



Contract Number

19-575

SAP Number

4400012500

## Department of Behavioral Health

**Department Contract Representative  
Telephone Number**

Johnnetta Gibson

909-388-0861

**Contractor  
Contractor Representative  
Telephone Number  
Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center**

Avantpage, Inc.

Luis Miguel

530-750-2040

September 1, 2019 to August 31, 2025

\$2,500,000

\$0

\$2,500,000

9200001000

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and Avantpage, Inc. referenced above, hereinafter called Contractor.

**IT IS HEREBY AGREED AS FOLLOWS:**

**WITNESSETH:**

**WHEREAS**, the County desires to purchase and Contractor desires to provide Translation and Interpretation Services, and,

**WHEREAS**, this Agreement is authorized by law,

**NOW, THEREFORE**, the parties hereto do mutually agree to terms and conditions as follows:

## TABLE OF CONTENTS

| <u>Article</u>                                        | <u>Page</u> |
|-------------------------------------------------------|-------------|
| Title Page .....                                      | 1           |
| Table of Contents .....                               | 2           |
| Referenced Contracts Provisions .....                 | 3           |
| I. Definition of Terminology .....                    | 4           |
| II. Contract Supervision .....                        | 5           |
| III. Performance .....                                | 5           |
| IV. Contractor Service Responsibilities .....         | 13          |
| V. Contractor General Responsibilities .....          | 15          |
| VI. Funding and Budgetary Restrictions .....          | 17          |
| VII. Provisional Payment .....                        | 18          |
| VIII. Fiscal Award Monitoring .....                   | 19          |
| IX. Contract Performance Notification .....           | 20          |
| X. Probationary Status .....                          | 20          |
| XI. Duration and Termination .....                    | 20          |
| XII. Personnel .....                                  | 21          |
| XIII. Prohibited Affiliations .....                   | 24          |
| XIV. Licensing, Certification and Accreditation ..... | 25          |
| XV. Administrative Procedures .....                   | 27          |
| XVI. Laws and Regulations .....                       | 30          |
| XVII. Confidentiality .....                           | 32          |
| XVIII. Quality Assurance/Utilization Review .....     | 33          |
| XIX. Independent Contractor Status .....              | 33          |
| XX. Subcontractor Status .....                        | 33          |
| XXI. Attorney Costs and Fees .....                    | 34          |
| XXII. Indemnification and Insurance .....             | 34          |
| XXIII. Nondiscrimination .....                        | 38          |
| XXIV. Contract Amendments .....                       | 40          |
| XXV. Assignment .....                                 | 40          |
| XXVI. Severability .....                              | 41          |
| XXVII. Improper Consideration .....                   | 41          |
| XXVIII. Venue .....                                   | 41          |
| XXIX. Conclusion .....                                | 42          |

Schedule A - Fee Schedule

Attachment I - Business Associate Agreement

Attachment II - Attestation Regarding Ineligible/Excluded Persons

Attachment III - Request for Translation and Interpretation Services Form (RTIS 49)

## **REFERENCED CONTRACT PROVISIONS**

**Term:** September 1, 2019 through August 31, 2025, inclusive.

**Aggregate Maximum Obligation:**

|                                     |             |
|-------------------------------------|-------------|
| Fiscal Year 2019-20                 | \$450,000   |
| Fiscal Year 2020-21                 | \$500,000   |
| Fiscal Year 2021-22                 | \$500,000   |
| Fiscal Year 2022-23                 | \$500,000   |
| Fiscal Year 2023-24                 | \$500,000   |
| Fiscal Year 2024-25                 | \$50,000    |
| <hr/>                               |             |
| TOTAL AGGREGATE MAXIMUM OBLIGATION: | \$2,500,000 |

**Basis for Reimbursement:**

Translation and Interpretation Services

**Payment Method:**

Fee For Service

**Payment/Reimbursement Rate:**

See Schedule A – Fee Schedule

**Notices to County and Contractor:**

COUNTY: County of San Bernardino  
Department of Behavioral Health  
Office of Cultural Competence & Ethnic Services  
303 East Vanderbilt Way, 1<sup>st</sup> Floor  
San Bernardino, CA 92415-0026

CONTRACTOR: Avantpage, Inc.  
132 E Street, #370  
Davis, CA 95616

## I. Definition of Terminology

- A. Wherever in this document and in any attachments hereto, the terms "Contract" and/or "Agreement" are used to describe the conditions and covenants incumbent upon the parties hereto, these terms are interchangeable.
- B. The terms beneficiary, client, consumer, customer, participant, or patient are used interchangeably throughout this document and refers to the individual(s) receiving services.
- C. Definition of May, Shall and Should. Whenever in this document the words "may," "shall" and "should" are used, the following definitions shall apply: "may" is permissive; "shall" is mandatory; and "should" means desirable.
- D. The term "County's billing and transactional database system" refers to the centralized data entry system used by the Department of Behavioral Health (DBH) for patient and billing information.
- E. The term "Director," unless otherwise stated, refers to the Director of DBH for the County of San Bernardino.
- F. The "State and/or applicable State agency" as referenced in this Contract may include the Department of Health Care Services (DHCS), the Department of State Hospitals (DSH), the Department of Social Services (DSS), the Mental Health Services Oversight and Accountability Commission (MHSOAC), the Department of Public Health (CDPH), and the Office of Statewide Health Planning and Development (OSHPD).
- G. The U.S. Department of Health and Human Services (HHS) mission is to enhance and protect the health and well-being of all Americans by providing for effective health and human services and fostering advances in medicine, public health, and social services.
- H. The "County Contract Rate" (CCR) is the maximum allowable reimbursement rate established by DBH.
- I. The "provisional rates" are the interim rates established for billing and payment purposes and are subject to change upon request and approval by DBH Administrative Services - Fiscal Division.
- J. ASL – The acronym for American Sign Language, a visual-gestural language used primarily by members of the North American Deaf community.
- K. English Language Barrier – A person experiencing difficulties communicating in English while obtaining available social services. This may be due to their inability to speak English or to effectively communicate in English.
- L. Field Test – The State of California requires translations of standard tests to be at a fourth grade reading level. Each test instrument must be evaluated for reading level both before and after translation. Field tests for acceptability by clients in target language ensure that the items in the target language are equivalent to those of the same items in the original language.
- M. Interpret – To explain or present in understandable terms.
- N. Interpretation – The conversion of live speech from one language into another.
- O. Interpreter – An individual paid to listen to a person speaking in one language and

converse the spoken words to another individual(s), in that individual(s)'s language.

- P. On-site Interpretation – Interpretation conducted face-to-face as opposed to on the phone.
- Q. Language Services – Translation and Interpretation Services.
- R. Sign Language – A formal language utilizing the technique of hand gestures for communication.
- S. Telephonic Interpretation – Interpretation conducted on the phone as opposed to face-to-face.
- T. Translate – To convert into one's own or another language.
- U. Translation – The conversion of written text from one language into another.
- V. Translation Log – The log interpreter and DBH staff member sign at time of service to document day and time of on-site interpretation.
- W. Translator – An individual paid to convert written text from one language to another.

## II. Contract Supervision

- A. The Director or designee shall be the County employee authorized to represent the interests of the County in carrying out the terms and conditions of this Contract. The Contractor shall provide, in writing, the names of the persons who are authorized to represent the Contractor in this Contract.
- B. Contractor will designate an individual to serve as the primary point of contact for this Contract. Contractor shall not change the primary contact without written notification and acceptance of the County. Contractor shall notify DBH when the primary contact will be unavailable/out of the office for one (1) or more workdays and will also designate a back-up point of contact in the event the primary contact is not available. Contractor or designee must respond to DBH inquiries within two (2) business days.
- C. Contractor shall provide DBH with contact information, specifically, name, phone number and email address of Contractor's staff member who is responsible for the following processes: Business regarding administrative issues, Technical regarding data issues, Clinical regarding program issues; and Facility.

## III. Performance

- A. Under this Agreement, the Contractor shall provide those services, which are dictated by attached Addenda, Schedules and/or Attachments. The Contractor agrees to be knowledgeable in and apply all pertinent local, State, and Federal laws and regulations; including, but not limited to those referenced in the body of this Agreement. In the event information in the Addenda, Schedules and/or Attachments conflicts with the basic Agreement, then information in the Addenda, Schedules and/or Attachments shall take precedence to the extent permitted by law.
- B. Limitations on Moral Grounds
  - 1. Contractor shall not be required to provide, reimburse for, or provide coverage of a counseling or referral service if the Contractor objects to the service on moral or religious grounds.
  - 2. If Contractor elects not to provide, reimburse for, or provide coverage of a

counseling or referral service because of an objection on moral or religious grounds, it must furnish information about the services it does not cover as follows:

- a. To DBH:
  - i. After executing this Contract;
  - ii. Whenever Contractor adopts the policy during the term of the Contract;
- b. Consistent with the provisions of 42 Code of Federal Regulations part 438.10:
  - i. To potential beneficiaries before and during enrollment; and
  - ii. To beneficiaries at least thirty (30) days prior to the effective date of the policy for any particular service.

C. Contractor agrees to submit reports as requested and required by the County and/or the Department of Health Care Services (DHCS).

D. Data Collection and Performance Outcome Requirements

Contractor shall comply with all local, State, and Federal regulations regarding local, State, and Federal Performance Outcomes measurement requirements and participate in the outcomes measurement process, as required by the State and/or DBH. For Mental Health Services Act (MHSA) programs, Contractor agrees to meet the goals and intention of the program as indicated in the related MHSA Component Plan and most recent update.

Contractor shall comply with all requests regarding local, State, and Federal Performance Outcomes measurement requirements and participate in the outcomes measurement processes as requested.

MHSOAC, DHCS, OSHPD, DBH and other oversight agencies or their representatives have specific accountability and outcome requirements. Timely reporting is essential for meeting those expectations.

- 1. Contractor must collect, manage, maintain and update client, service and episode data as well as staffing data as required for local, State, and Federal reporting.
- 2. Contractor shall provide information by entering or uploading required data into:
  - a. County's billing and transactional database system.
  - b. DBH's client information system and, when available, its electronic health record system.
  - c. The "Data Collection and Reporting" (DCR) system, which collects and manages Full Service Partnership (FSP) information.
  - d. Individualized data collection applications as specified by DBH, such as Objective Arts and the Prevention and Early Intervention (PEI) Database.

