

**EXHIBIT A**

**OVERVIEW OF THE MENTAL HEALTH SERVICES ACT (MHSA) INTEGRATED THREE-YEAR PROGRAM AND EXPENDITURE PLAN**

California voters approved Proposition 63 during the November 2004 General Election. Proposition 63, the Mental Health Services Act [hereinafter “MHSA”], became effective on January 1, 2005. Through imposition of a 1% tax on personal income in excess of \$1 million, the MHSA provides the opportunity for the State Department of Mental Health [hereinafter also “DMH” and “the Department”] to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families. Per California Code of Regulations [hereinafter “CCR”], Title 9, Chapter 14, Section 3200.060, “county” means the County Mental Health Programs, two or more counties acting jointly, and/or city-operated programs receiving funds per Welfare and Institutions Code [hereinafter “W&I”] Section 5701.5. The MHSA addresses a broad continuum of prevention, early intervention and service needs and the necessary infrastructure, technology, and training elements that will effectively support the system. Components of the MHSA Integrated Three-Year Program and Expenditure Plan will include those elements required by W&I Code Section 5847 and related regulations including: Community Services and Supports [hereinafter “CSS”], Prevention and Early Intervention, Education and Training, Innovations, and Capital Facilities and Technology.

CSS means mental health and related services provided through the service delivery systems, also known as “Adult and Older Adult Systems of Care” and “Children’s System of Care,” found in W&I Code Sections 5800 and 5850, respectively, as well as services provided to transition-age youth, as specified in W&I Code Section 5847(c). The three types of service categories that may be funded under the MHSA CSS Component are: Full Service Partnerships, General System Development, and Outreach and Engagement, as described in CCR, Title 9, Chapter 14, Sections 3200.080, 3200.100, and 3200.130, respectively.

**I. SCOPE OF WORK**

*County* [hereinafter “the Contractor”] agrees to provide to DMH services related to the development, implementation, and performance reporting of the MHSA through the Contractor’s Three-Year Program and Expenditure Plan. This Agreement covers the CSS Component of the Contractor’s Three-Year Plan.

- A. The services described in this Agreement shall be provided during the following term: *1st day of Month of approval*, to June 30, 2008. This Agreement shall be updated on an annual basis, in accordance with W&I Code Sections 5847 and 5848 and Part V of this Agreement.
- B. The project representatives during the term of this Agreement will be:

California Department of Mental Health	<i>County</i>
Deputy Director	
Systems of Care	
1600 9 <sup>th</sup> Street, Room 130	
Sacramento, CA 95814	
(916) 654-3551	

- C. Funds received pursuant to this Agreement shall be used only to implement and operate the programs and services as set forth in Part II of this Agreement, and further described in the CSS Work Plans and Information Technology (IT) Project Plans, if applicable, attached hereto as Attachments *X through XI*, and incorporated by reference.
- D. Funds approved as “One Time Funds” as set forth below, for non-recurring costs and IT Project Plans shall only be used for the project as approved by the Department and for no more than the amount approved.
- E. All contracted services should be performed within the state of California, except those performed within 100 miles of counties contiguous with another state. Any other services sought to be performed outside of the State of California must be approved the Department.
- F. The Contractor shall maintain at the office of the County Mental Health Director all Work Plans, IT Project Plans, budgets, and annual and other updates referenced in this Agreement. Per Government Code 8546.7, Agreements involving the expenditure of public funds in excess of ten thousand dollars must be maintained for 3 years after the final payment made pursuant to the Agreement.

