

## **CONTRACT**

The COUNTY OF SAN BENITO ("COUNTY") and TRADITIONS BEHAVIORAL HEALTH "CONTRACTOR" enter into this contract, which shall be effective on the date stated in Paragraph 1.

### **TERMS**

**1. Duration of Contract.**

This contract shall commence on July 1, 2016, and end on June 30, 2017, unless sooner terminated as specified herein.

**2. Scope of Services.**

CONTRACTOR, for COUNTY'S benefit, shall perform the services specified in Attachment A. Attachment A is made a part of this contract.

**3. Compensation for Services.**

In consideration for CONTRACTOR'S performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

**4. General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

**5. Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000.
- (b) Professional liability insurance: \$1,000,000.
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000.

**6. Termination.**

The number of days of advance written notice required for termination of this contract is thirty (30) days.

**7. Specific Terms and Conditions: (check one)**

- ( ) There are no additional provision to this contract.
- (X) The rights and duties of the parties to this contract are additionally governed by the specific additional terms mutually agreed to and listed in Attachments D and E. Attachments D and E are made a part of this contract.

**8. Information about Contract Administrators.**

The following names, title, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

**Contract Administrator for COUNTY**

Name: Alan Yamamoto  
Title: Behavioral Health Director  
Address: 1131 San Felipe Rd.,  
Hollister, California 95023  
Phone No: (831) 636-4020  
Fax No: (831) 636-4025

**Contract Administrator for CONTRACTOR**

Name: Gary Hayes, Ph.D.  
Title: President  
Address: 1580 First Street  
Napa. CA 94559  
Phone No: 707 258-8757, ext. 104  
E-mail: drhayes3@tbhcare.com  
Fax: 707 253-0457

**SIGNATURES**

**APPROVED BY COUNTY:**

\_\_\_\_\_

Chair: \_\_\_\_\_  
San Benito County Board of Supervisors

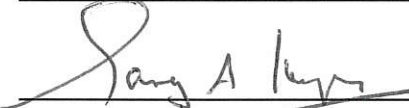
Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel

By:  \_\_\_\_\_

**APPROVED BY CONTRACTOR:**

 \_\_\_\_\_

Name: Gary Hayes, Ph.D., President  
Federal Tax ID # 68-0392037

Date: 3/18/16 \_\_\_\_\_

Date: 4-18-16 \_\_\_\_\_

## **ATTACHMENT A**

### **Scope of Services**

#### **Staff Psychiatrist:**

1. Introduction. CONTRACTOR shall provide through its registry a psychiatrist currently licensed by the State of California, and board certified in Psychiatry by the Council of Medical Education of the American Medical Association. Such license shall be unrestricted by the California Medical Board at all times.

2. Hours. CONTRACTOR represents and warrants that the psychiatrist it furnishes to COUNTY is an employee of CONTRACTOR. CONTRACTOR's President, or his designee, shall supervise and direct its employee's professional services to COUNTY. CONTRACTOR shall provide personnel to cover an average of 40 hours per week of services in consultation with the COUNTY's Mental Health Director regarding COUNTY needs.

3. Description of Services. CONTRACTOR, through its personnel, agrees to provide direct psychiatric services as needed to supplement COUNTY's clinical staff in providing these services to clients of COUNTY behavioral health units in accordance with community standards of care, clinical practices and reimbursement regulatory requirements. These services shall include:

A. Interviewing and examining clients and families to diagnose psychiatric problems and determine the type of psychiatric medical treatment needed and referring clients to appropriate sources of treatment and participating in individual and group therapy sessions, treatment planning, and case conferences.

B. Prescribing and dispensing medication to clients for psychiatric treatment and working in close collaboration with nursing staff serving agency clients. Advising the agency on policy and procedures which affect the medication clinic.

C. Monitoring and documenting progress in treatment, or other activities determined by the needs of the clients and the programs to which they are assigned according to the community standard of care and applicable federal, state and COUNTY laws, regulations, licensures/certifications, policies and procedures.

D. Preparing a variety of comprehensive records and reports and complete required paperwork such as physician's portion of disability evaluations, psychiatric evaluations, service plans, annual re-assessments, billings, and consent forms.

E. Participating in a variety of processes, meetings and programs such as the peer review process, the medication clinic staff meetings, the authorization of services staff meetings, the consortium meetings and the quality improvement/quality assurance program.

F. Providing psychiatric crisis services within the agency and the community and consulting with community organizations for psychiatric follow-up and support.

Coordinating client care with other agency providers to develop a treatment plan.

G. Providing psychiatric services for dually diagnosed clients and participating in treatment reviews and service authorizations for the behavioral health department's mental health and drug and alcohol programs.

