



Contract Number

SAP Number

Department of Behavioral Health

Department Contract Representative	Bishoy Bestawros
Telephone Number	909-388-0856
Contractor	Bezerk Productions
Contractor Representative	Linda Sibio
Telephone Number	(760) 808-5326
Contract Term	July 1, 2021 -June 30, 2026
Original Contract Amount	\$947,303
Amendment Amount	
Total Contract Amount	\$947,303
Cost Center	

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

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH:

WHEREAS, the County desires to purchase and Contractor desires to provide Mental Health Services Act Innovation Project - Cracked Eggs services, and,

WHEREAS, this Agreement is authorized by law,

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

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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 "Director," unless otherwise stated, refers to the Director of DBH for the County of San Bernardino.
- E. The term "head of service" as defined in the California Code of Regulations, Title 9, Sections 622 through 630, is a licensed mental health professional or other appropriate individual as described in these sections.
- 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.

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. Contractor shall provide Mental Health Services Act Innovation Project - Cracked Eggs services in accordance with applicable provisions of law and Addendum I.
- C. Contractor agrees to submit reports as requested and required by the County and/or the Department of Health Care Services (DHCS).
- D. 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, 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 Innovation funded participants, Innovation 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 within 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.

E. 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.

F. 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.

G. 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.

H. Damage to County Property, Facilities, Buildings, or Grounds (If Applicable)

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Contractor shall notify DBH within two (2) business days when such damage has occurred. All repairs or replacements must be approved by the County in writing, prior to the Contractor's commencement of repairs or replacement of reported damaged items. Such repairs shall be made as soon as possible after Contractor receives written approval from DBH but no later than thirty (30) days after the DBH approval.

If the Contractor fails to make timely repairs to County vehicles, facilities, buildings, or ground caused by the willful or negligent act of Contractor or employees or agents of the Contractor, the County may make any necessary repairs. The Contractor, as determined by the County, for such repairs shall repay all costs incurred by the County, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County.

I. Damage to County Issued/Loaned Equipment (If Applicable)

1. Contractor shall repair, at its own cost, all damage to County equipment issued/loaned to Contractor for use in performance of this Contract. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.
2. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor shall repay all costs incurred by the County, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County.
3. If a virtual private network (VPN) token is lost or damaged, Contractor must contact DBH immediately and provide the user name assigned to the VPN Token. DBH will obtain a replacement token and assign it to the user account. Contractor will be responsible for the VPN token replacement fee.

J. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

IV. 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 Schedules A and B. 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. Any unspent fiscal year allocation does not roll over and is not available in future years. Each fiscal year period will be settled to Federal and/or State cost reporting accountability.

- B. The maximum financial obligation of the County under this Agreement shall not exceed the sum referenced in the Schedules A and B. The maximum financial obligation is further limited by fiscal year, funding source and service modalities as delineated on the Schedules A and B. Contractor may not transfer funds between funding sources, modes of services, or exceed 10% of a budgeted line item without the prior written approval from DBH. Budget line items applicable to the 10% rule are: (1) Total Salaries & Benefits and (2) Individual Operating Expense items. The County has the sole discretion of transferring funds between funding sources or modes of services.
 - 1. It is understood between the parties that the Schedules A and B are budgetary guidelines. Contractor must adhere to the budget by funding outlined in the Schedule A of the Contract as well as track year-to-date expenditures. Contractor understands that costs incurred for services not listed or in excess of the funding in the Schedule A shall result in non-payment to Contractor for these costs.
- C. 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.
- D. 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 Scope of Work. 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.
- E. The maximum financial obligation under this contract shall not exceed \$947,303 for the contract term.
- F. The Schedules A and B will be submitted to, and approved by, the Director or designee at a later date.

V. Provisional Payment

- A. During the term of this Agreement, the County shall reimburse Contractor in arrears for eligible expenditures provided under this Agreement and in accordance with the terms. County payments to Contractor for performance of eligible services hereunder are provisional until the completion of all settlement activities.
- B. Claims for Reimbursement shall be completed and forwarded to the county on a monthly basis for approved expenses incurred and claimed by Contractor. No later than ten (10) calendar days following the, month of service, unless otherwise specified, the contractor shall submit a claim for payment for the reporting month, in a format acceptable by DBH. Form to be used for claims must be submitted within 30 days of receiving the contract and be approved in writing by DBH prior to use.
- C. 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.
- 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. Contractor shall have a written policy and procedures which outline the allocation of direct and indirect costs. These policies and procedures should follow the guidelines set forth in the Uniform Grant Guidance, Cost Principles and Audit Requirements for Federal Awards. Calculation of allocation rates must be based on actual data (total direct cost, labor costs, labor hours, etc.) from current fiscal year. If current data is not available, the most recent data may be used. Contractor shall acquire actual data necessary for indirect costs allocation purpose. Estimated costs must be reconciled to actual cost. Contractor must notify DBH in writing if the indirect cost rate changes.
- F. 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.
- G. 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.