- e. Any other data or information collection system identified by DBH, the MHSOAC, OSHPD or DHCS.
- 3. Contractor shall comply with all requirements regarding paper or online forms:
  - a. Bi-Annual Client Perception Surveys (paper-based): twice annually, or as designated by DHCS. Contractor shall collect consumer perception data for clients served by the programs. The data to be collected includes, but not limited to, the client's perceptions of the quality and results of services provided by the Contractor.
  - b. Client preferred language survey (paper-based), if requested by DBH.
  - c. Intermittent services outcomes surveys.
  - d. Surveys associated with services and/or evidence-based practices and programs intended to measure strategy, program, component, or system level outcomes and/or implementation fidelity.
  - e. Network Adequacy Certification Tool (NACT) as required by DHCS and per DBH instructions.
- 4. Data must be entered, submitted and/or updated in a timely manner for:
  - a. All FSP and non-FSP clients: this typically means that client, episode and service-related data shall be entered into the County's billing and transactional database system.
  - b. All service, program, and survey data will be provided in accordance with all DBH established timelines.
  - c. Required information about FSP clients, including assessment data, quarterly updates and key events shall be entered into the DCR online system by the due date or within 48 hours of the event or evaluation, whichever is sooner.
- 5. Contractor will ensure that data are consistent with DBH's specified operational definitions, that data are in the required format, that data is correct and complete at time of data entry, and that databases are updated when information changes.
- 6. Data collection requirements may be modified or expanded according to local, State, and/or Federal requirements.
- 7. Contractor shall submit, monthly, its own analyses of the data collected for the prior month, demonstrating how well the contracted services or functions provided satisfied the intent of the Contract, and indicating, where appropriate, changes in operations that will improve adherence to the intent of the Contract. The format for this reporting will be provided by DBH.
- 8. Independent research involving clients shall not be conducted without the prior written approval of the Director of DBH. Any approved research must follow the guidelines in the DBH Research Policy.

Note: Independent research means a systematic investigation, including research development, testing and evaluation, designed to develop or



contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

E. Right to Monitor and Audit Performance and Records

1. Right to Monitor

County or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, financial records, staff information, patient records, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Full cooperation shall be given by Contractor in any auditing or monitoring conducted, according to this agreement.

Contractor shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services, and activities furnished under the terms of this Contract, or determinations of amounts payable available at any time for inspection, examination, or copying by DBH, the State of California or any subdivision or appointee thereof, Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services (HHS) Office of Inspector General, the United States Comptroller General or their designees, and other authorized Federal and State agencies. This audit right will exist for at least ten (10) years from the final date of the contract period or in the event the Contractor has been notified that an audit or investigation of this Contract has commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies. Records and documents include, but are not limited to all physical and electronic records.

Contractor shall cooperate with the County in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by the County.

County reserves the right to place Contractor on probationary status, as referenced in the Probationary Status Article, should Contractor fail to meet performance requirements; including, but not limited to violations such as high disallowance rates, failure to report incidents and changes as contractually required, failure to correct issues, inappropriate invoicing, timely and accurate data entry, meeting performance outcomes expectations, and violations issued directly from the State. Additionally, Contractor may be subject to Probationary Status or termination if contract monitoring and auditing corrective actions are not resolved with the specified timeframes.

2. Availability of Records



Contractor and subcontractors, shall retain, all records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract, including beneficiary grievance and appeal records, and the data, information and documentation specified in 42 Code of Federal Regulations parts 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten (10) years from the term end date of this Contract or until such time as the matter under audit or investigation has been resolved. Records and documents include, but are not limited to all physical and electronic records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract including working papers, reports, financial records and documents of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries.

Contractor shall maintain all records and management books pertaining to local service delivery and demonstrate accountability for contract performance and maintain all fiscal, statistical, and management books and records pertaining to the program.

Records, should include, but are not limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the Code of Federal Regulations (CFR), Title II, Subtitle A, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of a Contract.

Contractor shall maintain client and community service records in compliance with all regulations set forth by local, State, and Federal requirements, laws and regulations, and provide access to clinical records by DBH staff.

Contractor shall comply with Medical Records/Protected Health Information Article regarding relinquishing or maintaining medical records.

Contractor shall agree to maintain and retain all appropriate service and financial records for a period of at least ten (10) years from the date of final payment, the final date of the contract period, final settlement, or until audit findings are resolved, whichever is later.

Contractor shall submit audited financial reports on an annual basis to DBH. The audit shall be conducted in accordance with generally accepted accounting principles and generally accepted auditing standards.

In the event the Contract is terminated, ends its designated term or Contractor ceases operation of its business, Contractor shall deliver or make available to

DBH all financial records that may have been accumulated by Contractor or subcontractor under this Contract, whether completed, partially completed or in progress within seven (7) calendar days of said termination/end date.

3. Assistance by Contractor

Contractor shall provide all reasonable facilities and assistance for the safety and convenience of County's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of Contractor.

- F. Notwithstanding any other provision of this Agreement, the County may withhold all payments due to Contractor, if Contractor has been given at least thirty (30) days notice of any deficiency(ies) and has failed to correct such deficiency(ies). Such deficiency(ies) may include, but are not limited to: failure to provide services described in this Agreement; Federal, State, and County audit exceptions resulting from noncompliance, violations of pertinent Federal and State laws and regulations, and significant performance problems as determined by the Director or designee from monitoring visits.
- G. County has the discretion to revoke full or partial provisions of the Contract, delegated activities or obligations, or application of other remedies permitted by State or Federal law when the County or DHCS determines Contractor has not performed satisfactorily.

H. Cultural Competency

The State mandates counties to develop and implement a Cultural Competency Plan (CCP). This Plan applies to all DBH services. Policies and procedures and all services must be culturally and linguistically appropriate. Contract agencies are included in the implementation process of the most recent State approved CCP for the County of San Bernardino and shall adhere to all cultural competency standards and requirements. Contractor shall participate in the County's efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity. In addition, contract agencies will maintain a copy of the current DBH CCP.

1. Cultural and Linguistic Competency

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

- a. To ensure equal access to quality care for diverse populations, Contractor shall adopt the Federal Office of Minority Health Culturally and Linguistically Appropriate Services (CLAS) national standards.
- b. Contractor shall be required to assess the demographic make-up and population trends of its service area to identify the cultural and linguistic needs of the eligible beneficiary population. Such studies are critical to

designing and planning for providing appropriate and effective mental health and substance use disorder treatment services.

- c. Upon request, Contractor shall provide DBH with culture-specific service options available to be provided by Contractor.
- d. DBH recognizes that cultural competence is a goal toward which professionals, agencies, and systems should strive. Becoming culturally competent is a developmental process and incorporates at all levels the importance of culture, the assessment of cross-cultural relations, vigilance towards the dynamics that result from cultural differences, the expansion of cultural knowledge, and the adaptation of services to meet culturally-unique needs. Providing mental health and substance use disorder treatment services in a culturally appropriate and responsive manner is fundamental in any effort to ensure success of high quality and cost-effective behavioral health services. Offering those services in a manner that fails to achieve its intended result due to cultural and linguistic barriers does not reflect high quality of care and is not cost-effective.
- e. To assist Contractor's efforts towards cultural and linguistic competency, DBH shall provide the following:
  - i. Technical assistance to Contractor regarding cultural competency implementation.
  - ii. Demographic information to Contractor on service area for service(s) planning.
  - iii. Cultural competency training for DBH and Contractor personnel.

NOTE: Contractor staff is required to attend cultural competency trainings. Staff who do not have direct contact providing services to clients/consumers shall complete a minimum of two (2) hours of cultural competency training, and direct service staff shall complete a minimum of four (4) hours of cultural competency training each calendar year. Contractor shall upon request from the County, provide information and/or reports as to whether its provider staff completed cultural competency training.
  - iv. Interpreter training for DBH and Contractor personnel, when available.
  - v. Technical assistance for Contractor in translating mental health and substance use disorder treatment services information to DBH's threshold language (Spanish). Technical assistance will consist of final review and field testing of all translated materials as needed.
  - vi. Monitoring activities administered by DBH may require Contractor to demonstrate documented capacity to offer services in threshold languages or contracted interpretation and translation services.

- vii. Contractor's written organizational procedures must be in place to determine multilingual and competency level(s).
- viii. The Office of Cultural Competence and Ethnic Services (OCCES) may be contacted for technical assistance and training offerings at [cultural\\_competency@dbh.sbcounty.gov](mailto:cultural_competency@dbh.sbcounty.gov) or by phone at (909) 386-8223

I. Accessibility/Availability of Services

Contractor shall ensure that services provided are available and accessible to beneficiaries in a timely manner including those with limited English proficiency or physical or mental disabilities. Contractor shall provide physical access, reasonable accommodations, and accessible equipment for Medi-Cal beneficiaries with physical or mental disabilities [(42 C.F.R. § 438.206(b)(1) and (c)(3)].

J. Site Inspection

Contractor shall permit authorized County, State, and/or Federal Agency(ies), through any authorized representative, the right to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract support activities and the premises which it is being performed. Contractor shall provide all reasonable assistance for the safety and convenience of the authorized representative in the performance of their duties. All inspections and evaluations shall be made in a manner that will not unduly delay the work.

K. Disaster Response

1. In the event that a local, State, or Federal emergency is proclaimed within San Bernardino County, Contractor shall cooperate with the County in the implementation of the DBH Disaster Response Plan. This may include deployment of Contractor staff to provide services in the community, in and around county areas under mutual aid contracts, in shelters and/or other designated areas.
2. Contractor shall provide the DBH Disaster Coordinator with a roster of key administrative and response personnel including after-hours phone numbers, pagers, and/or cell phone numbers to be used in the event of a regional emergency or local disaster. These numbers will be kept current by quarterly reports to the County by Contractor. The County shall keep such information confidential and not release other than to authorized County personnel or as otherwise required by law.
3. Contractor shall ensure that, within three months from the Contract effective date, at least twenty-five percent (25%) of Contractor's permanent direct service staff participates in a disaster response orientation and training provided by the County or County's designee.
4. Said twenty-five percent (25%) designated Contractor permanent direct service staff shall complete the following disaster trainings as prerequisites to the DBH live trainings held annually, which are available online on the Federal Emergency Management Agency (FEMA) website at <https://training.fema.gov/is/crslist.aspx>.

- a. IS: 100
  - b. IS: 200
  - c. IS: 700
  - d. IS: 800
5. The County agrees to reimburse Contractor for all necessary and reasonable expenses incurred as a result of participating in the County's disaster response at the request of County. Any reasonable and allowable expenses above the Contract maximum will be subject to negotiations.
6. Contractor shall provide the DBH with the key administrative and response personnel including after-hours phone numbers, pagers, and/or cell phone numbers to be used in the event of a regional emergency or local disaster. Updated reports are due fourteen (14) days after the close of each quarter. Please send updated reports to:

Office of Disaster and Safety  
303 E. Vanderbilt Way  
San Bernardino, CA 92415  
safety@dbh.sbcounty.gov

L. Collections Costs

Should the Contractor owe monies to the County for reasons including, but not limited to, Quality Management review, cost-settlement, and/or fiscal audit, and the Contractor has failed to pay the balance in full or remit mutually agreed upon payment, the County may refer the debt for collection. Collection costs incurred by the County shall be recouped from the Contractor. Collection costs charged to the Contractor are not a reimbursable expenditure under the Contract.