## II. PROGRAMS AND SERVICES FUNDED

- A. The programs and services funded through this Agreement are contained in the following # Work Plans, attached hereto as Attachments *X through XI*, and incorporated by reference:

*Attach the following documents:*

1. *Attach each CSS Work Plan, identified by the name of the program, as a separate Attachment. Exhibit 4 of the County’s proposal may be used, provided it is updated to reflect all programs and services finally approved by DMH, and the words “Exhibit 4” are removed from the document.*

### B. One-Time Funds

DMH has approved funding for non-recurring costs, as specified below:

*List One-Time expenditures funded since the date of the approval letter, including IT Project Plans.*

## III. GENERAL ASSURANCES

- A. The Contractor is in compliance with all applicable statutes and regulations regarding Maintenance of Effort, Non-Supplantation and Allowable Use of Funds.
- B. The Local Mental Health Board or Commission has reviewed and approved procedures ensuring citizen and professional involvement in the MHSA Community Program Planning process, as set forth in W&I Code Section 5848 of the MHSA.
- C. In accordance with W&I Code Section 5848(d), the Local Mental Health Board or Commission shall review and comment upon the performance outcome data required by W&I Code Section 5604.2(a)(7).

#### IV. COMPLIANCE

##### A. Compliance with Applicable Law

The Contractor shall maintain compliance with all applicable statutes and regulations, including the program principles set forth in W&I Code Section 5813.5(d).

##### B. Funding Requirements

###### 1. Maintenance of Effort

The Contractor shall maintain compliance with the requirements of W&I Code Section 17608.05 and all applicable regulations regarding Maintenance of Effort.

###### 2. Non-Supplantation

The Contractor shall maintain compliance with all requirements contained in statute and regulation regarding Non-Supplantation.

###### 3. Use of Funds

The Contractor shall maintain compliance with CCR, Title 9, Sections 3400 and 3405, and all other regulations regarding use of funds. The programs implemented under this Agreement must be new or expanded programs. All funds shall be used exclusively to implement and operate the services and programs, as approved by DMH and set forth in Part II of this Agreement and further described in Attachments *X through XI*. The Contractor must implement all approved programs; however the Contractor may make changes in line items or in funding levels among the approved programs.

These funds may not be loaned to the state General Fund or any other fund of the State, or a county general fund or any other county fund or used for any purpose other than those authorized by W&I Code Section 5892.

###### 4. Medi-Cal Reimbursement

When applicable, the Contractor shall comply with all requirements necessary for Medi-Cal reimbursement for mental health services provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in W&I Code Sections 5718 through 5724. If the Contractor has entered into an Agreement with DMH under W&I Code Section 5775 to provide Medi-Cal Specialty Mental Health Services, the Contractor shall comply with the requirements of that Agreement and the provisions of CCR, Title 9, Division 1, Chapter 11. Medi-Cal Specialty Mental Health Services are those services described in CCR, Title 9, Sections 1810.247 and 1810.345.

##### C. Reporting Requirements

1. Pursuant to W&I Code Section 5610(a), and applicable regulations, the Contractor shall submit Client and Service Information ["CSI"] data to DMH during the term of this Agreement. The Contractor must report CSI data to DMH as soon as possible after collection, but no later than 60 (sixty) days after the end of the monthly service reporting period. The required CSI data includes, but is not limited to, client demographic information and a description of services provided.

2. For each program or service funded by this Agreement, the Contractor shall submit quarterly progress reports which include the target numbers of people to be served or units of service to be provided for each program, and the actual numbers of people served or units of service provided for each program during the three-month period covered by the report. The quarterly progress report shall be submitted to DMH no later than 60 (sixty) days following the end of the three-month period covered by the report.
3. For IT projects supported by CSS funds, the Contractor shall submit quarterly IT project status reports. The information contained in the reports shall include, but is not limited to status of the project, including its budget, whether it is on schedule, its accomplishments, and its deliverables. The report shall also include delineation of identified risks and actions taken, or to be taken, to mitigate/remediate the risk. The quarterly IT project status report shall be submitted to DMH no later than 30 (thirty) days following the end of each three-month period covered by the report.
4. During the term of this Agreement, pursuant to W&I Code Section 5848(c), and applicable regulations, the Contractor shall submit MHSA Full Service Partnerships ["FSP"] Data Collection and Reporting (DCR) data to DMH for the purpose of measuring individual-level performance outcomes. All FSP data shall be submitted in electronic form. The Contractor shall ensure that the staff responsible for transmitting this data is trained in data collection procedure. The requirements referred to in this section do not preclude any other performance outcomes measurement required by law or regulation.