VI. 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.

VII. Single Audit Requirement

Pursuant to CFR, Title II, Subtitle A, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Contractors expending the threshold amount or more in Federal funds within the Contractor's fiscal year must have a single or program-specific audit performed in accordance with Subpart F, Audit Requirements. The audit shall comply with the following requirements:

- A. The audit shall be performed by a licensed Certified Public Accountant (CPA).
- B. The audit shall be conducted in accordance with generally accepted auditing standards and Government Auditing Standards, latest revision, issued by the Comptroller General of the United States.
- C. At the completion of the audit, the Contractor must prepare, in a separate document from the auditor's findings, a corrective action plan to address each audit finding included in the auditor's report(s). The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If Contractor does not agree with the audit findings

or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

- D. Contractor is responsible for follow-up on all audit findings. As part of this responsibility, the Contractor must prepare a summary schedule of prior audit findings. The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
- E. Contractor must electronically submit within thirty (30) calendar days after receipt of the auditor's report(s), but no later than nine (9) months following the end of the Contractor's fiscal year, to the Federal Audit Clearinghouse (FAC) the Data Collection Form SF-SAC (available on the FAC Web site) and the reporting package which must include the following:
 - 1. Financial statements and schedule of expenditures of Federal awards
 - 2. Summary schedule of prior audit findings
 - 3. Auditor's report(s)
 - 4. Corrective action plan

Contractor must keep one copy of the data collection form and one copy of the reporting package described above on file for ten (10) years from the date of submission to the FAC or from the date of completion of any audit, whichever is later.

- F. The cost of the audit made in accordance with the provisions of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards can be charged to applicable Federal awards. However, the following audit costs are unallowable:
 - 1. Any costs when audits required by the Single Audit Act that have not been conducted or have been conducted but not in accordance with the Single Audit requirement.
 - 2. Any costs of auditing that is exempted from having an audit conducted under the Single Audit Act and Subpart F – Audit Requirements because its expenditures under Federal awards are less than the threshold amount during the Contractor's fiscal year.

Where apportionment of the audit is necessary, such apportionment shall be made in accordance with generally accepted accounting principles, but shall not exceed the proportionate amount that the Federal funds represent of the Contractor's total revenue.

The costs of a financial statement audit of Contractor's that do not have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

- G. Contractor must prepare appropriate financial statements, including Schedule of Expenditures for Federal Awards (SEFA).

- H. The work papers and the audit reports shall be retained for a minimum of ten (10) years from the date of the final audit report, and longer if the independent auditor is notified in writing by the County to extend the retention period.
- I. Audit work papers shall be made available upon request to the County, and copies shall be made as reasonable and necessary.

VIII. 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.

IX. 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.

X. Duration and Termination

- A. The term of this Agreement shall be from July 1 2021 through June 30, 2026 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 Innovation funded participants; 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.

XI. 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 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.
- E. 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.
- F. 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.

XII. 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.

XIII. 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 ensure all service providers apply for, obtain and maintain the appropriate certification, licensure, registration or waiver prior to rendering services. Service providers must work within their scope of practice and may not render and/or claim services without a valid certification, licensure, registration or waiver. Contractor shall develop and implement a policy and procedure for all applicable staff to notify Contractor of a change in licensure/certification/waiver status, and Contractor is responsible for notifying DBH of such change.
- C. Contractor shall comply with applicable provisions of the:
 1. California Business and Professions Code, Division 2; and
 2. California Code of Regulations, Title 16.
- D. Contractor shall comply with the United States Department of Health and Human 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. 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 I**) 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

- 4. Contractor acknowledges that Ineligible Persons are precluded from employment and from providing Federal and State funded health care services by contract with County.
- 5. 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.
- 6. 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.
- 7. Contractor shall immediately notify DBH should an employee become sanctioned or excluded by the OIG, GSA, and/or DHCS.

XIV. 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. 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.
- D. State Notices shall take precedence in the event of conflict with the terms and conditions of this Agreement.
- E. 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.
- F. 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.
- G. Copyright

All copyrights in the works created by Contractor shall remain the property of Contractor. Such copyrights shall include, but are not limited to, lesson plans and the teaching handbook. County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, , 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. County shall seek permission from Contractor and such permission will not be unreasonably withheld, before granting others a written license to use or reproduce such material for use within the County. Such license shall be revocable and limited to a five-year term which may be renewed upon agreement by Contractor. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino Department of Behavioral Health, through the use of MHSA Innovation funding, as the funding agency and Contractor as the creator of the publication.

