pharmacist, Certified Pediatric/Family Nurse Practitioner, Nurse Practitioner, Occupational Therapist, and Speech-Language Pathologist. Interns, trainees, and associates are not eligible for enrollment.

## Exhibit D

### d. PHYSICIAN INCENTIVE PLAN

- i. If Contractor wants to institute a Physician Incentive Plan, Contractor shall submit the proposed plan to the County which will in turn submit the Plan to the State for approval, in accordance with the provisions of 42 C.F.R. § 438.6(c).

## 5. DATA, PRIVACY AND SECURITY REQUIREMENTS

### a. ELECTRONIC PRIVACY AND SECURITY

- i. Contractor shall have a secure email system and send any email containing PII or PHI in a secure and encrypted manner. Contractor's email transmissions shall display a warning banner stating that data is confidential, systems activities are monitored and logged for administrative and security purposes, systems use is for authorized users only, and that users are directed to log off the system if they do not agree with these requirements.
- ii. Contractor shall institute compliant password management policies and procedures, which shall include but not be limited to procedures for creating, changing, and safeguarding passwords. Contractor shall establish guidelines for creating passwords and ensuring that passwords expire and are changed at least once every 90 days.
- iii. Any Electronic Health Records (EHRs) maintained by Contractor that contain PHI or PII for individuals served through this Agreement shall contain a warning banner regarding the PHI or PII contained within the EHR. Contractors that utilize an EHR shall maintain all parts of the clinical record that are not stored in the EHR, including but not limited to the following examples of client signed documents: discharge plans, informing materials, and health questionnaire.
- iv. Contractor entering data into any County electronic systems shall ensure that staff are trained to enter and maintain data within this system.

## 6. PROGRAM INTEGRITY

### a. Credentialing and Re-credentialing of Providers

- i. Contractor shall ensure that all of their network providers delivering covered services, sign and date an attestation statement on a form provided by County, in which each provider attests to the following:
  1. Any limitations or inabilities that affect the provider's ability to perform any of the position's essential functions, with or without accommodation;
  2. A history of loss of license or felony convictions;
  3. A history of loss or limitation of privileges or disciplinary activity;
  4. A lack of present illegal drug use; and
  5. The application's accuracy and completeness

## Exhibit D

- ii. Contractor must file and keep track of attestation statements, credentialing applications and credentialing status for all of their providers and must make those available to the County upon request at any time.
- iii. Contractor is required to sign an annual attestation statement at the time of Agreement renewal in which they will attest that they will follow County's Credentialing Policy and MHSUDS IN 18-019 and ensure that all of their rendering providers are credentialed as per established guidelines.

# Exhibit E

## DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT

### I. Identifying Information

Name of entity	D/B/A			
Address (number, street)	City	State	ZIP code	
CLIA number	Taxpayer ID number (EIN)	Telephone number (        )		

II. Answer the following questions by checking "Yes" or "No." If any of the questions are answered "Yes," list names and addresses of individuals or corporations under "Remarks" on page 2. Identify each item number to be continued.

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| A. Are there any individuals or organizations having a direct or indirect ownership or control interest of five percent or more in the institution, organizations, or agency that have been convicted of a criminal offense related to the involvement of such persons or organizations in any of the programs established by Titles XVIII, XIX, or XX? ..... | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Are there any directors, officers, agents, or managing employees of the institution, agency, or organization who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX, or XX? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Are there any individuals currently employed by the institution, agency, or organization in a managerial, accounting, auditing, or similar capacity who were employed by the institution's, organization's, or agency's fiscal intermediary or carrier within the previous 12 months? (Title XVIII providers only) .....                                   | <input type="checkbox"/> | <input type="checkbox"/> |

III. A. List names, addresses for individuals, or the EIN for organizations having direct or indirect ownership or a controlling interest in the entity. (See instructions for definition of ownership and controlling interest.) List any additional names and addresses under "Remarks" on page 2. If more than one individual is reported and any of these persons are related to each other, this must be reported under "Remarks."

NAME	ADDRESS	EIN

- B. Type of entity:     Sole proprietorship                       Partnership                       Corporation  
                                Unincorporated Associations                       Other (specify) \_\_\_\_\_
- C. If the disclosing entity is a corporation, list names, addresses of the directors, and EINs for corporations under "Remarks."
- D. Are any owners of the disclosing entity also owners of other Medicare/Medicaid facilities? (Example: sole proprietor, partnership, or members of Board of Directors) If yes, list names, addresses of individuals, and provider numbers. ....