a. Initial Data

The Contractor shall collect data as soon as it begins providing services to FSP clients, including, but not limited to: general administrative data; residential status; educational status; employment status; financial status; legal issues/status; health status; substance abuse issues; assessment of daily living functions where appropriate; and all interventions, including emergency intervention. This data shall be transmitted to DMH as soon as possible, and no later than 90 (ninety) days after the commencement of services.

b. Quarterly Assessments

Every three months, the Contractor shall conduct a quarterly assessment of each individual and submit FSP data to DMH within 90 (ninety) days of collecting the data. This data shall include, but is not limited to: general administrative data; educational status; financial status; legal issues/status; health status; substance abuse issues; and assessment of daily living functions where appropriate.

c. Changes in Key Events

The Contractor shall submit data to DMH as soon as possible, but no later than 90 (ninety) days after an FSP client experiences a change in a key event, such as a change in educational status, employment or financial status, legal status, or residential status, including hospitalization or incarceration; or following an emergency intervention. Data submitted shall include, but is not limited to the following: general administrative data; residence; educational status; employment status; legal issues/status; and a description of any and all interventions, including emergency intervention.

5. Twice annually, during two-week survey periods designated by DMH, the Contractor shall collect consumer perception data for clients served by the

programs set forth in Part II A of this Agreement. The data to be collected includes, but is not limited to, the client's perceptions of the quality and results of services provided by the Contractor. The survey data shall be submitted to DMH no later than 90 (ninety) days after collection.

6. As part of the annual cost and financial reports the Contractor currently submits to DMH for all mental health programs operated by the Contractor, the Contractor shall include revenue, distribution and expenditures of MHPA funds. Complete cost and financial reports signed by the mental health director and the county's auditor-controller certifying that information submitted is true and correct and that the county is in compliance with non-supplantation requirements, shall be submitted no later than December 31 following the end of the fiscal year. The Contractor shall also submit a reconciled cost report, certified by the mental health director and the county's auditor-controller as being true and correct, no later than April 1 of the next calendar year.
7. The Contractor shall submit an Annual MHPA Revenue and Expenditure Report for each program in Part II A and B of this Agreement to DMH no later than December 31 following the end of the fiscal year. For the programs set forth in Part II A, the reports shall be itemized by program and service category and shall include, but not be limited to, the total cost of the program provided, associated administrative expenses, and the amounts and sources of revenues used to pay for the program. For the CSS related IT Projects and other approved One-Time Expenditures set forth in Part II B, the reports shall include, but not be limited to, the total cost of the program or project, and the amounts and sources of revenues used to pay for the program or project.
8. For each six-month period of this Agreement, the Contractor shall prepare a Cash Flow Statement. The statement shall include, but is not limited to, cash on hand at the beginning of the six-month period; cash flow activity; adjustments from prior periods; actual expenditures for items such as personnel, operating expenses and administration; and cash on hand at the end of the six-month period. The report shall specify if there are allowable encumbrances on remaining funds. This information must be submitted to DMH within the 30 (thirty) days following the end of each six-month period.
9. The Contractor shall provide other information required by state or federal law.
10. The Contractor shall notify DMH 90 (ninety) days prior to any change in reporting system(s) and/or change of system vendor, and cooperate with DMH to minimize any delays or problems in submitting the required data to DMH.
11. All data submitted shall be full and complete.
12. The Contractor shall make diligent efforts to minimize errors in data reported.