IV. Contractor Services Responsibilities

The Contractor shall:

- A. Provide on-going training for personnel providing translation and interpretation services on cultural competency, ethical and professional standards, principles of interpretation and translation, and terminology specific to health care and social services settings.
- B. Provide experienced translators and/or interpreters for services to County clientele experiencing English language barriers, in languages specified in Schedule A – Fee Schedule.
  - 1. Provide up-to-date contact information to be used by County to request on-site interpretation, telephonic interpretation, and translation 24 hours a day, 7 days a week, including:
  - 2. E-mail address.
  - 3. Phone number (message and response).
  - 4. Toll-free number for telephonic interpretation.
- C. Provide a current e-mail address to be used for submission of all service requests and immediately notify County in writing of any changes to this address.

- D. Confirm information received including the date, time, location of the appointment(s) and the availability of the interpreter by notifying the appropriate department representative and notifying the appropriate County department within 24 hours from the time the County sent the Request.
- E. Contractor shall submit a claim for reimbursement including but not limited to the following criterion:
1. Interpreter Name
  2. Date of Service
  3. Consumer Information (Name, Nature of Assignment/Type of Appointment)
  4. Facility Information (Facility Name, Address, City, On-site Contact, and Phone Number)
  5. Start and End times
  6. Signature of Interpreter
  7. Printed Name and Facility Representative signature

The County reserves the right to amend the criterion if the County considers that additional clarifications are needed.

- F. Provide availability by phone and e-mail, 24 hours a day, 7 days a week.
- G. Provide services in the following regions and surrounding areas on an as-requested basis:

| Region          | Representative Cities (Not All Inclusive)            |
|-----------------|------------------------------------------------------|
| West Valley     | Rancho Cucamonga, Ontario, Fontana                   |
| Central Valley  | Rialto, Bloomington                                  |
| East Valley     | San Bernardino, Colton, Highland, Redlands           |
| Northern Desert | Apple Valley, Barstow, Hesperia, Victorville         |
| Eastern Desert  | Joshua Tree, Yucca Valley, Needles                   |
| Mountains       | Crestline, Lake Arrowhead, Running Springs, Big Bear |

- H. Provide field test translation material.
- I. Contact County clientele to clarify service needs as necessary (location, service date(s), frequency of service, etc.) to ensure service is provided promptly; work with County clientele and employees in a professional manner.
- J. Ensure the confidentiality of the translation or interpretation services provided.
- K. When receiving information from the County through encrypted e-mail, use encrypted e-mail when responding.
- L. On rare occasions, Contractor may be required to provide an interpreter who is court certified and in good standing with the California Judicial Council
- M. Adhere to Service Guidelines provided to Contractor and subject to update during the term of the contract.
- N. Contact County to clarify service needs (i.e., location, service date(s), frequency of service, etc.); work with County departments and employees in a professional manner.
- O. On-Site Interpretation Services:
1. Travel throughout the County of San Bernardino to provide services at DBH offices, client's home, or any other locations, as needed, including, but not limited to, desert and mountain regions of the County. Arrive promptly; do not make contact with



client without the presence of a County staff member; follow agreed-upon procedures for “no-show” or late arrival of employee and/or client.

2. Provide translation and/or interpretation services on an as-requested basis within 48 hours of the request for Spanish language services and within 72 hours of the request for all other translation and interpretation services. (Schedule A – Fee Schedule).
3. Assign experienced interpreters (including sign language) who are fluent and proficient in English and the language or ASL requested.
4. Provide interpreters who possess professional communication and customer service skills.
5. Ensure interpreters are trained in cultural competency and behavioral health terminology, and understand their professional role to interpret solely what is asked and refrain from advising, counseling or having personal conversations with clients.

P. Translation Services

Contractor shall:

1. Assign experienced and professional translators who are proficient in English and the requested foreign language.
2. Translate written materials that may be confidential and/or contain social services terminology.
3. Provide written translation materials within 72 hours from the request in electronic and hard copy format. Electronic copy must be sent through encrypted e-mail in Microsoft Office Word format.

Q. Telephonic Services

Contractor shall:

1. Provide a toll-free telephone number to access interpreters for immediate and/or scheduled use.
2. Provide a toll-free Telecommunication Device for the Deaf (TDD).
3. Ensure telephonic interpreters are trained in cultural competency and behavioral health terminology, and are capable of handling calls in which the consumer is having a behavioral health crisis.
4. Collect needed information from the callers for reimbursement, while at the same time, providing professional and courteous customer service that meets the needs of behavioral health consumers. In an urgent or crisis situation, the interpreter should make reasonable accommodations to collect information needed for reimbursement at an appropriate time.

R. Court Certified Interpretation Services

Contractor shall provide on rare occasions an interpreter who is court certified and in good standing with the California Judicial Council.

V. Contractor General Responsibilities

- A. Contractor shall notify County of any continuing vacancies and any positions that become vacant during the term of this Contract that will result in reduction of services to be provided under this Contract. Upon notice of vacancies, the Contractor shall

advise County of the steps being taken to provide the services and to fill the position as expeditiously as possible. Vacancies and associated problems shall be reported to County on each periodically required report for the duration of said vacancies and/or problems.

- B. Contractor shall provide a system, approved by the County, through which recipients of service shall have the opportunity to express and have considered their views and complaints regarding the delivery of services. The procedure must be in writing and a copy provided to all recipients.
- C. Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. The Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.
- D. Contractor shall notify the County of any staff member, paid intern or volunteer who is knowingly or negligently employed who has been convicted of any crime of violence or of any sexual crime. Contractor shall investigate all incidents where an applicant, employee, intern or volunteer has been arrested and/or convicted for any crime listed in Penal Code Section 11105.3 and shall notify the County. In the County's discretion, the County may instruct Contractor to take action to either deny/terminate employment or terminate internship and/or volunteer services where the investigation shows that the underlying conduct renders the person unsuitable for employment, internship, or volunteer services.

Contractor shall immediately notify the County concerning the arrest and/or conviction, for other than minor traffic offenses, of any paid employee, agent, consultant, intern, or volunteer staff, when such information becomes known to Contractor.

- E. Contractor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall procure all licenses and pay all fees and other charges required thereby. Contractor shall maintain all required licenses during the term of this Contract. Failure to comply with the provisions of this section may result in immediate termination of this Contract.
- F. If the amount available to Contractor under this Contract, as specified in Section VI, Paragraph A, exceeds \$100,000, Contractor agrees to comply with the Clean Air Act (42 U.S.C. Section 7606), section 508 of the Clean Water Act (33 U.S.C. section 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R. section 1.1 et seq.).
- G. Contractor shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of this Contract. Recycled printed products shall include a symbol identifying the recycled material.
- H. Contractor understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the County shall be the Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any

Contract dispute hereunder, each Party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

- I. Contractor shall register with 2-1-1 San Bernardino County Inland Empire United Way within thirty (30) days of contract effective date and follow necessary procedures to be included in the 2-1-1 database. The contractor shall notify the 2-1-1 San Bernardino County Inland Empire United Way of any changes in program services, location or contact information within ten (10) days of any change. Services performed as a result of being included in the 2-1-1 database, are separate and apart from the services being performed under this Contract and payment for such services will not be the responsibility of the County.

#### VI. Funding and Budgetary Restrictions

- A. This Agreement shall be subject to any restrictions, limitations, or conditions imposed by State, County or Federal governments which may in any way affect the provisions or funding of this Agreement, including, but not limited to those contained in the Referenced Contract Provisions. This Agreement is also contingent upon sufficient funds being made available by State, County or Federal governments for the term of the Agreement. Funding is by fiscal year period July 1 through June 30. Costs and services are accounted for by fiscal year. Each fiscal year period will be settled to Federal and/or State cost reporting accountability.
- B. The aggregate amount of payment under this Agreement shall not exceed \$2,500,000, the sum referenced in the Referenced Contract Provisions. The consideration to be paid to the Contractor, as provided herein, shall be full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- C. Reimburse for invoices shall be on a fee-for service basis and is based on the Fee Schedule (Schedule A). On site interpretation will be based on the specific language requested and the number of minutes/hours services are provided, regardless of the number of clients assisted during that time period.
- D. Contractor will provide invoices once a month to the County no later than the tenth (10<sup>th</sup>) day of the month following the month of services. Payment to the Contractor will be made on a monthly basis. Invoices shall at minimum, include the following information:
  1. Name of the DBH facility requesting the services,
  2. Location where services were provided,
  3. Full name and contact phone number of the County employee request the services,
  4. Full name of the County clientele receiving services,
  5. Date of service, description of services provided, amount of services provided, and total cost, and
  6. A copy of the signed interpreter Log and signed by DBH staff confirming services were provided.
- E. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account.

Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- F. Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- G. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- H. Contractor must establish and maintain effective internal controls over all funding awarded to Contractor by County to provide reasonable assurance that Contractor complies with Federal, State, and County statutes, regulations, and terms and conditions of the Contract.
- I. Contractor Prohibited From Redirections of Contracted Funds:
  - 1. Funds under this Agreement are provided for the delivery of mental health services to eligible beneficiaries under each of the funded programs identified in the Schedule A – Fee Schedule. Each funded program has been established in accordance with the requirements imposed by each respective County, State and/or Federal payer source contributing to the funded program.
  - 2. Contractor may not redirect funds from one funded program to another funded program, except through a duly executed amendment to this Agreement.
  - 3. Contractor may not charge services delivered to an eligible beneficiary under one funded program to another funded program unless the recipient is also an eligible beneficiary under the second funded program.
- J. A portion of the funding for these services includes Federal Funds. The Federal CFDA numbers are 93.778, 93.150, 93.958 and 93.959.

#### VII. Provisional Payment

- A. During the term of this Agreement, the County shall pay Contractor in arrears for eligible services provided under this Agreement and in accordance with the terms.
- B. Contractor shall be in compliance with the Deficit Reduction Act of 2005, Section 6032 Implementation. As a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act [42 U.S.C. 1396(a) (68)], set forth in that subsection and as the Federal Secretary of the United States Department of Health and Human Services may specify.
- C. Contractor agrees that no part of any Federal funds provided under this Contract shall

be used to pay the salary of an individual per fiscal year at a rate in excess of Level 1 of the Executive Schedule at <http://www.opm.gov/oca> (U.S. Office of Personnel Management).