NAME	ADDRESS	PROVIDER NUMBER

## Exhibit E

**YES    NO**

- IV. A. Has there been a change in ownership or control within the last year? .....    
 If yes, give date. \_\_\_\_\_
- B. Do you anticipate any change of ownership or control within the year? .....    
 If yes, when? \_\_\_\_\_
- C. Do you anticipate filing for bankruptcy within the year? .....    
 If yes, when? \_\_\_\_\_

V. Is the facility operated by a management company or leased in whole or part by another organization? .....    
 If yes, give date of change in operations. \_\_\_\_\_

VI. Has there been a change in Administrator, Director of Nursing, or Medical Director within the last year? .....

VII. A. Is this facility chain affiliated? .....    
 (If yes, list name, address of corporation, and EIN.)

Name		EIN	
Address (number, name)	City	State	ZIP code

B. If the answer to question VII.A. is NO, was the facility ever affiliated with a chain?  
 (If yes, list name, address of corporation, and EIN.)

Name		EIN	
Address (number, name)	City	State	ZIP code

*Whoever knowingly and willfully makes or causes to be made a false statement or representation of this statement, may be prosecuted under applicable federal or state laws. In addition, knowingly and willfully failing to fully and accurately disclose the information requested may result in denial of a request to participate or where the entity already participates, a termination of its agreement or contract with the agency, as appropriate.*

Name of authorized representative (typed)	Title
Signature	Date

Remarks

## Exhibit F

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

#### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

#### CERTIFICATION

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its owners, officers, corporate managers and partners:
  - (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 proposal 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 F

- (c) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature: Janice Melton, Esq Date: 6-4-24  
Janice Melton CEO J Melton & ASSO  
(Printed Name & Title) (Name of Agency or Company)

## **Fresno County Mental Health Plan**

### **Grievances**

Fresno County Mental Health Plan (MHP) provides beneficiaries with a grievance and appeal process and an expedited appeal process to resolve grievances and disputes at the earliest and the lowest possible level.

Title 9 of the California Code of Regulations requires that the MHP and its fee-for-service providers give verbal and written information to Medi-Cal beneficiaries regarding the following:

- How to access specialty mental health services
- How to file a grievance about services
- How to file for a State Fair Hearing

The MHP has developed a Consumer Guide, a beneficiary rights poster, a grievance form, an appeal form, and Request for Change of Provider Form. All of these beneficiary materials must be posted in prominent locations where Medi-Cal beneficiaries receive outpatient specialty mental health services, including the waiting rooms of providers' offices of service.

Please note that all fee-for-service providers and contract agencies are required to give their clients copies of all current beneficiary information annually at the time their treatment plans are updated and at intake.

Beneficiaries have the right to use the grievance and/or appeal process without any penalty, change in mental health services, or any form of retaliation. All Medi-Cal beneficiaries can file an appeal or state hearing.

Grievances and appeals forms and self addressed envelopes must be available for beneficiaries to pick up at all provider sites without having to make a verbal or written request. Forms can be sent to the following address:

Fresno County Mental Health Plan  
P.O. Box 45003  
Fresno, CA 93718-9886  
(800) 654-3937 (for more information)  
(559) 488-3055 (TTY)

### **Provider Problem Resolution and Appeals Process**

The MHP uses a simple, informal procedure in identifying and resolving provider concerns and problems regarding payment authorization issues, other complaints and concerns.

Informal provider problem resolution process – the provider may first speak to a Provider Relations Specialist (PRS) regarding his or her complaint or concern. The PRS will attempt to settle the complaint or concern with the provider. If the attempt is unsuccessful and the provider chooses to forego the informal grievance process, the provider will be advised to file a written complaint to the MHP address (listed above).

Formal provider appeal process – the provider has the right to access the provider appeal process at any time before, during, or after the provider problem resolution process has begun, when the complaint concerns a denied or modified request for MHP payment authorization, or the process or payment of a provider's claim to the MHP.

Payment authorization issues – the provider may appeal a denied or modified request for payment authorization or a dispute with the MHP regarding the processing or payment of a provider's claim to the MHP. The written appeal must be submitted to the MHP within 90 calendar days of the date of the receipt of the non-approval of payment.

The MHP shall have 60 calendar days from its receipt of the appeal to inform the provider in writing of the decision, including a statement of the reasons for the decision that addresses each issue raised by the provider, and any action required by the provider to implement the decision.