#### **D. Plan of Correction**

1. If, at any point during the duration of this Agreement, DMH determines that the Contractor is out of compliance with any provision in this Agreement, DMH may request a plan of correction, after providing the Contractor with written notification and the basis for the finding of noncompliance. Within 30 (thirty) days of receiving notification, the Contractor shall provide a written request for a plan of correction. The request shall include:

- a. A statement of specific actions the Contractor will take in order to come into compliance with this Agreement;
  - b. The names of the persons responsible for completing each action; and
  - c. A date for the correction to be completed that is realistic and appropriate to the level of the deficiency or deficiencies.
2. As part of its proposed plan of correction, the Contractor may, in accordance with the provisions set forth in Part V, request an amendment of this Agreement. Any amendment to this Agreement will have prospective application only.
  3. If DMH accepts the Contractor's proposed plan of correction, it shall suspend other punitive actions to give the Contractor the opportunity to come into compliance. As a condition of accepting the Contractor's proposed plan, DMH may impose additional obligations on the Contractor. DMH may monitor the Contractor's implementation of the plan of correction as necessary. Before issuing a finding of compliance, DMH may request proof that the corrective action has been successful.
  4. During the period when a plan of correction is in force, the provisions of the plan of correction take precedence over provisions of this Agreement, to the extent the two differ.
  5. If DMH determines that the Contractor has failed to achieve sufficient compliance, funds may be withheld, under all or part of this Agreement, until compliance is achieved.
  6. If at any point during the duration of this agreement, DMH determines that the Contractor is not providing the programs and services described in the Agreement, or is not providing programs and services in a manner consistent with the terms of the Agreement, or is using funds allocated to it through this Agreement for purposes not contained in the Agreement, DMH may withhold funding until the problem is resolved or a plan of correction is agreed upon.

#### **E. Monitoring**

Upon the Department's request, the Contractor shall provide DMH with access to any and all programs, including locations, records and staff, for the purpose of monitoring the Contractor's compliance with the terms of this Agreement.

### **V. AMENDMENT TO THE AGREEMENT**

This Agreement may be amended through the mandatory annual update procedure set forth in this Part. In addition, the Contractor or the DMH may, at any time, request an amendment in writing. No additional MHSA funds shall be provided to the Contractor pursuant to the proposed amendment unless and until DMH has approved the Contractor's request and this Agreement has been amended in accordance with this Part.

#### **A. Annual Updates**

1. The Contractor shall submit a written annual update of the Three-Year Plan that was approved by DMH, in accordance with the requirements set forth in W&I Code Sections 5847 and 5848 and all applicable regulations. The annual update is due by or before the

end of each calendar year for the prior fiscal year. Each annual update must be approved by DMH and signed by both the Contractor and DMH.

2. The annual update may include proposed modifications to this Agreement and requests for funding for new programs and/or services. Requests for modifications shall include:
  - a. A description of the proposed change, including the reasons why such a revision is required;
  - b. The number of individuals to be served;
  - c. An itemized list of proposed budgetary changes.

#### **B. Amendments to the Agreement**

The Contractor may request an amendment at any time by submitting a written request for modification to DMH. Within 60 (sixty) days of receiving a written request to modify, DMH shall either grant the request to modify; deny the request; grant the request with modifications; or inform the Contractor that additional time is required to consider the request. If DMH does not respond within 60 (sixty) days, the request is deemed denied. The Contractor may resubmit the request.

DMH may propose amending the Agreement by submitting a written proposal to the Contractor.

Unless the modification is documented in a written addendum to this Agreement signed by both the Contractor and DMH, modifications to this Agreement are not legally binding, and the Contractor shall receive no additional funds

#### **VI. RESOLUTION OF DISPUTES**

Should a dispute arise between the Contractor and DMH relating to performance under this Agreement, other than disputes governed by the dispute resolution process set forth in CCR, Title 9, Division 1, Chapter 11, the Contractor shall, prior to exercising any other remedy that may be available, file a "Notice of Dispute" with DMH within 10 (ten) days of discovery of the problem. Within 10 (ten) days, DMH shall meet with the Contractor, review the factors in the dispute, and recommend a means for resolving the dispute before a written response is provided to the Contractor. DMH shall provide a written response to the Contractor within 30 (thirty) days of the meeting. The decision of DMH shall be final.