Contractor shall retain the copyright to group work that is created during the term of the Contract. This includes interdisciplinary works at the end of each cohort (as described in Addendum I), as Contractor is the director and collaborator of these works.

It is understood Contractor is waiving her \$120,000 intellectual property licensing fee as a good faith act toward the success of her collaboration with the County on evaluations, scheduling, and other non-creative items.

Use of Trademarks:

Contractor trademarks are the names “Bezerk Productions” and “Cracked Eggs” in any form. Contractor may grant County a nonexclusive limited license for the noncommercial and incidental use of the names, for example in promotional materials or media reports. Such limited license of the trademarks may be granted for the contract period. Students who have successfully completed the teaching course, and become certified by Contractor as facilitators in the “Cracked Eggs” method may be granted, a limited nonexclusive license to use the trademarks outside of San Bernardino County. Certified facilitators will be able to continue to provide the training in San Bernardino County.

H. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Contract or Contractor’s relationship with the County may be made or used without prior written approval of DBH.

I. 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 Contractor. Only the items listed below in Paragraph L shall be delivered to DBH at the completion of work under the Agreement.

J. Equipment and Other Property

All equipment, materials, supplies or property of any kind (including vehicles.) 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. 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.

5. 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.
- K. 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.
- L. 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.
- M. 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.

XV. 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. MHSA Contract with the State;
 2. California Welfare and Institutions Code, Division 5;
 3. Patient Protection and Affordable Care Act, § 6401; and
 4. Balanced Budget Act of 1997.
- 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 III**. 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); implementing and providing a copy to DBH of reasonable and appropriate written policies and Medi-Cal PII. 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. Contractor shall comply with 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; 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; 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.
4. Contractor shall comply with the data security requirements set forth by the County as referenced in **Attachment II**.

F. Program Integrity Requirements

1. General Requirement

As a condition under Patient Protection and Affordable Care Act, § 6401. Contractor must have administrative and management processes or procedures, including a mandatory compliance plan, that are designed to detect and prevent fraud, waste or abuse.

- a. If Contractor identifies an issue or receives notification of a complaint concerning an incident of possible fraud, waste, or abuse, Contractor shall immediately notify DBH; conduct an internal investigation to determine the validity of the issue/complaint; and develop and implement corrective action if needed.
- b. If Contractor's internal investigation concludes that fraud or abuse has occurred or is suspected, the issue if egregious, or beyond the scope of the Contractor's ability to pursue, the Contractor shall immediately report to the DBH Office of Compliance for investigation, review and/or disposition.
- c. Contractor shall immediately report to DBH any overpayments identified

or recovered, specifying the overpayments due to potential fraud.

- d. Contractor shall immediately report any information about a change in contractor's or contractor's staff circumstances that may affect eligibility to participate in the managed care program.
- e. Contractor shall implement and maintain processes or procedures designed to detect and prevent fraud, waste or abuse that includes provisions to verify, by sampling or other methods, whether services that have been represented to have been delivered by Contractor were actually furnished to beneficiaries, demonstrate the results to DBH, and apply such verification procedures on a regular basis.
- f. Contractor understands DBH, CMS, or the HHS Inspector General may inspect, evaluate, and audit the subcontractor at any time if there is a reasonable possibility of fraud or similar risk.

2. Compliance Plan and Program

DBH has established an Office of Compliance/Compliance designee for purposes of ensuring adherence to all standards, rules and regulations related to the provision of services and expenditure of funds in Federal and State health care programs. Contractor shall either adopt DBH's Compliance Plan/Program or establish its own Compliance Plan/Program and provide documentation to DBH to evaluate whether the Program is consistent with the elements of a Compliance Program as recommended by the United States Department of Health and Human Services, Office of Inspector General.

Contractor's Compliance Program must include the following elements:

- a. Designation of a compliance officer/representative who reports directly to the Chief Executive Officer and compliance committee comprised of senior management who are charged with overseeing the Contractor's compliance program and compliance with the requirements of this account.
- b. Policies and Procedures

Written policies and procedures that articulate the Contractor's commitment to comply with all applicable Federal and State standards. Contractor shall adhere to applicable DBH Policies and Procedures relating to the Compliance Program or develop its own compliance related policies and procedures.

 - i. Contractor shall establish and implement procedures and a system with dedicated staff for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they arise, investigation of potential compliance problems as identified in the course of self-evaluation and audits, correction of such problems promptly and thoroughly (or coordination of suspected criminal acts with law enforcement agencies) to reduce the potential for recurrence, and ongoing

compliance with the requirements under the Contract.