- D. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

E. Prohibited Payments

1. County shall make no payment to Contractor other than payment for services covered under this Contract.
2. Federal Financial Participation is not available for any amount furnished to an excluded individual or entity, or at the direction of a physician during the period of exclusion when the person providing the service knew or had reason to know of the exclusion, or to an individual or entity when the County failed to suspend payments during an investigation of a credible allegation of fraud [42 U.S.C. section 1396b(i)(2)].
3. In accordance with Section 1903(i) of the Social Security Act, County is prohibited from paying for an item or service:
  - a. Furnished under contract by any individual or entity during any period when the individual or entity is excluded from participation under title V, XVIII, or XX or under this title pursuant to sections 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act.
  - b. Furnished at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under title V, XVIII, or XX or under this title pursuant to sections 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act and when the person furnishing such item or service knew, or had reason to know, of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).
  - c. Furnished by an individual or entity to whom the County has failed to suspend payments during any period when there is a pending investigation of a credible allegation of fraud against the individual or entity, unless the County determines there is good cause not to suspend such payments.
  - d. With respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act (ASFRA) of 1997.

- F. If DHCS or the County determines there is a credible allegation of fraud, waste or abuse against government funds, the County shall suspend payments to the Contractor.

VIII. Fiscal Award Monitoring

- A. County has the right to monitor the Contract during the award period to ensure accuracy of claim for reimbursement and compliance with applicable laws and regulations.

- B. Contractor agrees to furnish duly authorized representatives from the County and the State access to patient/client records and to disclose to State and County representatives all financial records necessary to review or audit Contract services and to evaluate the cost, quality, appropriateness and timeliness of services. Contractor shall attain a signed confidentiality statement from said County or State representative when access to any patient records is being requested for research and/or auditing purposes. Contractor will retain the confidentiality statement for its records.
- C. If the appropriate agency of the State of California, or the County, determines that all, or any part of, the payments made by the County to Contractor pursuant hereto are not reimbursable in accordance with this Agreement, said payments will be repaid by Contractor to the County. In the event such payment is not made on demand, the County may withhold monthly payment on Contractor's claims until such disallowances are paid by Contractor.

#### IX. Contract Performance Notification

- A. In the event of a problem or potential problem that will impact the quality or quantity of work or the level of performance under this Contract, Contractor shall provide notification within one (1) working day, in writing and by telephone, to DBH.
- B. Contractor shall notify DBH in writing of any change in mailing address within ten (10) calendar days of the address change.

#### X. Probationary Status

- A. In accordance with the Performance Article of this Agreement, the County may place Contractor on probationary status in an effort to allow the Contractor to correct deficiencies, improve practices, and receive technical assistance from the County.
- B. County shall give notice to Contractor of change to probationary status. The effective date of probationary status shall be five (5) business days from date of notice.
- C. The duration of probationary status is determined by the Director or designee(s).
- D. Contractor shall develop and implement a corrective action plan, to be approved by DBH, no later than ten (10) business days from date of notice to become compliant.
- E. Should the Contractor refuse to be placed on probationary status or comply with the corrective action plan within the designated timeframe, the County reserves the right to terminate this Agreement as outlined in the Duration and Termination Article.
- F. Placement on probationary status requires the Contractor disclose probationary status on any Request for Proposal responses to the County.
- G. County reserves the right to place Contractor on probationary status or to terminate this Agreement as outlined in the Duration and Termination Article.

#### XI. Duration and Termination

- A. The term of this Agreement shall be from September 1, 2019 through August 31, 2025 inclusive.
- B. This Agreement may be terminated immediately by the Director at any time if:



1. The appropriate office of the State of California indicates that this Agreement is not subject to reimbursement under law; or
  2. There are insufficient funds available to County; or
  3. There is evidence of fraud or misuse of funds by Contractor; or
  4. There is an immediate threat to the health and safety of Medi-Cal beneficiaries; or
  5. Contractor is found not to be in compliance with any or all of the terms of the herein incorporated Articles of this Agreement or any other material terms of the Contract, including the corrective action plan; or
  6. During the course of the administration of this Agreement, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.
- C. Either the Contractor or Director may terminate this Agreement at any time for any reason or no reason by serving thirty (30) days written notice upon the other party.
- D. This Agreement may be terminated at any time by the mutual written concurrence of both the Contractor and the Director.
- E. Contractor must immediately notify DBH when a facility operated by Contractor as part of this Agreement is sold or leased to another party. In the event a facility operated by Contractor as part of this Agreement is sold or leased to another party, the Director has the option to terminate this Agreement immediately.

## XII. Personnel

- A. Contractor agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
- B. Statements of Disclosure
1. Contractor shall submit a statement of disclosure of ownership, control and relationship information regarding its providers, managing employees, including agents and managing agents as required in Title 42 of the Code of Federal Regulations, Sections 455.104 and 455.105 for those having five percent (5%) or more ownership or control interest. This statement relates to the provision of information about provider business transactions and provider ownership and control and must be completed prior to entering into a contract, during



certification or re-certification of the provider; within thirty-five (35) days after any change in ownership; annually; and/or upon request of the County. The disclosures to provide are as follows:

- a. Name and address of any person (individual or corporation) with an ownership or control interest in Contractor's agency. The address for corporate entities shall include, as applicable, a primary business address, every business location and a P.O. box address;
  - b. Date of birth and Social Security Number (if an individual);
  - c. Other tax identification number (if a corporation or other entity);
  - d. Whether the person (individual or corporation) with an ownership or control interest in the Contractor's agency is related to another person with ownership or control in the same or any other network provider of the Contractor as a spouse, parent, child or sibling;
  - e. The name of any other disclosing entity in which the Contractor has an ownership or control interest; and
  - f. The name, address, date of birth and Social Security Number of any managing employee of the Contractor.
2. Contractor shall also submit disclosures related to business transactions as follows:
- a. Ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - b. Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the five (5) year period ending on the date of a request by County.
3. Contractor shall submit disclosures related to persons convicted of crimes regarding the Contractor's management as follows:
- a. The identity of any person who is a managing employee, owner or person with controlling interest of the Contractor who has been convicted of a crime related to Federal health care programs;
  - b. The identity of any person who is an agent of the Contractor who has been convicted of a crime related to Federal health care programs. Agent is described in 42 C.F.R. §455.101; and
  - c. The Contractor shall supply the disclosures before entering into a contract and at any time upon the County's request.
- C. Contractor shall confirm the identity of its providers, employees, DBH-funded network providers, contractors and any person with an ownership or controlling interest, or who is an agent or managing employee by developing and implementing a process to conduct a review of applicable Federal databases in accordance with Title 42 of the Code of Federal Regulations, Section 455.436. In addition to any background check or

Department of Justice clearance, the Contractor shall review and verify the following databases:

1. Social Security Administration's Death Master File to ensure new and current providers are not listed. Contractor shall conduct the review prior to hire and upon contract renewal (for contractor employees not hired at the time of contract commencement).
2. National Plan and Provider Enumeration System (NPPES) to ensure the provider has a NPI number, confirm the NPI number belongs to the provider, verify the accuracy of the providers' information and confirm the taxonomy code selected is correct for the discipline of the provider.
3. List of Excluded Individuals/Entities and General Services Administration's System for Award Management (SAM), the Office of Inspector General's (OIG) List of Excluded Individuals/Entities (LEIE), and DHCS Suspended and Ineligible Provider (S&I) List (if Medi-Cal reimbursement is received under this Contract), to ensure providers, employees, DBH-funded network providers, contractors and any person with an ownership or controlling interest, or who is an agent or managing employee are not excluded, suspended, debarred or otherwise ineligible to participate in the Federal and State health care programs. See the Licensing, Certification and Accreditation section of this Contract for further information on Excluded and Ineligible Person checks.

D. Contractor shall obtain records from the Department of Justice of all convictions of persons offered employment or volunteers as specified in Penal Code Section 11105.3.

E. Contractor shall inform DBH within twenty-four (24) hours or next business day of any allegations of sexual harassment, physical abuse, etc., committed by Contractor's employees against clients served under this Contract. Contractor shall report incident as outlined in Notification of Unusual Occurrences or Incident/Injury Reports paragraph in the Administrative Procedures Article.

F. Iran Contracting Act of 2010

In accordance with Public Contract Code Section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person [as defined in Public Contract Code Section 2202(e)] engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

G. Trafficking Victims Protection Act of 2000

In accordance with the Trafficking Victims Protection Act (TVPA) of 2000, the Contractor certifies that at the time the Contract is signed, the Contractor will remain in compliance with Section 106(g) of the Trafficking Victims Protection Act of 2000 as amended (22

U.S.C. 7104). For access to the full text of the award term, go to: <http://www.samhsa.gov/grants/grants-management/policies-regulations/additional-directives>.

The TVPA strictly prohibits any Contractor or Contractor employee from:

1. Engaging in severe forms of trafficking in persons during the duration of the Contract;
2. Procuring a commercial sex act during the duration of the Contract; and
3. Using forced labor in the performance of the Contract.

Any violation of the TVPA may result in payment withholding and/or a unilateral termination of this Contract without penalty in accordance with 2 CFR Part 175. The TVPA applies to Contractor and Contractor's employees and/or agents.

### XIII. Prohibited Affiliations

- A. Contractor shall not knowingly have any prohibited type of relationship with the following:
1. An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549 [42 C.F.R. § 438.610(a)(1)].
  2. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR 2.101, of a person described in this section [42 C.F.R. § 438.610(a)(2)].
- B. Contractor shall not have a prohibited type of relationship by employing or contracting with providers or other individuals and entities excluded from participation in Federal health care programs (as defined in section 1128B(f) of the Social Security Act) under either Section 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act [42 C.F.R. §§ 438.214(d)(1), 438.610(b); 42 U.S.C. § 1320c-5].
- C. Contractor shall not have any types of relationships prohibited by this section with an excluded, debarred, or suspended individual, provider, or entity as follows:
1. A director, officer, agent, managing employee, or partner of the Contractor [42 U.S.C. § 1320a-7(b)(8)(A)(ii); 42 C.F.R. § 438.610(c)(1)].
  2. A subcontractor of the Contractor, as governed by 42 C.F.R. § 438.230. [42 C.F.R. § 438.610(c)(2)].
  3. A person with beneficial ownership of 5 percent (5%) or more of the Contractor's equity [(42 C.F.R. § 438.610(c)(3)].
  4. An individual convicted of crimes described in section 1128(b)(8)(B) of the Act [42 C.F.R. § 438.808(b)(2)].
  5. A network provider or person with an employment, consulting, or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's obligations under this Contract [42

C.F.R. § 438.610(c)(4)].