In the event of a dispute, the language contained in this Agreement shall prevail over any other language, including that contained in the Contractor's Three-Year Plan.

The Contractor and DMH shall continue to perform their duties and obligations under this Agreement during any dispute.

**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**I. PAYMENT PROVISIONS**

**A. Payment**

1. Upon the effective date of this Agreement, DMH shall distribute MHSA funds to the Contractor on a quarterly basis one month in advance of the start of each quarter. Quarterly payments will be discontinued if the Contractor is delinquent in submitting the reports required by Exhibit A, Part IV. C and will resume when the required documents and/or information are received. DMH will monitor the Contractor's amount of cash on hand for on-going operations for each component of the MHSA and distributions of funds may be adjusted based on the amount of cash on hand.
2. If the Contractor participates in Medi-Cal mental health programs as a Mental Health Plan, the Contractor shall comply with the requirements and provisions applicable to Medi-Cal Mental Health Managed Care contained or referenced in regulations, policies and statute, and Medi-Cal Mental Health Managed Care Agreement.
3. If the Contractor is eligible and chooses to participate in the Mental Health Medi-Cal Administrative Activities ["MAA"] claiming process, the Contractor agrees to submit claims only for those activities included and defined within the Contractor's Mental Health MAA Claiming Plan as approved by DMH, the Department of Health Services ["DHS"], and the federal Center for Medicare and Medicaid Services ["CMS"]. The Contractor agrees to comply with all applicable federal statutes and regulations and, with the exception of the approved MAA activities and claiming policies that are unique for mental health programs, agrees in all other respects to comply with W&I Code Section 14132.47 and MAA Regulations promulgated by DHS in the CCR, Title 22.

**B. Budget Contingencies**

1. DMH may adjust or revise the Contractor's planning estimate to provide for increases or decreases in the amount of funds expected to be available for the Contractor's approved programs. The contractor may submit a revised budget plan and request an amendment to this agreement to change or alter its proposed programs to adjust to the revised planning estimate of funds available.
2. If there is insufficient money available in the Fund to implement or operate the programs funded by this Agreement or to fund the amount of the annual planning estimate, DMH, with the input of the California Mental Health Directors Association, may revise the planning estimate or may decide to use some or all of the prudent reserve to fund the approved programs. Decisions to use the prudent reserve will be made on a statewide basis.
3. If funds, including the prudent reserve, are not sufficient to implement and/or operate a program or provide a service, those provisions of this Agreement addressing that program or service shall be void and shall have no further force or effect. Neither DMH nor the State shall have any duty to provide funds to the Contractor for that program or service, and the Contractor shall have no obligation to perform those programs or services. If funds are insufficient to implement and/or operate the Agreement, the Agreement shall be void and shall have no further force or effect.

**C. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**II. BUDGET DETAIL FOR THE MHSA INTEGRATED THREE-YEAR PROGRAM AND EXPENDITURE PLAN COMPONENTS**

**A. Community Services and Supports**

A summary of the Contractor's CSS funding amounts for FY 2005-06, 2006-07, and 2007-08 are provided below:

**FY 2005-06**

TYPE OF FUNDING	TOTALS
Services	<i>Services Total</i>
CSS related IT funding	<i>\$0.00</i>
One-Time Funds	
<i>List all one-time funds disbursed since the date of the approval letter.</i>	
One-Time Funds Sub Total	<i>One-Time Funds Sub Total</i>
<b>Total Budget</b>	<b><i>Total for FY 2005-06</i></b>

**FY 2006-07**

TYPE OF FUNDING	TOTALS
Services	<i>Services Total</i>
CSS related IT funding	<i>\$0.00</i>
One-Time Funds	
<i>List all one-time funds disbursed since the date of the approval letter.</i>	
One-Time Funds Sub Total	<i>One-Time Funds Sub Total</i>
<b>Total Budget</b>	<b><i>Total for FY 2006-07</i></b>