H. Participating in documentation changes including training related to electronic records and billing procedures.

I. Providing testimony for court proceedings related to COUNTY psychiatric clients.

4. COUNTY Billing for Psychiatric Services. CONTRACTOR is precluded from billing for services performed under this agreement to any private or governmental third-party payers. The COUNTY is the only party that may bill and seek reimbursement from private or governmental third-party payers for the services performed by CONTRACTOR on behalf of COUNTY.

5. Licensure. CONTRACTOR must have all current, required and valid licensure, and any other credential(s) required by the State of California. CONTRACTOR shall provide COUNTY with copies of CONTRACTOR'S current California licensure as a physician, certification from the Drug Enforcement Administration, and with such other credentialing information as COUNTY may from time to time request. If CONTRACTOR fails to comply with requests for credentialing information, COUNTY may terminate this Agreement immediately.

**END OF ATTACHMENT "A"**

## **ATTACHMENT B**

### **Payment Schedule**

#### **B - 1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

#### **B - 2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net fifteen (15) days from receipt of the invoice date..

#### **B - 3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ A total lump sum payment of \$ \_\_\_\_\_, or
- ☒ A total sum not to exceed (\$413,920) four hundred thirteen thousand , nine hundred twenty dollars for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

#### **B - 4. SPECIAL COMPENSATION TERMS: (Check one)**

- ☐ There are no additional terms of compensation
- ☒ The following specific terms of compensation shall apply: (specify)

#### **Adult Psychiatrist:**

- A. Unit of Service: A unit of service is defined as contractor time spent providing services specified in Exhibit "A", Staff Psychiatrist: Paragraph 3, 'A' through 'I'.
- B. Rate of Compensation: COUNTY shall compensate CONTRACTOR at the rate of \$199.00 per hour for each actual unit of service provided.
- C. Invoice Instructions: CONTRACTOR shall submit a monthly invoice to COUNTY, which details the dates and actual units of service per each work day during the preceding month.

NOTE: In the event County offers permanent employment to one of Contractor's physicians, and physician accepts, County will pay Contractor \$37,000.00 upon physician's start as an employee with the County.

## **END OF ATTACHMENT B**

## **ATTACHMENT C**

### **General Terms and Conditions**

#### **C-1. INDEMNIFICATION.**

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### **C-2. GENERAL INSURANCE REQUIREMENTS.**

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### **C-3. INSURANCE COVERAGE REQUIREMENTS.**

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets,

or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

**C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

**C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

**C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

**C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

**C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

**C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

**C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or

- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or

remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

**C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

**C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

## **ATTACHMENT D**

### **Status of Contractor**

CONTRACTOR is: (check one)

- ☐ CONTRACTOR is an "Organizational Provider" as that term is defined in this paragraph. The term "Organizational Provider" means a provider of specialty mental health services, other than psychiatric inpatient hospital services or psychiatric nursing facility services. An organizational provider provides mental health services to beneficiaries through employees or by contracting with licensed or registered mental health professionals and other staff, unless such staff is legally entitled to a waiver. CONTRACTOR, as an organizational provider, shall comply with all specific terms and conditions of D-1 through D-21, inclusive.
- ☒ CONTRACTOR is a "Group Provider" as that term is defined in this paragraph. The term "Group Provider" means an organization that provides specialty mental health services through two or more individual providers. Group providers include entities such as independent practice associations, hospital outpatient departments, health care service plans, and clinics. CONTRACTOR, a group provider, shall comply with all specific terms and conditions of D-1 through D-21, inclusive.
- ☐ CONTRACTOR is an "Individual Provider" as that term is defined in this paragraph. The term "Individual Provider" means licensed mental health professional whose scope of practice permits the practice of psychotherapy without supervision and who provides specialty mental health services directly to beneficiaries. Individual providers include licensed physicians, licensed psychologist, licensed clinical social workers, licensed marriage, family and child counselors, and registered nurses certified in psychiatric nursing by the Board of Registered Nursing. The term, individual provider does not include licensed mental health professionals when they are acting as employees of any organizational provider or independent contractors of organizational providers other than the CONTRACTOR. CONTRACTOR, an individual provider, shall comply with all specific terms and conditions of D-1 through D-16, inclusive. CONTRACTOR'S qualifications are as follows: (check one)

- |                                     |                |
|-------------------------------------|----------------|
| <input checked="" type="checkbox"/> | M.D.           |
| <input type="checkbox"/>            | Ph.D.          |
| <input type="checkbox"/>            | L.C.S.W.       |
| <input type="checkbox"/>            | M.F.T.         |
| <input type="checkbox"/>            | R.N. with M.S. |

### **SPECIFIC TERMS AND CONDITIONS**

The following paragraphs apply only as indicated above.