If the appeal concerns a denial or modification of payment authorization request, the MHP utilizes a Managed Care staff who was not involved in the initial denial or modification decision to determine the appeal decision.

If the Managed Care staff reverses the appealed decision, the provider will be asked to submit a revised request for payment within 30 calendar days of receipt of the decision

Other complaints – if there are other issues or complaints, which are not related to payment authorization issues, providers are encouraged to send a letter of complaint to the MHP. The provider will receive a written response from the MHP within 60 calendar days of receipt of the complaint. The decision rendered by the MHP is final.

## FRESNO COUNTY MENTAL HEALTH PLAN

### GRIEVANCES AND INCIDENT REPORTING

#### PROTOCOL FOR COMPLETION OF INCIDENT REPORT

- The Incident Report must be completed for all incidents involving clients. The staff person who becomes aware of the incident completes this form, and the supervisor co-signs it.
- When more than one client is involved in an incident, a separate form must be completed for each client.

#### Where the forms should be sent - within 24 hours from the time of the incident

- Incident Report should be sent to:  
DBH Program Supervisor

### INCIDENT REPORT WORKSHEET

When did this happen? (date/time) \_\_\_\_\_ Where did this happen? \_\_\_\_\_

Name/DMH # \_\_\_\_\_

**1. Background information of the incident:**

**2. Method of investigation:** (chart review, face-to-face interview, etc.)

Who was affected? (If other than consumer) \_\_\_\_\_

List key people involved. (witnesses, visitors, physicians, employees)

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**3. Preliminary findings:** How did it happen? Sequence of events. Be specific. If attachments are needed write comments on an 8 1/2 sheet of paper and attach to worksheet.

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**Outcome severity:** *Nonexistent*  *inconsequential*  *consequential*  *death*  *not applicable*  *unknown*

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**4. Response:** a) corrective action, b) Plan of Action, c) other

Completed by (print name) \_\_\_\_\_

Completed by (signature) \_\_\_\_\_ Date completed \_\_\_\_\_

Reviewed by Supervisor (print name) \_\_\_\_\_

Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

# Exhibit I

## Fresno County Department of Behavioral Health

### Guiding Principles of Care Delivery

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#### **DBH VISION:**

Health and well-being for our community.

#### **DBH MISSION:**

DBH, in partnership with our diverse community, is dedicated to providing quality, culturally responsive, behavioral health services to promote wellness, recovery, and resiliency for individuals and families in our community.

#### **DBH GOALS:**

Quadruple Aim

- Deliver quality care
- Maximize resources while focusing on efficiency
- Provide an excellent care experience
- Promote workforce well-being

#### **GUIDING PRINCIPLES OF CARE DELIVERY:**

The DBH 11 principles of care delivery define and guide a system that strives for excellence in the provision of behavioral health services where the values of wellness, resiliency, and recovery are central to the development of programs, services, and workforce. The principles provide the clinical framework that influences decision-making on all aspects of care delivery including program design and implementation, service delivery, training of the workforce, allocation of resources, and measurement of outcomes.

#### 1. Principle One - Timely Access & Integrated Services

- Individuals and families are connected with services in a manner that is streamlined, effective, and seamless
- Collaborative care coordination occurs across agencies, plans for care are integrated, and whole person care considers all life domains such as health, education, employment, housing, and spirituality
- Barriers to access and treatment are identified and addressed
- Excellent customer service ensures individuals and families are transitioned from one point of care to another without disruption of care

# Exhibit I

## Fresno County Department of Behavioral Health

### Guiding Principles of Care Delivery

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#### 2. Principle Two - Strengths-based

- Positive change occurs within the context of genuine trusting relationships
- Individuals, families, and communities are resourceful and resilient in the way they solve problems
- Hope and optimism is created through identification of, and focus on, the unique abilities of individuals and families

#### 3. Principle Three - Person-driven and Family-driven

- Self-determination and self-direction are the foundations for recovery
- Individuals and families optimize their autonomy and independence by leading the process, including the identification of strengths, needs, and preferences
- Providers contribute clinical expertise, provide options, and support individuals and families in informed decision making, developing goals and objectives, and identifying pathways to recovery
- Individuals and families partner with their provider in determining the services and supports that would be most effective and helpful and they exercise choice in the services and supports they receive

#### 4. Principle Four - Inclusive of Natural Supports

- The person served identifies and defines family and other natural supports to be included in care
- Individuals and families speak for themselves
- Natural support systems are vital to successful recovery and the maintaining of ongoing wellness; these supports include personal associations and relationships typically developed in the community that enhance a person's quality of life
- Providers assist individuals and families in developing and utilizing natural supports.