**FY 2007-08**

TYPE OF FUNDING	TOTALS
Services	<i>Services Total</i>
CSS related IT funding	<i>\$0.00</i>
One-Time Funds	
<i>List all one-time funds disbursed since the date of the approval letter.</i>	
One-Time Funds Sub Total	<i>One-Time Funds Sub Total</i>
<b>Total Budget</b>	<b><i>Total for FY 2007-08</i></b>

**EXHIBIT D**

**SPECIAL TERMS AND CONDITIONS**

**I. RELATIONSHIP OF THE PARTIES**

The Department and the Contractor are, and shall at all times be deemed, independent agencies. Each party to this Agreement shall be wholly responsible for the manner in which it performs the obligations and services required of it by the terms of this Agreement. Nothing herein will be construed as creating the relationship of employer and employee, or principal and agent, between the parties or any of their agents or employees. Each party assumes exclusively the responsibility for the acts of its employees or agents as they relate to the services to be provided during the course and scope of their employment. The Department, its agents and employees, shall not be entitled to any rights or privileges of the Contractor's employees and shall not be considered in any manner to be employees of the Contractor. The Contractor, its agents and employees, shall not be entitled to any rights or privileges of state employees and shall not be considered in any manner to be state employees.

**II. LAW GOVERNING**

It is understood and agreed that this Agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

**III. SUBCONTRACTS**

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of the responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**IV. CONSULTANTS**

The Contractor represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel are not deemed to be employees of or have any contractual relationship with DMH or the State of California by virtue of such an arrangement with the Contractor.

**V. TERMINATION**

Either party may terminate this Agreement by giving 60 (sixty) days written notice to the other party. The notice of termination shall specify the effective date of termination.

Upon the Contractor's receipt of notice of termination from the Department, and except as otherwise directed in the notice, the Contractor shall:

- A.** Stop work on the date specified in the notice;

- B. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Agreement up to effective date of termination;
- C. Terminate all orders and subcontracts;
- D. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including but not limited to, reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts; and
- E. Deliver or make available to DMH all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Agreement, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Agreement shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials, supplies, and expenses incurred pursuant to this Agreement prior to the effective date of termination.

## VI. CONFIDENTIALITY

### A. Confidentiality of Client Information and Medical Records

1. The Contractor shall comply with applicable state and federal laws and regulations regarding confidentiality of client information and medical records, including, but not limited to, W&I Code Section 5328 et seq. and Section 14100.2; the Code of Federal Regulations, Title 42, Section 431.300 et seq.; and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D et seq. of Title 42, United States Code and it's implementing regulations (including be not limited to Title 45, CFR, Parts 142, 160, 162, and 164)..
2. The Contractor shall protect from unauthorized disclosure, names and other identifying information concerning beneficiaries receiving services pursuant to this Agreement, except for statistical information. The Contractor shall not use identifying information for any purpose other than as necessary to lawfully carry out the Contractor's obligations under this Agreement.
3. The Contractor shall not disclose, except as otherwise permitted by state and federal laws and regulations, or this Agreement, or authorized by the beneficiary, any such identifying information to anyone other than DMH without prior written authorization from the State in accordance with state and federal laws.
4. For purposes of the above paragraphs, identifying information shall include, but not be limited to: name, identifying number, symbol, or other identifying particular assigned to the individual
5. Notification of Electronic Breach or Improper Disclosure: During the term of this Agreement, Contractor shall notify DMH, immediately upon discovery of any breach of Medi-Cal Protected Health Information (PHI) and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the DMH Information Security Officer within two business days of discovery at (916) 651-6776. 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 provide a written report of the investigation to the DMH Information Security

Officer, postmarked within thirty (30) working days of the discovery of the breach to the address below:

**Information Security Officer  
Office of HIPAA Compliance  
California Department of Mental Health  
1600 9<sup>th</sup> Street, Room 150  
Sacramento, CA 95814**

6. *Safeguards.* The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DMH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. 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. Contractor shall provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.