6. Contractor shall not employ or contract with, directly or indirectly, such individuals or entities for the furnishing of health care, utilization review, medical social work, administrative services, management, or provision of medical services, or the establishment of policies or provision of operational support for such services [42 C.F.R. § 438.808(b)(3)].

D. Conflict of Interest

1. Contractor shall comply with the conflict of interest safeguards described in 42 Code of Federal Regulations part 438.58 and the prohibitions described in section 1902(a)(4)(C) of the Act [42 C.F.R. § 438.3(f)(2)].
2. Contractor shall not utilize in the performance of this Contract any County officer or employee or other appointed County official unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular County employment [Pub. Con. Code § 10410; 42 C.F.R. § 438.3(f)(2)].
  - a. Contractor shall submit documentation to the County of current and former County employees who may present a conflict of interest.

XIV. Licensing, Certification and Accreditation

- A. Contractor shall operate continuously throughout the term of this Agreement with all licenses, certifications and/or permits as are necessary to the performance hereunder. Failure to maintain a required license, certification, and/or permit may result in immediate termination of this Contract.
- B. Contractor shall inform DBH whether it has been accredited by a private independent accrediting entity [42 C.F.R. 438.332(a)]. If Contractor has received accreditation by a private independent accrediting entity, Contractor shall authorize the private independent accrediting entity to provide the County a copy of its most recent accreditation review, including:
  1. Its accreditation status, survey type, and level (as applicable); and
  2. Accreditation results, including recommended actions or improvements, corrective action plans, and summaries of findings; and
  3. The expiration date of the accreditation [42 C.F.R. § 438.332(b)].
- C. Contractor shall comply with applicable provisions of the:
  1. California Code of Regulations, Title 9;
  2. California Business and Professions Code, Division 2; and
  3. California Code of Regulations, Title 16.
- D. Contractor shall comply with the United States Department of Human and Health Services OIG requirements related to eligibility for participation in Federal and State health care programs.
  1. Ineligible Persons may include both entities and individuals and are defined as any individual or entity who:

- a. Is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal and State health care programs; or
  - b. Has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal and State health care programs after a period of exclusion, suspension, debarment, or ineligibility.
2. Contractor shall review the organization and all its employees, subcontractors, agents, physicians and persons having five percent (5%) or more of direct or indirect ownership or controlling interest of the Contractor for eligibility against the following databases: SAM and the OIG's LEIE respectively to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract. Contractor shall conduct these reviews before hire or contract start date and then no less than once a month thereafter.
  - a. SAM can be accessed at <http://www.sam.gov/portal/public/SAM>.
  - b. LEIE can be accessed at <http://oig.hhs.gov/exclusions/index.asp>.
3. If Contractor receives Medi-Cal reimbursement, Contractor shall review the organization and all its employees, subcontractors, agents and physicians for eligibility against the DHCS S&I List to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract. Contractor shall conduct this review before hire or contract start date and then no less than once a month thereafter.
  - a. S&I List can be accessed at: <http://medi-cal.ca.gov/default.asp>.
4. Contractor shall certify or attest that no staff member, officer, director, partner or principal, or sub-contractor is "excluded" or "suspended" from any Federal health care program, federally funded contract, state health care program or state funded contract. This certification shall be documented by completing the Attestation Regarding Ineligible/Excluded Persons (**Attachment II**) at time of the initial contract execution and annually thereafter. Contractor shall not certify or attest any excluded person working/contracting for its agency and acknowledges that the County shall not pay the Contractor for any excluded person. The Attestation Regarding Ineligible/Excluded Persons shall be submitted to the following program and address:

DBH Office of Compliance  
303 East Vanderbilt Way  
San Bernardino, CA 92415-0026

Or send via email to: [Compliance\\_Questions@dbh.sbcounty.gov](mailto:Compliance_Questions@dbh.sbcounty.gov)
5. Contractor acknowledges that Ineligible Persons are precluded from employment and from providing Federal and State funded health care services by contract with County.
6. Contractor shall have a policy regarding the employment of sanctioned or excluded employees that includes the requirement for employees to notify the Contractor should the employee become sanctioned or excluded by the OIG,

General Services Administration (GSA), and/or DHCS.

7. Contractor acknowledges any payment received for an excluded person may be subject to recovery and/or considered an overpayment by DBH/DHCS and/or be the basis for other sanctions by DHCS.
8. Contractor shall immediately notify DBH should an employee become sanctioned or excluded by the OIG, GSA, and/or DHCS.

XV. Administrative Procedures

- A. Contractor agrees to adhere to all applicable provisions of:
  1. State Notices,
  2. DBH Policies and Procedures on Advance Directives, and;
  3. County DBH Standard Practice Manual (SPM). Both the State Notices and the DBH SPM are included as a part of this Contract by reference.
- B. Contractor shall have a current administrative manual which includes: personnel policies and procedures, general operating procedures, service delivery policies, any required State or Federal notices (Deficit Reduction Act), and procedures for reporting unusual occurrences relating to health and safety issues.
- C. All written materials for potential beneficiaries and beneficiaries with disabilities must utilize easily understood language and a format which is typically at 5th or 6th grade reading level, in a font size no smaller than 12 point, be available in alternative formats and through the provision of auxiliary aids and services, in an appropriate manner that takes into consideration the special needs of potential beneficiaries or beneficiaries with disabilities or limited English proficiency and include a large print tagline and information on how to request auxiliary aids and services, including the provision of the materials in alternative formats [42 C.F.R. 438.10(d)(6)(ii)]. The aforementioned written materials may only be provided electronically by the Contractor if all of the following conditions are met:
  1. The format is readily accessible;
  2. The information is placed in a location on the Contractor's website that is prominent and readily accessible;
  3. The information is provided in an electronic form which can be electronically retained and printed;
  4. The information is consistent with the content and language requirements of this Attachment; and
  5. The beneficiary is informed that the information is available in paper form without charge upon request and Contractor provides it upon request within five (5) business days [42 C.F.R. 438.10(c)(6)].
- D. Contractor shall ensure its written materials are available in alternative formats, including large print, upon request of the potential beneficiary or beneficiary with disabilities at no cost. Large print means printed in a font size no smaller than 18 point [42 C.F.R. § 438.10(d)(3)].

- E. If a dispute arises between the parties to this Agreement concerning the interpretation of any State Notice or a policy/procedure within the DBH SPM, the parties agree to meet with the Director to attempt to resolve the dispute.
- F. State Notices shall take precedence in the event of conflict with the terms and conditions of this Agreement.
- G. If a dispute arises between the parties concerning the performance of this Agreement, DBH and Contractor agree to meet informally to attempt to reach a just and equitable solution.
- H. Notification of Unusual Occurrences or Incident/Injury Reports
  - 1. Contractor shall notify DBH, within twenty-four (24) hours or next business day, of any unusual incident(s) or event(s) that occur while providing services under this Contract, which may result in reputational harm to either the Contractor or the County. Notice shall be made to the assigned contract oversight DBH Program Manager with a follow-up call to the applicable Deputy Director.
  - 2. Contractor shall submit a written report to DBH within three (3) business days of occurrence on DBH Unusual Occurrence/Incident Report form or on Contractor's own form preapproved by DBH Program Manager or designee.
  - 3. If Contractor is required to report occurrences, incidents or injuries as part of licensing requirements, Contractor shall provide DBH Program Manager or designee with a copy of report submitted to applicable State agency.
  - 4. Written reports shall not be made via email unless encryption is used.
- I. Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino Department of Behavioral Health as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with and approved by the County prior to publication. Contractor shall receive written permission from DBH prior to publication of said training materials.
- J. Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor or subcontractor pursuant to the Agreement shall be considered property of the County upon payment for services. All such items shall be delivered to DBH at the completion of work under the Agreement. Unless otherwise directed by DBH, Contractor may retain copies of such items.



K. Equipment and Other Property

All equipment, materials, supplies or property of any kind (including vehicles, publications, copyrights, etc.) purchased with funds received under the terms of this Agreement which has a life expectancy of one (1) year or more shall be the property of DBH, unless mandated otherwise by Funding Source, and shall be subject to the provisions of this paragraph. The disposition of equipment or property of any kind shall be determined by DBH when the Agreement is terminated. Additional terms are as follows:

1. The purchase of any furniture or equipment which was not included in Contractor's approved budget, shall require the prior written approval of DBH, and shall fulfill the provisions of this Agreement which are appropriate and directly related to Contractor's services or activities under the terms of the Agreement. DBH may refuse reimbursement for any cost resulting from such items purchased, which are incurred by Contractor, if prior written approval has not been obtained from DBH.
2. Before equipment purchases made by Contractor are reimbursed by DBH, Contractor must submit paid vendor receipts identifying the purchase price, description of the item, serial numbers, model number and location where equipment will be used during the term of this Agreement.
3. All equipment purchased/reimbursed with funds from this Agreement shall only be used for performance of this Agreement.
4. Assets purchased with Medi-Cal Federal Financial Participation (FFP) funds shall be capitalized and expensed according to Medi-Cal (Centers for Medicare and Medicaid Services) regulation.
5. Contractor shall submit an inventory of equipment purchased under the terms of this Agreement as part of the monthly activity report for the month in which the equipment is purchased. Contractor must also maintain an inventory of equipment purchased that, at a minimum, includes the description of the property, serial number or other identification number, source of funding, title holder, acquisition date, cost of the equipment, location, use and condition of the property, and ultimate disposition data. A physical inventory of the property must be reconciled annually. Equipment should be adequately maintained and a control system in place to prevent loss, damage, or theft. Equipment with cost exceeding County's capitalization threshold of \$5,000 must be depreciated.
6. Upon termination of this Agreement, Contractor will provide a final inventory to DBH and shall at that time query DBH as to requirements, including the manner and method in returning equipment to DBH. Final disposition of such equipment shall be in accordance with instructions from DBH.

- L. Contractor agrees to and shall comply with all requirements and procedures established by the State, County, and Federal Governments, including those for quality improvement, and including, but not limited to, submission of periodic reports to DBH for coordination, contract compliance, and quality assurance.

M. Travel

Contractor shall adhere to the County's Travel Management Policy (8-02) when travel is pursuant to this Agreement and for which reimbursement is sought from the County. In addition, Contractor shall, to the fullest extent practicable, utilize local transportation services, including but not limited to Ontario Airport, for all such travel.

N. Political contributions and lobbying activities are not allowable costs. This includes contributions made indirectly through other individuals, committees, associations or other organizations for campaign or other political purposes. The costs of any lobbying activities however conducted, either directly or indirectly, are not allowable.