#### 5. Principle Five - Clinical Significance and Evidence Based Practices (EBP)

- Services are effective, resulting in a noticeable change in daily life that is measurable.
- Clinical practice is informed by best available research evidence, best clinical expertise, and values and preferences of those we serve
- Other clinically significant interventions such as innovative, promising, and emerging practices are embraced

# Exhibit I

## Fresno County Department of Behavioral Health

### Guiding Principles of Care Delivery

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#### 6. Principle Six - Culturally Responsive

- Values, traditions, and beliefs specific to an individual's or family's culture(s) are valued and referenced in the path of wellness, resilience, and recovery
- Services are culturally grounded, congruent, and personalized to reflect the unique cultural experience of each individual and family
- Providers exhibit the highest level of cultural humility and sensitivity to the self-identified culture(s) of the person or family served in striving to achieve the greatest competency in care delivery

#### 7. Principle Seven - Trauma-informed and Trauma-responsive

- The widespread impacts of all types of trauma are recognized and the various potential paths for recovery from trauma are understood
- Signs and symptoms of trauma in individuals, families, staff, and others are recognized and persons receive trauma-informed responses
- Physical, psychological and emotional safety for individuals, families, and providers is emphasized

#### 8. Principle Eight - Co-occurring Capable

- Services are reflective of whole-person care; providers understand the influence of bio-psycho-social factors and the interactions between physical health, mental health, and substance use disorders
- Treatment of substance use disorders and mental health disorders are integrated; a provider or team may deliver treatment for mental health and substance use disorders at the same time

#### 9. Principle Nine - Stages of Change, Motivation, and Harm Reduction

- Interventions are motivation-based and adapted to the person's stage of change
- Progression through stages of change are supported through positive working relationships and alliances that are motivating
- Providers support individuals and families to develop strategies aimed at reducing negative outcomes of substance misuse through a harm reduction approach
- Each individual defines their own recovery and recovers at their own pace when provided with sufficient time and support

# Exhibit I

## Fresno County Department of Behavioral Health

### Guiding Principles of Care Delivery

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#### 10. Principle Ten - Continuous Quality Improvement and Outcomes-Driven

- Individual and program outcomes are collected and evaluated for quality and efficacy
- Strategies are implemented to achieve a system of continuous quality improvement and improved performance outcomes
- Providers participate in ongoing professional development activities needed for proficiency in practice and implementation of treatment models

#### 11. Principle Eleven - Health and Wellness Promotion, Illness and Harm Prevention, and Stigma Reduction

- The rights of all people are respected
- Behavioral health is recognized as integral to individual and community well-being
- Promotion of health and wellness is interwoven throughout all aspects of DBH services
- Specific strategies to prevent illness and harm are implemented at the individual, family, program, and community levels
- Stigma is actively reduced by promoting awareness, accountability, and positive change in attitudes, beliefs, practices, and policies within all systems
- The vision of health and well-being for our community is continually addressed through collaborations between providers, individuals, families, and community members

## Exhibit J

### Health Insurance Portability and Accountability Act (HIPAA)

#### Business Associate Agreement

1. The County is a “Covered Entity,” and the Contractor is a “Business Associate,” as these terms are defined by 45 CFR 160.103. In connection with providing services under the Agreement, the parties anticipate that the Contractor will create and/or receive Protected Health Information (“PHI”) from or on behalf of the County. The parties enter into this Business Associate Agreement (BAA) to comply with the Business Associate requirements of HIPAA, to govern the use and disclosures of PHI under this Agreement. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

The parties to this Agreement shall be in strict conformance with all applicable federal and State of California laws and regulations, including, but not limited to California Welfare and Institutions Code sections 5328, 10850, and 14100.2 *et seq.*; 42 CFR 2; 42 CFR 431; California Civil Code section 56 *et seq.*; the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), including, but not limited to, 45 CFR Parts 160, 45 CFR 162, and 45 CFR 164; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) regarding the confidentiality and security of patient information, including, but not limited to 42 USC 17901 *et seq.*; and the Genetic Information Nondiscrimination Act (“GINA”) of 2008 regarding the confidentiality of genetic information.