The Contractor shall implement strong access controls and other security safeguards and precautions as noted in the following to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

The Contractor shall enforce the following administrative and technical password controls on all systems used to process or store confidential, personal, or sensitive data:

- a. Passwords must not be:
  - i. 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
  - ii. a dictionary word
  - iii. stored in clear text
- b. Passwords must be:
  - i. 8 characters or more in length
  - ii. changed every 90 days
  - iii. changed immediately if revealed or compromised
  - iv. composed of characters from at least three of the following four groups from the standard keyboard:
    - (1) Upper case letters (A-Z);
    - (2) Lower case letters (a-z);
    - (3) Arabic numerals (0 through 9); and
    - (4) 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:

- a. network-based firewall and/or personal firewall
- b. continuously updated anti-virus software
- c. patch management process including installation of all operating system/software 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, CDs 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.

7. *Mitigation of Harmful Effects.* The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor or its subcontractors in violation of the requirements of these Provisions.
8. *Contractor's Contractors.* The Contractor shall ensure that any contractors, including subcontractors, to whom Contractor provides PHI received from or created or received by Contractor on behalf of DMH, agree to the same restrictions and conditions that apply to 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.
9. *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 DMH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of these Provisions, including termination of employment.
10. *Termination for Cause.* Upon DMH's knowledge of a material breach of these Provisions by Contractor, DMH shall either:
  - (1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by DMH; or
  - (2) Immediately terminate this Agreement if Contractor has breached a material term of these Provisions and cure is not possible.
  - (3) If neither cure nor termination is feasible, the DMH Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
11. *Judicial or Administrative Proceedings.* DMH may terminate this Agreement, effective immediately, if (i) Contractor is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of HIPAA, or (iii), a finding or stipulation in any administrative or civil proceeding that the contractor has violated any privacy or security regulation or law.
12. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all PHI received from DMH (or created or received by Contractor on behalf of DMH) that Contractor still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it 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 shall apply to PHI that is in the possession of subcontractors or agents of Contractor.

13. *Disclaimer.* DMH makes no warranty or representation that compliance by Contractor with these Provisions, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI.
14. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these Provisions may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DMH's request, Contractor agrees to promptly enter into negotiations with DMH concerning an amendment to these Provisions embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DMH may terminate this Agreement upon thirty (30) days written notice in the event (i) Contractor does not promptly enter into negotiations to amend these Provisions when requested by DMH pursuant to this Section or (ii) Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that DMH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
15. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of these Provisions is intended to confer, nor shall anything herein confer, upon any person other than DMH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
16. *Interpretation.* The terms and conditions in these Provisions shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations 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 HIPAA and the HIPAA regulations.
17. *Regulatory References.* A reference in the terms and conditions of these Provisions to a section in the HIPAA regulations means the section as in effect or as amended.
18. *Survival.* The respective rights and obligations of Contractor under Section 6.C of these Provisions shall survive the termination or expiration of this Agreement.
19. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

## **B. Confidentiality of Data and Documents**

1. Except as otherwise required by law, the Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without express permission of the Department.

2. Permission to disclose information or documents on one occasion or at public hearings held by the Department relating to the same shall not authorize the Contractor to further disclose such information or documents on any other occasion, except as otherwise required by law.
3. The Contractor shall not comment publicly to the Press or any other media regarding the data or documents generated, collected, or produced in connection with this Agreement, or the Department's actions on the same, except to the Department's staff, the Contractor's own personnel involved in the performance of this Agreement, at a public hearing, or in response to questions from a legislative committee.
4. If requested by the Department, the Contractor shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by the Department and shall supply the Department with evidence thereof.
5. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure of the same.
6. After any data or documents submitted has become a part of the public records of the State, the Contractor may, if it wishes to do so, at its own expense and upon approval by the Department, publish or utilize the same but shall include the following legend:

LEGAL NOTICE

This report was prepared as an account of work sponsored by DMH, but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither DMH, nor the State of California, nor any officer or employee thereof, nor any of its contractors or subcontractors, makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

**VII. PROVISIONS RELATING TO DATA**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
- B. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Agreement is commenced.
- C. "Generated data" is that data that a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data

processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.