XVI. Laws and Regulations

A. Contractor agrees to comply with all relevant Federal and State laws and regulations, including, but not limited to those listed below, inclusive of future revisions, and comply with all applicable provisions of:

1. Mental Health Plan (MHP) Contract with the State;
2. California Code of Regulations, Title 9;
3. California Code of Regulations, Title 22;
4. Code of Federal Regulations, Title 42, Part 2
5. California Welfare and Institutions Code, Division 5;
6. Code of Federal Regulations, Title 42, including, but not limited to, Parts 438 and 455;
7. Code of Federal Regulations, Title 45;
8. United States Code, Title 42, as applicable;
9. Balanced Budget Act of 1997; and
10. Applicable Medi-Cal laws, regulations, including applicable sub-regulatory guidance and contract provisions.

B. Health and Safety

Contractor shall comply with all applicable State and local health and safety requirements and clearances for each site where program services are provided under the terms of the Contract:

1. Any space owned, leased or operated by the Contractor and used for services or staff must meet local fire codes.
2. The physical plant of any site owned, leased or operated by the Contractor and used for services or staff is clean, sanitary and in good repair.
3. Contractor shall establish and implement maintenance policies for any site owned, leased or operated that is used for services or staff to ensure the safety and well-being of beneficiaries and staff.

C. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, Contractor agrees that Contractor and Contractor's employees, while performing service for the County, on County property, or

while using County equipment:

1. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
2. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of any substance.
3. Shall not sell, offer, or provide alcohol or a drug to another person. This shall not be applicable to Contractor or Contractor's employees who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.
4. Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
5. The County may terminate for default or breach of this Contract and any other contract Contractor has with County, if Contractor or Contractor's employees are determined by the County not to be in compliance with above.

D. Pro-Children Act of 1994

Contractor will comply with Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.

E. Privacy and Security

1. Contractor shall comply with all applicable State and Federal regulations pertaining to privacy and security of client information including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), as incorporated in the American Recovery and Reinvestment Act of 2009. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) and/or Protected Health Information (PHI) or electronic Protected Health Information (ePHI). The HIPAA Privacy and Security Regulations specify requirements with respect to contracts between an entity covered under the HIPAA Privacy and Security Regulations and its Business Associates. A Business Associate is defined as a party that performs certain services on behalf of, or provides certain services for, a Covered Entity and, in conjunction therewith, gains access to IIHI, PHI or ePHI. Therefore, in accordance with the HIPAA Privacy and Security Regulations, Contractor shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as **Attachment I**. Contractor shall not use or disclose PHI other than as permitted or required by law.
2. In addition to the aforementioned protection of IIHI, PHI and e-PHI, the County requires Contractor to adhere to the protection of Personally Identifiable Information (PII) and Medi-Cal PII and in accordance to 42 C.F.R. §2.13 Confidentiality Restrictions and Safeguards and HIPAA Privacy and Security

rules. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining or verifying eligibility that can be used alone or in conjunction with any other information to identify an individual.

3. Disclosure of PHI, including acknowledgement of participation or referral to/from Part 2 services is prohibited unless a valid client authorization (also referred to as "consent" of disclosure) per 42 CFR §2.31. Contractor shall ensure disclosure without client authorization/consent occurs only for medical emergencies, research, and/or audit and evaluation, as specified under 42 CFR §2.51, §2.52, §2.53, respectively.
4. Contractor shall comply with 42 C.F.R. §2.13 Confidentiality Restrictions and Safeguards and §2.16 Security for Records and the HIPAA Privacy and Security Rules, which includes but is not limited to implementing administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of PHI, PII, IIHI, and e-PHI; implementing reasonable and appropriate policies and procedures to comply with the standards; conducting a risk analysis regarding the potential risks and vulnerabilities of the confidentiality, integrity and availability of PHI, PII, IIHI, and e-PHI; conducting privacy and security awareness and training at least annually and retain training records for at least ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later, and limiting access to those persons who have a business need. Any disclosure made under 42 C.F.R. Part 2 must be limited to that information which is necessary to carry out the purpose of the disclosure.
5. Contractor shall comply with the applicable provisions of 42 C.F.R. Sections 455.100 through 455.106.

F. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

XVII. Confidentiality

Contractor agrees to comply with confidentiality requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), commencing with Subchapter C, ; 42 Code of Federal Regulations Part 2; and all State and Federal statutes and regulations regarding confidentiality, including but not limited to applicable provisions of Welfare and Institutions Code

Sections 5328 et seq. and 14100.2, Title 22, California Code of Regulations Section 51009. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements

- A. Contractor and its employees, agents or subcontractors shall protect from unauthorized disclosure of PII or PHI concerning persons receiving services or being referred for services related to this agreement.
- B. Contractor shall have all employees acknowledge an Oath of Confidentiality mirroring that of DBH's, including confidentiality and disclosure requirements, as well as sanctions related to non-compliance. Contractor shall have all employees sign acknowledgement of the Oath on an annual basis. Said confidentiality statements must be kept for inspection for a period of six (6) years following contract termination
- C. Contractor shall not use or disclose PHI other than as permitted or required by law.

#### XVIII. Quality Assurance/Utilization Review

- A. Contractor agrees to be in compliance with the Laws and Regulations Article of this Contract.
- B. County shall establish standards and implement processes for Contractor that will support understanding of, compliance with, documentation standards set forth by the State. The County has the right to monitor performance so that the documentation of care provided will satisfy the requirements set forth. The documentation standards for beneficiary care are minimum standards to support claims for the delivery of specialty mental health services. All documentation shall be addressed in the beneficiary record.

#### XIX. Independent Contractor Status

Contractor understands and agrees that the services performed hereunder by its officers, agents, employees, or contracting persons or entities are performed in an independent capacity and not in the capacity of officers, agents or employees of the County.

All personnel, supplies, equipment, furniture, quarters, and operating expenses of any kind required for the performance of this Contract shall be provided by Contractor.

#### XX. Subcontractor Status

- A. If Contractor intends to subcontract any part of the services provided under this Contract to a separate and independent agency or agencies, Contractor must submit a written Memorandum of Understanding (MOU) with that agency or agencies with original signatures to DBH. The MOU must clearly define the following:
  - 1. The name of the subcontracting agency.
  - 2. The amount (units, minutes, etc.) and types of services to be rendered under the MOU.
  - 3. The amount of funding to be paid to the subcontracting agency.
  - 4. The subcontracting agency's role and responsibilities as it relates to this Contract.
  - 5. A detailed description of the methods by which the Contractor will insure that all

subcontracting agencies meet the monitoring requirements associated with funding regulations.

- B. Any subcontracting agency must be approved in writing by DBH and shall be subject to all applicable provisions of this Contract. The Contractor will be fully responsible for the performance, duties and obligations of a subcontracting agency, including the determination of the subcontractor selected and the ability to comply with the requirements of this Contract. DBH will not reimburse subcontractor directly for any services rendered.

C. Ineligible Persons

Contractor shall adhere to Prohibited Affiliations and Licensing, Certification and Accreditation Articles regarding Ineligible Persons or Excluded Parties for its subcontractors.

XXI. Attorney Costs & Fees

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Article, Part A.

XXII. Indemnification and Insurance

A. Indemnification

Contractor agrees to indemnify, defend (with counsel reasonably approved by the County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

B. Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

C. Waiver of Subrogation Rights

Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not

prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

D. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

E. Severability of Interests

Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

F. Proof of Coverage

Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the contract is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and all endorsements immediately upon request.

G. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

H. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

I. Failure to Procure Coverage

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

J. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to



protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

K. Insurance Specifications

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

1. Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a State-approved, Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal Injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

3. Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

4. Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

5. Cyber Liability Insurance

Cyber Liability Insurance with limits of not less than \$1,000,000 for each occurrence or event with an annual aggregate of \$5,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

L. Professional Services Requirements

1. Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate.

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) aggregate.

or

Directors and Officers Insurance coverage with limits of not less than one million

(\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

2. Abuse/Molestation Insurance – The Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation, and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
3. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The “claims made” insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

### XXIII. Nondiscrimination

#### A. General

Contractor agrees to serve all clients without regard to race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or disability pursuant to the Civil Rights Act of 1964, as amended (42 U.S.C., Section 2000d), Executive Order No. 11246, September 24, 1965, as amended, Title IX of the Education Amendments of 1972, and Age Discrimination Act of 1975.

Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or disability.

#### B. Americans with Disabilities Act/Individuals with Disabilities

Contractor agrees to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable Federal and State laws and regulations, guidelines and interpretations issued pursuant thereto. Contractor shall report to the applicable DBH Program Manager if its offices/facilities have accommodations for people with physical disabilities, including offices, exam rooms, and equipment.

#### C. Employment and Civil Rights

Contractor agrees to and shall comply with the County's Equal Employment Opportunity Program and Civil Rights Compliance requirements:

##### 1. Equal Employment Opportunity Program

Contractor agrees to comply with the provisions of the Equal Employment Opportunity Program of the County of San Bernardino and rules and regulations adopted pursuant thereto: Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, and 13672; Title VII of the Civil Rights Act of 1964 (and Division 21 of the California Department of Social Services Manual of Policies and Procedures and California Welfare and Institutions Code, Section 10000); the

California Fair Employment and Housing Act; and other applicable Federal, State, and County laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

During the term of the Contract, Contractor shall not discriminate against any employee, applicant for employment, or service recipient on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, political affiliation or military and veteran status.

2. Civil Rights Compliance

- a. Contractor shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by State regulation. Consistent with the requirements of applicable Federal or State law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical disabilities. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified individuals with disabilities in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of the United States Department of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977. The Contractor shall include the nondiscrimination and compliance provisions of this Contract in all subcontracts to perform work under this Contract. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9, CCR, Section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.
- b. Contractor shall prohibit discrimination on the basis of race, color, national origin, sex, gender identity, age, disability, or limited English proficiency (LEP) in accordance with Section 1557 of the Affordable Care Act (ACA), appropriate notices, publications, and DBH Non-Discrimination-Section 1557 of the Affordable Care Act Policy (COM0953).

D. Sexual Harassment

Contractor agrees that clients have the right to be free from sexual harassment and sexual contact by all staff members and other professional affiliates.

- E. Contractor shall not discriminate against beneficiaries on the basis of health status or need for health care services, pursuant to 42 C.F.R. Section 438.6(d)(3).
- F. Contractor shall not discriminate against Medi-Cal eligible individuals who require an

assessment or meet medical necessity criteria for specialty mental health services on the basis of race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or disability and will not use any policy or practice that has the effect of discriminating on the basis of race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or disability [42 C.F.R. § 438.3(d)(4)].

G. Policy Prohibiting Discrimination, Harassment, and Retaliation

1. Contractor shall adhere to the County's Policy Prohibiting Discrimination, Harassment and Retaliation (07-01). This policy prohibits discrimination, harassment, and retaliation by all persons involved in or related to the County's business operations.