- D-1. CONTRACTOR shall comply with Division 5 of the Welfare and Institutions Code, Titles 9 and 22 of the California Code of Regulations, and all statutes and regulations related thereto.
- D-2. CONTRACTOR shall comply with all statutes and regulations governing the confidentiality of records.

- D-3. CONTRACTOR shall maintain all governing records in compliance with all appropriate federal, state and local requirements.
- D-4. CONTRACTOR shall comply with all Patients' Rights statutes and regulations.
- D-5. CONTRACTOR shall insure that all pertinent admissions and length of stay requests comply with utilization review regulations.
- D-6. CONTRACTOR shall maintain all necessary licensing and certification to perform under the scope of practice of CONTRACTOR.
- D-7. CONTRACTOR shall comply with all credentialing activities as may be required by the County.
- D-8. CONTRACTOR shall submit to COUNTY in a timely manner all required reports.
- D-9. Notwithstanding anything in paragraph C-6, to the contrary, CONTRACTOR shall maintain records as specified in paragraph C-6 for a period of seven (7) years from the close of the COUNTY'S fiscal year in which this contract is in effect.
- D-10. Notwithstanding paragraphs C-5 and C-6, CONTRACTOR shall make all of its books and records, pertaining to the goods and services furnished under the terms of this contract, available for inspection, examination or copying, by the COUNTY, the State Department of Justice, HHS, and the State Department of Health Services, at all reasonable times at the CONTRACTOR'S place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping.
- D-11. CONTRACTOR must meet all Department of Mental Health and Mental Health Provider selection criteria.
- D-12. CONTRACTOR shall ensure that beneficiaries will receive the same level of care as provided to all other patients served.
- D-13. CONTRACTOR shall not discriminate in the provision of services to beneficiaries on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.
- D-14. CONTRACTOR shall maintain a log of any complaints or grievances of beneficiaries, including the date received and the date and nature of resolution. CONTRACTOR shall make all beneficiaries aware of the avenues of appeal available through COUNTY. Specific procedures for fulfilling these requirements are outlined in the County's Provider Handbook.
- D-15. CONTRACTOR, in seeking to resolve any problems or appeals with COUNTY, shall follow those procedures specified in the COUNTY's Provider Handbook of the San Benito County Mental Health Plan.
- D-16. CONTRACTOR shall adhere to all procedures and regulations as described in the COUNTY's Provider Handbook.

## **ATTACHMENT E**

### **HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT**

#### **BUSINESS ASSOCIATE**

- (a) Contractor shall comply with, and assist the County in complying with, the privacy requirements of the Health Insurance Portability and Accountability Act (including but not limited to 42 U.S.C. 1320d et seq.; "HIPAA") and its implementing regulations (including but not limited to 45 CFR Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule." Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms are used in the Privacy Rule.
- (b) Except as otherwise limited in this Addendum, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of the County as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule with which the County complies.
- (c) Contractor shall not use or further disclose Protected Health Information other than as permitted or required by this Addendum, or as required by law.
- (d) Contractor shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Addendum.
- (e) Contractor shall report to the County any use or disclosure of the Protected Health Information not provided for by this Addendum.
- (f) Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor as a result of a use or disclosure of Protected Health Information by Contractor, which is in violation of the requirements of this Agreement.
- (g) Contractor shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, created, or received by Contractor on behalf of the County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- (h) Contractor shall provide access, at the request of the County, and in the time and manner designated by the County, to Protected Health Information in a Designated Record Set; this Protected Health Information will be released to the County or, as directed by the County, to an Individual, in order to meet the requirements under 45 CFR Section 164.524.
- (i) Contractor shall make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs, pursuant to 45 CFR Section 164.526, at the request of the County or an Individual, and in the time and manner designated by the County.
- (j) Contractor shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County, to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.
- (k) Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with subsection (j), to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

- (l) Contractor shall make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of the County, available to the County; or at the request of the County, to the Secretary of the United States Department of Health and Human Services ("Secretary"), in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule.
- (m) A breach by Contractor of any provision of this Addendum, as determined by County, shall constitute a material breach of the contract and shall provide grounds for immediate termination of the Contract by the County.
  - (1) Except as provided in subparagraph (2) of this section, upon termination of this Addendum for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Contractor. Contractor, its agents and subcontractors shall retain no copies of the Protected Health Information.
  - (2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor, or any of its agents or subcontractors, maintains such Protected Health Information.
- (n) Contractor is responsible for providing the required notification only if a breach involved of "unsecured PHI". Unsecured PHI is PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance by the Secretary of DHHS. The most current guidance can be found on the DHHS website (<http://www.hhs.gov>).
- (o) The Parties agree to take action to amend this Agreement from time to time as is necessary for the County to comply with the requirements for the Privacy Rule or any other requirements of HIPAA and its implementing regulations.

**END ATTACHMENT E**