- D. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to the Department. Such data shall be the property of the Department.
- E. "Generated data" shall be the property of the Department unless and only to the extent that it is specifically provided otherwise herein or by agreement of DMH and the Contractor.
- F. The title to the Contractor's proprietary data shall remain in the Contractor's possession throughout the term of this Agreement and thereafter. As to generated data which is reserved to the Contractor by express terms of this Agreement and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at the Contractor's own expense for a period of not less than three years after receipt by the State of the final report or termination of this Agreement and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Contract, whichever is later.
- G. Prior to the expiration of such time, and before changing the form of or destroying any such data, the Contractor shall notify the Department of any such contemplated action; and the Department may, within 30 (thirty) days after said notification, determine whether it desires said data to be further preserved and, if the Department so elects, the expense of further preservation of said data shall be paid for by the Department. The Contractor agrees that the Department shall have unrestricted reasonable access to the same during said three-year period and throughout the time during which said data is preserved in accordance with this Agreement, and the Contractor agrees to use best efforts to furnish competent witnesses or to identify such competent witnesses to testify in any court of law regarding said data.

#### **VIII. CHANGES IN TIME FOR PERFORMANCE OF TASKS**

The time for performance of the tasks and items within the budget, but not the total Agreement price, may be changed with the prior written approval of the Department. However, the date for completion of performance and the total Agreement price, as well as all other terms not specifically accepted may be altered only by formal amendment of this Agreement.

#### **IX. PATIENTS' RIGHTS**

The parties to this Agreement shall comply with all applicable laws and regulations relating to patients' rights.

#### **X. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Agreement or the right of the Department to enforce said provisions.

**XI. CONTRACT IS COMPLETE**

Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Agreement.

**XII. CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do no purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

**XIII. PUBLIC HEARINGS**

If public hearings on the subject matter dealt with in this Agreement are held within one year from the contract expiration date, the Contractor will make available to testify the personnel assigned to this Agreement at the hourly rates specified in the Contractor's proposed budget.

**XIV. FORCE MAJEURE**

Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, including and without being limited to: acts of God, interference, rulings or decisions by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall as soon as reasonably possible give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Agreement.

**XV. PERMITS AND LICENSES**

The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement, and give all notices necessary and incident to the lawful prosecution of the work.

The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the Department in writing.

**XVI. LITIGATION**

The Department, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the Department or its officers or employees for which the contractor must provide indemnification under this Agreement. The failure of the Department to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall promptly notify the Department of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the Department, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the Department.

#### **XVII. SEVERABILITY**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are and shall be deemed to be severable.

#### **XVIII. PUBLIC CONTRACT CODE**

The Contractor is advised that provisions of Public Contract Code Sections 10355 through 10382 pertaining to the duties, obligations and rights of a consultant service contractor are applicable to this Agreement.

#### **XIX. WAIVER OF DEFAULT**

Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement will not be deemed to be a waiver of any other or subsequent breach, and will not be construed to be a modification of this Agreement.

#### **XX. CONFLICT OF INTEREST CERTIFICATION**

In accordance with State laws and Departmental policy, no employees (including contractors) shall participate in incompatible activities which are in conflict with their job duties. In addition, State law requires employees whose positions are designated in the Department's Conflict of Interest Code to file statements of economic interest. Employees whose positions have been designated will be notified by the department if a statement is required.

In signing this contract, I certify that I have read and understand the following:

GOVERNMENT CODE 19990: A state officer or employee shall not engage in any employment, activity, or enterprise, which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the Department, those activities that, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to all of the following:

1. Using the prestige or influence of the State or the appointing authority for the private gain or advantage of the officer or employee, or the private gain of another.

2. Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
3. Receiving or accepting money or any other consideration from anyone other than the State for the performance of his or her duties as a state officer or employee.
4. Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.
5. Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
6. Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.