The County prohibits discrimination, harassment, and/or retaliation on the basis Race, Religion, Color, National Origin, Ancestry, Disability, Sex/Gender, Gender Identity/Gender Expression/Sex Stereotype/Transgender, Sexual Orientation, Age, Military and Veteran Status. These classes and/or categories are Covered Classes covered under this policy; more information is available at [www.dfeh.ca.gov/employment](http://www.dfeh.ca.gov/employment).

The County prohibits discrimination against any employee, job applicant, unpaid intern in hiring, promotions, assignments, termination, or any other term, condition, or privilege of employment on the basis of a Protected Class. The County prohibits verbal harassment, physical harassment, visual harassment, and sexual harassment directed to a Protected Class.

2. Contractor shall comply with 45 C.F.R. § 160.316 to refrain from intimidation or retaliation. Contractors may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual or other person for:
  - a. Filing of a complaint
  - b. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing.
  - c. Opposing any unlawful act of practice, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of protected health information.

XXIV. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract shall be valid only when they have been reduced to writing, duly signed by both parties and attached to the original of the Contract and approved by the required persons and organizations.

XXV. Assignment

- A. This Agreement shall not be assigned by Contractor, either in whole or in part, without the prior written consent of the Director.
- B. This Contract and all terms, conditions and covenants hereto shall insure to the benefit

of, and binding upon, the successors and assigns of the parties hereto.

- C. If the ownership of the Contractor changes, both the licensee and the applicant for the new license shall, prior to the change of ownership, provide the State and DBH with written documentation stating:
1. That the new licensee shall have custody of the clients' records and that these records or copies shall be available to the former licensee, the new licensee and the County; or
  2. That arrangements have been made by the licensee for the safe preservation and the location of the clients' records, and that they are available to both the new and former licensees and the County; or
  3. The reason for the unavailability of such records.

XXVI. Severability

The provisions of this Contract are specifically made severable. If any clause, provision, right and/or remedy provided herein are unenforceable or inoperative, the remainder of this Contract shall be enforced as if such clause, provision, right and/or remedy were not contained herein.

XXVII. Improper Consideration

- A. Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.
- B. The County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process or any solicitation for consideration was not reported. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.
- C. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

XXVIII. Venue

The venue of any action or claim brought by any party to the Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning the Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.



XXIX. Conclusion

- A. This Agreement consisting of forty-two (42) pages, Schedules, Addenda, and Attachments inclusive is the full and complete document describing the services to be rendered by Contractor to the County, including all covenants, conditions and benefits.
- B. IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino has caused this Agreement to be subscribed by the Clerk thereof, and Contractor has caused this Agreement to be subscribed on its behalf by its duly authorized officers, the day, month, and year first above written.

COUNTY OF SAN BERNARDINO

► Curt Hagman  
Curt Hagman, Chairman, Board of Supervisors

Dated: 8-20-19  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By Natalie Kessee  
Deputy

Avantpage, Inc.

(Print or type name of corporation, company, contractor, etc.)

By LM  
(Authorized signature - sign in blue ink)

Name Luis Miguel  
(Print or type name of person signing contract)

Title CEO  
(Print or Type)

Dated: 8.13.19

Address 132 E St #370  
Davis, CA 95616

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► Dawn Martin  
Dawn Martin, Deputy County Counsel

Date 8/16/19

Reviewed for Contract Compliance

► Natalie Kessee  
Natalie Kessee, Contracts Manager

Date 8/14/19

Reviewed/Approved by Department

► Michael Knight for  
Veronica Kelley, Director

Date 8/14/19



**Avantpage Inc.  
Fee Schedule**

| <b>Service in 48 hours</b>   | <b>Fees</b>              |                                 |                                |                            |
|------------------------------|--------------------------|---------------------------------|--------------------------------|----------------------------|
| Spanish *                    | On-Site <u>\$70/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.14/word</u> | Video <u>\$3.50/minute</u> |
| <b>Service in 72 hours</b>   | <b>Fees</b>              |                                 |                                |                            |
| American Sign Language (ASL) | On-Site <u>\$85/hour</u> | Telephonic <u>\$0.00/minute</u> | Translation <u>\$0.00/word</u> | Video <u>\$3.50/minute</u> |
| Arabic                       | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Armenian                     | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Cambodian                    | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Cantonese                    | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Farsi                        | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| French                       | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Hmong                        | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Hungarian                    | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Indonesian                   | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Japanese                     | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Korean                       | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Mandarin                     | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Laotian                      | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Punjabi                      | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Romanian                     | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Russian                      | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Sign Language (non ASL)      | On-Site <u>\$80/hour</u> | NA                              | Translation <u>\$0.18/word</u> | Video <u>\$0.00/minute</u> |
| Tagalog                      | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Thai                         | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Tigrinian                    | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Tongan                       | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Turkish                      | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Urdu                         | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |
| Vietnamese                   | On-Site <u>\$80/hour</u> | Telephonic <u>\$0.99/minute</u> | Translation <u>\$0.18/word</u> | Video <u>\$3.50/minute</u> |

## SCHEDULE A – FEE SCHEDULE

|                                                                                                                                                                                                    |                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Court Certified Interpreter</b>                                                                                                                                                                 | On-Site Fee \$ <u>99</u> /hour Spanish<br>On-Site Fee \$ <u>120</u> /hour other languages (specify below):                                                                          |
| Mileage/<br>Mileage for Multiple Destinations                                                                                                                                                      | Current IRS mileage rate.<br>For multiple destinations scheduled sequentially, mileage is calculated from residence to destination #1, destination #2, etc., and back to residence. |
| <b>Ancillary Charges</b>                                                                                                                                                                           |                                                                                                                                                                                     |
| Minimum Charges –<br>On-Site Interpretation                                                                                                                                                        | Two (2) Hour Minimum charge                                                                                                                                                         |
| Minimum Charges – Translation                                                                                                                                                                      | \$45 for minimum charge for all languages                                                                                                                                           |
| Minimum Charges – Court-Certified<br>Interpretation                                                                                                                                                | Two (2) Hour Minimum Charge                                                                                                                                                         |
| Minimum Charges – Telephonic                                                                                                                                                                       | Five (5) minute charge requested appointment                                                                                                                                        |
| Minimum Charges – Video Interpretation                                                                                                                                                             | Thirty (30) minute charge requested appointment                                                                                                                                     |
| 24/7(After-Hours) –<br>On-Site Interpretation                                                                                                                                                      | Two (2) hour minimum charge                                                                                                                                                         |
| 24/7(After-Hours) – Court-Certified<br>Interpretation                                                                                                                                              | Two (2) hour minimum charge                                                                                                                                                         |
| Cancellation > One Business Days'<br>Notice/No Notice                                                                                                                                              | Two (2) hour minimum charge                                                                                                                                                         |
| Rush Orders –<br>On-Site Interpretation<br>> One Business Days' Notice                                                                                                                             | Twenty percent (20%)                                                                                                                                                                |
| Rush Orders – Translation<br>> One Business Days' Notice                                                                                                                                           | Twenty percent (20%)                                                                                                                                                                |
| Exotic Languages<br>(Languages Not Listed in Schedule of Fees)                                                                                                                                     | Contractor provides rate quote in RTIS 49 Confirmation.                                                                                                                             |
| Proofreading and Editing                                                                                                                                                                           | \$45                                                                                                                                                                                |
| <b><u>Rate Calculation</u></b>                                                                                                                                                                     |                                                                                                                                                                                     |
| <b>On-site Interpretation Rates</b> lasting more than the appropriate minimum, remaining time is rounded (up or down) to the nearest quarter hour (22 minutes = .25 hours; 23 minutes = .5 hours). |                                                                                                                                                                                     |
| <b>Telephonic Interpretation Rates</b> do <u>not</u> round seconds to the next minute.                                                                                                             |                                                                                                                                                                                     |
| <b><u>Additional:</u></b> None                                                                                                                                                                     |                                                                                                                                                                                     |

**BUSINESS ASSOCIATE AGREEMENT**

Except as otherwise provided in this Agreement, Avantpage, Inc., hereinafter referred to as Business Associate, may use, access, maintain or disclose Protected Health Information to perform functions, activities or services for or on behalf of the County of San Bernardino Department of Behavioral Health, hereinafter referred to as the Covered Entity, as specified in this Agreement and the attached **CONTRACT**, provided such use, access, maintenance or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), 42 United States Code (USC) 1320d et seq., and its implementing regulations, including but not limited to, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164, hereinafter referred to as the "Privacy and Security Rules" and patient confidentiality regulations, including but not limited to, Title 42 of the Code of Federal Regulations Part 2 and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5 (HITECH) and any regulations adopted or to be adopted pursuant to HITECH that relate to the obligations of business associates. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of HITECH.

**I. Definitions**

- A. "Breach" means the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), which compromises the security or privacy of the PHI. An impermissible use or disclosure of PHI is presumed to be a Breach unless the Covered Entity or Business Associate demonstrates that there is a low probability that the PHI has been compromised. A Breach shall not include:
1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule; or
  2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule; or
  3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business Associate" means with respect to a Covered Entity, a person who:
1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity creates, receives, maintains or transmits PHI for a function or activity involving the use or disclosure of Personally Identifiable Health Information, including claims processing or administration, data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
  2. Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or for Covered Entity where the provision of the service involves the disclosure of PHI from such Covered Entity to the person.

A Covered Entity may be the Business Associate of another Covered Entity.

- C. "Covered Entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the Privacy and Security Rules.
- D. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- E. "Discovered" means a Breach shall be treated as discovered by Covered Entity or Business Associate as of the first day on which such Breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the Breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- F. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the Security Rule.
- G. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- H. "HITECH" means the privacy and security Breach notification provisions applicable to Business Associate under Title XIII of ARRA.
- I. "Individual" means the person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- J. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and;
  - 1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
  - 2. relates to the past, present or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
    - (a) that identifies the individual; or
    - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- K. "Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
- L. "Protected Health Information" or "PHI" means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted

or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(g), records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

- M. "Security Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of the Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
- N. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
- O. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the Privacy Rule, the Security Rule and HITECH.

## II. Obligations and Activities of Business Associate

### A. Prohibited Uses and Disclosures

Business Associate shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached **CONTRACT** or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or HITECH. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

Business Associate shall not use or disclose PHI for fundraising or marketing purposes. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(i)(A). Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by HITECH, 42 U.S.C. Section 17935(d)(2); and 45 C.F.R. Section 164.508 however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.

### B. Permitted Uses and Disclosures

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation service to Covered Entity as permitted by 45 CFR Section 164.504(e)(2)(i)(B).
3. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j)(1).