Except as otherwise provided in this Agreement, the Contractor, as a business associate of the County, may use or disclose Protected Health Information (“PHI”) to perform functions, activities or services for or on behalf of the County, as specified in this Agreement, provided that such use or disclosure shall not violate HIPAA Rules. The uses and disclosures of PHI may not be more expansive than those applicable to the County, as the “Covered Entity” under the HIPAA Rules, except as authorized for management, administrative or legal responsibilities of the Contractor.

2. The Contractor, including its subcontractors and employees, shall protect from unauthorized access, use, or disclosure of names and other identifying information, including genetic information, concerning persons receiving services pursuant to this Agreement, except

## Exhibit J

where permitted in order to carry out data aggregation purposes for health care operations [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A), and 164.504(e)(4)(i)]. This pertains to any and all persons receiving services pursuant to a County-funded program. This requirement applies to electronic PHI. The Contractor shall not use such identifying information or genetic information for any purpose other than carrying out the Contractor's obligations under this Agreement.

3. The Contractor, including its subcontractors and employees, shall not disclose any such identifying information or genetic information to any person or entity, except as otherwise specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the Secretary of the United States Department of Health and Human Services ("Secretary"), or authorized by the client/patient in writing. In using or disclosing PHI that is permitted by this Agreement or authorized by law, the Contractor shall make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or request.

4. For purposes of the above sections, identifying information shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as fingerprint or voiceprint, or photograph.

5. For purposes of the above sections, genetic information shall include genetic tests of family members of an individual or individual(s), manifestation of disease or disorder of family members of an individual, or any request for or receipt of genetic services by individual or family members. Family member means a dependent or any person who is first, second, third, or fourth degree relative.

6. The Contractor shall provide access, at the request of the County, and in the time and manner designated by the County, to PHI in a designated record set (as defined in 45 CFR § 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR § 164.524 regarding access by individuals to their PHI. With respect to individual requests, access shall be provided within thirty (30) days from request. Access may be extended if the Contractor cannot provide access and provides the individual with the reasons for the delay and

## Exhibit J

the date when access may be granted. PHI shall be provided in the form and format requested by the individual or the County.

The Contractor shall make any amendment(s) to PHI in a designated record set at the request of the County or individual, and in the time and manner designated by the County in accordance with 45 CFR § 164.526.

The Contractor shall provide to the County or to an individual, in a time and manner designated by the County, information collected in accordance with 45 CFR § 164.528, to permit the County to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

7. The Contractor shall report to the County, in writing, any knowledge or reasonable belief that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of unsecured PHI not permitted by this Agreement of which the Contractor becomes aware, immediately and without reasonable delay and in no case later than two (2) business days of discovery. Immediate notification shall be made to the County's Information Security Officer and Privacy Officer and the County's Department of Public Health ("DPH") HIPAA Representative, within two (2) business days of discovery. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached. The Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and State laws and regulations. The Contractor shall investigate such breach and is responsible for all notifications required by law and regulation or deemed necessary by the County and shall provide a written report of the investigation and reporting required to the County's Information Security Officer and Privacy Officer and the County's DPH HIPAA Representative.

This written investigation and description of any reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

## Exhibit J

County of Fresno  
Department of Public Health  
HIPAA Representative  
(559) 600-6439  
P.O. Box 11867  
Fresno, California 93775

County of Fresno  
Department of Public Health  
Privacy Officer  
(559) 600-6405  
P.O. Box 11867  
Fresno, California 93775

County of Fresno  
Department of Internal  
Services  
Information Security Officer  
(559) 600-5800  
2048 North Fine Street  
Fresno, California 93727

8. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the county, or created or received by the Contractor on behalf of the County, in compliance with Parts the HIPAA Rules. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the County, or created or received by the Contractor on behalf of the County, available to the Secretary upon demand.

The Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the Contractor's normal business hours; however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to the Contractor and in possession of a subcontractor of the Contractor, the Contractor must certify to the Secretary its efforts to obtain the information from the subcontractor.

### 9. **Safeguards**

The Contractor shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR Part 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of the County and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. The Contractor shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of electronic PHI. The 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. Upon the County's request, the Contractor shall provide the County with information concerning such

## Exhibit J

safeguards.