## C. Appropriate Safeguards

Business Associate shall implement the following administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity; and to ensure that any agent or subcontractor to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect PHI in accordance with the Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312, 164.314 and 164.316:

1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the Business Associate; implement a security awareness and training program for all members of its workforce; implement policies and procedures to prevent those workforce members who should not have access from obtaining access to Covered Entity's Electronic PHI; implement policy and procedures to address security incidents; establish policies and procedures for responding to an emergency or other occurrence that damages systems that contain Electronic PHI; and perform a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of Electronic PHI, including conducting accurate and thorough assessments of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Electronic PHI, that establishes the extent to which an entity's security policies and procedures meet the requirements of this subpart.
2. Implement policies and procedures to limit physical access to Business Associate's electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed; implement policies and procedures that specify the proper functions to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access Electronic PHI; implement physical safeguards for all workstations that access Electronic PHI; restrict access to authorized users; implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain Electronic PHI into and out of a facility and the movement of these items within the facility.
3. Implement technical policies and procedures for electronic information systems that maintain Electronic PHI to allow access only to those persons or software programs that have been granted access rights as specified in 45 C.F.R., Section 164.308 implement hardware, software and/or procedural mechanisms that record and examine activity in information systems that contain or use Electronic PHI; implement policies and procedures to protect Electronic PHI from improper alteration, destruction, unauthorized access or loss of integrity or availability; including but not limited to, encryption of all workstations, laptops and flash drives that store PHI.
4. Enter into written agreements with agents and subcontractors to whom Business Associate provides Covered Entity's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to Business Associate with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

## D. Mitigation

Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI by Business Associate, its agents or subcontractors in violation of the requirements of this Agreement.

## E. Reporting of Improper Access, Use or Disclosure or Breach

Business Associate shall report to Covered Entity's Office of Compliance any unauthorized use, access or disclosure of Unsecured PHI or any other security incident with respect to PHI no later than one (1) business day upon the discovery of a Breach or suspected Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D. Upon discovery of a Breach or suspected Breach, the Business Associate shall complete the following actions:

1. Provide Covered Entity's Office of Compliance with the following information to include but not limited to:
  - (a) Date the Breach or suspected Breach occurred;
  - (b) Date the Breach or suspected Breach was discovered;
  - (c) Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
  - (d) Number of potentially affected Patients/Clients; and
  - (e) Description of how the Breach or suspected Breach allegedly occurred.
2. Conduct and document a risk assessment by investigating without reasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
  - (a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - (b) The unauthorized person who used PHI or to whom it was made;
  - (c) Whether the PHI was actually acquired or viewed; and
  - (d) The extent to which the risk to PHI has been mitigated.
3. Provide a completed risk assessment and investigation documentation to Covered Entity's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with decision whether a Breach has occurred.
  - (a) If a Breach has not occurred, notification to Individual(s) is not required.
  - (b) If a Breach has occurred, notification to the Individual(s) is required and Business Associate must provide Covered Entity with affected Individual(s) name and contact information so that Covered Entity can provide notification.
4. Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the Covered Entity reserve the right to conduct its own investigation and analysis.

## F. Access to Protected Health Information

Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or to an Individual, at the request or direction of Covered Entity



and in the time and manner designated by the Covered Entity. If Business Associate maintains PHI in an electronic format, and an individual requests a copy of such information in electronic form, Business Associate shall provide such information in electronic form as required by 45 CFR Section 164.524.

G. Amendment of Protected Health Information

If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR Section 164.526, in the time and manner designated by the Covered Entity.

H. Access to Records

Business Associate shall make internal practices, books, and records, including policies and procedures and PHI, relating to the use, access and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules and patient confidentiality regulations. Anything provided to the Secretary shall also be provided to the Covered Entity upon Covered Entity's request.

I. Accounting for Disclosures

Business Associate, its agents and subcontractors shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Further, Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with provision (F.), above, to permit Covered Entity to respond to a request by the Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

J. Destruction of Protected Health Information

Upon termination of this Agreement, Business Associate shall return all PHI required to be retained and return or destroy, with certification of destruction by an officer of Business Associate, all other PHI received from the Covered Entity, or created or received by the Business Associate or its subcontractors, employees or agents on behalf of the Covered Entity. In the event the Business Associate determines that returning the PHI is not feasible, the Business Associate shall provide the Covered Entity with written notification of the conditions that make return not feasible. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by Business Associate or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures to the purposes that make the return or destruction of the PHI infeasible.

K. Breach Pattern or Practice by Covered Entity

Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material Breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to cure the Breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate

the Agreement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

L. Costs Associated to Breach

Business Associate shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the Agreement at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

1. Postage;
2. Alternative means of notice;
3. Media notification; and
4. Credit monitoring services.

M. Direct Liability

Business Associate may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to Covered Entity; failure to provide access to a copy of Electronic PHI to covered entity or individual; failure to disclose PHI to the Secretary of the U.S. Department of Health and Human Services when investigating Business Associate's compliance with HIPAA; failure to provide an accounting of disclosures and failure to enter into a business associate agreement with subcontractors.

N. Termination for Cause

Covered Entity may, upon written notice to Business Associate, immediately terminate this agreement, and any related agreements, if Covered Entity determines that Business Associate has breached a material term of this agreement. Covered Entity may, upon written notice to Business Associate, allow Business Associate five (5) business days to cure such breach.

III. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use, access or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use, access or disclose PHI, to the extent that such changes may affect Business Associate's use, access, maintenance or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use, access or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use, access, maintenance or disclosure of PHI.

IV. General Provisions

A. Remedies

Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which Covered Entity may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.

## B. Ownership

The PHI shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI.

## C. Regulatory References

A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or as amended.

## D. Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act and patient confidentiality regulations.

## E. Interpretation

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules and patient confidentiality regulations.

## F. Indemnification

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of Covered Entity's PHI, including without limitation, any Breach of PHI or any expenses incurred by Covered Entity in providing required Breach notifications.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the Effective Date.

**COVERED ENTITY**

County of San Bernardino

  
Signature

Dated

Curt Hagman  
Name

Chairman, Board of Supervisors  
Title

**BUSINESS ASSOCIATE**

Avantpage, Inc.

  
Signature

8.13.19  
Dated

Luis Miguel  
Name

CEO  
Title

**ATTACHMENT II**

**ATTESTATION REGARDING INELIGIBLE/EXCLUDED PERSONS**

**Contractor Avantpage, Inc. shall:**

To the extent consistent with the provisions of this Agreement, comply with regulations found in Title 42 Code of Federal Regulations (CFR), Parts 1001 and 1002, et al regarding exclusion from participation in Federal and State funded programs, which provide in pertinent part:

1. Contractor certifies to the following:
  - a. it is not presently excluded from participation in Federal and State funded health care programs,
  - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency which is likely to result in exclusion from any Federal or State funded health care program, and/or
  - c. unlikely to be found by a Federal and State agency to be ineligible to provide goods or services.
2. As the official responsible for the administration of Contractor, the signatory certifies the following:
  - a. all of its officers, employees, agents, sub-contractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of the Contractor are not presently excluded from participation in any Federal or State funded health care programs,
  - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency of any such officers, employees, agents and/or sub-contractors which is likely to result in an exclusion from any Federal and State funded health care program, and/or
  - c. its officers, employees, agents and/or sub-contractors are otherwise unlikely to be found by a Federal or State agency to be ineligible to provide goods or services.
3. Contractor certifies it has reviewed, at minimum prior to hire or contract start date and monthly thereafter, the following lists in determining the organization nor its officers, employees, agents, sub-contractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of the Contractor are not presently excluded from participation in any Federal or State funded health care programs:
  - a. OIG's List of Excluded Individuals/Entities (LEIE).
  - b. United States General Services Administration's System for Award Management (SAM).
  - c. California Department of Health Care Services Suspended and Ineligible Provider (S&I) List, if receives Medi-Cal reimbursement.
4. Contractor certifies that it shall notify DBH immediately (within 24 hours) by phone and in writing within ten (10) business days of being notified of:
  - a. Any event, including an investigation, that would require Contractor or any of its officers, employees, agents and/or sub-contractors exclusion or suspension under Federal or State funded health care programs, or
  - b. Any suspension or exclusionary action taken by an agency of the Federal or State government against Contractor, or one or more of its officers, employees, agents and/or sub-contractors, barring it or its officers, employees, agents and/or sub-contractors from providing goods or services for which Federal or State funded health care program payment may be made.

Luis Miguel, CEO  
Printed name of authorized official

[Signature]  
Signature of authorized official

8.13.19  
Date

**ATTACHMENT III**

**REQUEST FOR TRANSLATION & INTERPRETATION SERVICES FORM (RTIS 49)**  
**Personally Identifiable Information (PII) policy must be followed when requesting services.**

**SECTION I: CASEWORKER INFORMATION** All translation and interpretation requests must be initiated through Program Integrity Division (PID) at (909) 252-4377 or (909) 252-4365.

Name: \_\_\_\_\_ Dept: \_\_\_\_\_ Date: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**SECTION II: SERVICE REQUEST** Complete this section in its entirety.

Request for: ☐ Interpreter ☐ Written ☐ Translation ☐ Other: \_\_\_\_\_

Language: \_\_\_\_\_

Date of Service: \_\_\_\_\_ Time of Service: \_\_\_\_\_

**Service Requested for:** (First Name, Last Initial Only) \_\_\_\_\_ **or** Case Number: \_\_\_\_\_

**NOTE:** Providing the First Name and Last Initial **OR** Case Number **is not** a breach of PII Policy.

Service Location: ☐ County Office ☐ Other: \_\_\_\_\_

**Complete Address of Service Location:**

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Comments: \_\_\_\_\_

**SECTION III: CANCELLATION/RESCHEDULE SECTION**

☐ **Please cancel this service request.**

In the event of a cancellation or reschedule, the worker must e-mail this RTIS 49 to the provider at least one full business day prior to the scheduled appointment in order to minimize charges to the county.

If the appointment is rescheduled the worker must complete a new RTIS 49.

**SECTION IV: CONTRACTOR RESPONSE CONFIRMATION** Complete and return to SB County staff within 24 hours of the request.

Date Referral Received: \_\_\_\_\_ Agency Name: \_\_\_\_\_

Interpreter Selected and Scheduled for Appointment: ☐ Yes ☐ No

If marked no, please provide a reason in comments.

Interpreter Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Comments: \_\_\_\_\_

Quote hourly rate for languages not listed in the contract (**for Auditing Info Only**): \_\_\_\_\_

Ensure the customer's first name and last initial has been entered in **Section II: Service Request**; if not, ask the customer for his/her first name and last initial and enter them in the corresponding fields for payment.