The Contractor shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

A. Passwords must **not** be:

- (1) Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
- (2) A dictionary word; or
- (3) Stored in clear text

B. Passwords must be:

- (1) Eight (8) characters or more in length;
- (2) Changed every ninety (90) days;
- (3) Changed immediately if revealed or compromised; and
- (4) Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
  - a) Upper case letters (A-Z);
  - b) Lowercase letters (a-z);
  - c) Arabic numerals (0 through 9); and
  - d) Non-alphanumeric characters (punctuation symbols).

The Contractor shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

1. Network-based firewall and/or personal firewall;
2. Continuously updated anti-virus software; and
3. Patch management process including installation of all operating system/software

## Exhibit J

vendor security patches.

The Contractor shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. The Contractor must apply appropriate sanctions against its employees who fail to comply with these safeguards. The Contractor must adopt procedures for terminating access to PHI when employment of employee ends.

### 10. **Mitigation of Harmful Effects**

The Contractor shall mitigate, to the extent practicable, any harmful effect that is suspected or known to the Contractor of an unauthorized access, viewing, use, disclosure, or breach of PHI by the Contractor or its subcontractors in violation of the requirements of these provisions. The Contractor must document suspected or known harmful effects and the outcome.

### 11. **The Contractor's Subcontractors**

The Contractor shall ensure that any of its contractors, including subcontractors, if applicable, to whom the Contractor provides PHI received from or created or received by the Contractor on behalf of the County, agree to the same restrictions, safeguards, and conditions that apply to the Contractor with respect to such PHI and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract or sub-award to such agents or subcontractors.

### 12. **Employee Training and Discipline**

The Contractor shall train and use reasonable measures to ensure compliance with the requirements of these provisions by employees who assist in the performance of functions or activities on behalf of the County under this Agreement and use or disclose PHI, and discipline

## Exhibit J

such employees who intentionally violate any provisions of these provisions, which may include termination of employment.

### 13. **Termination for Cause**

Upon the County's knowledge of a material breach of these provisions by the Contractor, the County will either:

- A. Provide an opportunity for the Contractor to cure the breach or end the violation, and the County may terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County; or
- B. Immediately terminate this Agreement if the Contractor has breached a material term of this exhibit and cure is not possible, as determined by the County.
- C. If neither cure nor termination is feasible, the County's Privacy Officer will report the violation to the Secretary of the U.S. Department of Health and Human Services.

### 14. **Judicial or Administrative Proceedings**

The County may terminate this Agreement if: (1) the Contractor is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation in an administrative or civil proceeding in which the Contractor is a party that the Contractor has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws.

### 15. **Effect of Termination**

Upon termination or expiration of this Agreement for any reason, the Contractor shall return or destroy all PHI received from the County (or created or received by the Contractor on behalf of the County) that the Contractor still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, the Contractor shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision applies to PHI that is in the possession of subcontractors or agents, if applicable, of the Contractor. If the Contractor destroys the PHI data, a certification of date and time of destruction shall be provided to the County by the Contractor.

## **Exhibit J**

### **16. Compliance with Other Laws**

To the extent that other state and/or federal laws provide additional, stricter and/or more protective privacy and/or security protections to PHI or other confidential information covered under this BAA, the Contractor agrees to comply with the more protective of the privacy and security standards set forth in the applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA Rules or are otherwise more favorable to the individual.

### **17. Disclaimer**

The County makes no warranty or representation that compliance by the Contractor with these provisions, the HITECH Act, or the HIPAA Rules, will be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

### **18. 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 amend this agreement in order to implement the standards and requirements of the HIPAA Rules, the HITECH Act and other applicable laws relating to the security or privacy of PHI. The County may terminate this Agreement upon thirty (30) days written notice in the event that the Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that the County in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules, and the HITECH Act.

### **19. No Third-Party Beneficiaries**

Nothing expressed or implied in the provisions of this exhibit is intended to confer, and nothing in this exhibit does confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities

## Exhibit J

whatsoever.

### 20. **Interpretation**

The provisions of this exhibit shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules, and applicable State laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules.

### 21. **Regulatory References**

A reference in the terms and conditions of these provisions to a section in the HIPAA Rules means the section as in effect or as amended.

### 22. **Survival**

The respective rights and obligations of the Contractor as stated in this exhibit survive the termination or expiration of this Agreement.

### 23. **No Waiver of Obligation**

Change, waiver or discharge by the County of any liability or obligation of the Contractor under this exhibit on any one or more occasions is not a waiver of performance of any continuing or other obligation of the Contractor and does not prohibit enforcement by the County of any obligation on any other occasion.