- ii. Contractor shall implement and maintain written policies for all DBH funded employees, and of any contractor or agent, that provide detailed information about the False Claims Act and other Federal and State laws, including information about rights of employees to be protected as whistleblowers.
- iii. Contractor shall maintain documentation, verification or acknowledgement that the Contractor's employees, subcontractors, interns, volunteers, and members of Board of Directors are aware of these Policies and Procedures and the Compliance Program.
- iv. Contractor shall have a Compliance Plan demonstrating the seven (7) elements of a Compliance Plan. Contractor has the option to develop its own or adopt DBH's Compliance Plan. Should Contractor develop its own Plan, Contractor shall submit the Plan prior to implementation for review and approval to:

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

Or send via email to: Compliance_Questions@dbh.sbcounty.gov

c. Code of Conduct

Contractor shall either adopt the DBH Code of Conduct or develop its own Code of Conduct.

- i. Should the Contractor develop its own Code of Conduct, Contractor shall submit the Code prior to implementation to the following DBH Program for review and approval:

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

Or send via email to: Compliance_Questions@dbh.sbcounty.gov.

- ii. Contractor shall distribute to all Contractor's employees, subcontractors, interns, volunteers, and members of Board of Directors a copy of the Code of Conduct. Contractor shall document annually that such persons have received, read, understand and will abide by said Code.

d. Excluded/Ineligible Persons

Contractor shall comply with Licensing, Certification and Accreditation Article in this Contract related to excluded and ineligible status in Federal and State health care programs.

e. Internal Monitoring and Auditing

Contractor shall be responsible for conducting internal monitoring and auditing of its agency. Internal monitoring and auditing include, but are not limited to billing and coding practices, licensure/credential/registration/waiver verification and adherence to County, State and Federal regulations, as applicable.

i. Contractor shall not submit false, fraudulent, inaccurate or fictitious claims for payment or reimbursement of any kind.

f. Response to Detected Offenses

Contractor shall respond to and correct detected health care program offenses relating to this Contract promptly. Contractor shall be responsible for developing corrective action initiatives for offenses to mitigate the potential for recurrence.

g. Compliance Training

Contractor is responsible for ensuring its Compliance Officer/representative, and the agency's senior management, employees and contractors attend trainings regarding Federal and State standards and requirements. The Compliance Officer must attend effective training and education related to compliance, including but not limited to, seven elements of a compliance program and fraud, waste and abuse. Contractor is responsible for conducting and tracking Compliance Training for its agency staff. Contractor is encouraged to attend DBH Compliance trainings, as offered and available.

h. Enforcement of Standards

Contractor shall enforce compliance standards uniformly and through well-publicized disciplinary guidelines. If Contractor does not have its own standards, the County requires the Contractor utilize DBH policies and procedures as guidelines when enforcing compliance standards.

i. Communication

Contractor shall establish and maintain effective lines of communication between its Compliance Officer and Contractor's employees and subcontractors. Contractor's employees may use Contractor's approved Compliance Hotline or DBH's Compliance Hotline (800) 398-9736 to report fraud, waste, abuse or unethical practices. Contractor shall ensure its Compliance Officer establishes and maintains effective lines of communication with DBH's Compliance Officer and program.

j. 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.

- k. In accordance with the Termination paragraph of this Agreement, the County may terminate this Agreement upon thirty (30) days written notice if Contractor fails to perform any of the terms of this Compliance paragraph. At the County's sole discretion, Contractor may be allowed up to thirty (30) days for corrective action.

XVI. Medical Records/Protected Health Information

- A. Contractor agrees to maintain and retain medical records according to the following:
 - 1. The minimum maintenance requirement of medical records is:
 - a. The information contained in the medical record shall be confidential and shall be disclosed only to authorized persons in accordance to local, State and Federal laws.
 - b. Documents contained in the medical record shall be written legibly in ink or typewritten, be capable of being photocopied and shall be kept for all clients accepted for care or admitted, if applicable.
 - c. If the medical record is electronic, the Contractor shall make the computerized records accessible for the County's review.
 - 2. The minimum contractual requirement for the retention of medical records is:
 - a. For adults and emancipated minors, ten (10) years following discharge (last date of service), the final date of the contract period or from the date of completion of any audit, whichever is later;
 - b. For unemancipated minors, a minimum of ten (10) years after they have attained the age of 18, but in no event less than ten (10) years following discharge (last date of service), the final date of the contract period or from the date of completion of any audit, whichever is later.
 - c. County shall be informed within three (3) business days, in writing, if client medical records are defaced or destroyed prior to the expiration of the required retention period.
- B. Should patient/client records be misplaced and cannot be located after the Contractor has performed due diligence, the Contractor shall report to DBH as a possible breach of PHI in violation of HIPAA. Should the County and Contractor determine the chart cannot be located, all billable services shall be disallowed/rejected.
- C. Contractor shall ensure that all patient/client records are stored in a secure manner and access to records is limited to those employees of Contractor who have a business

need. Security and access of records shall occur at all times, during and after business hours.

- D. Contractor agrees to furnish duly authorized representatives from the County and the State access to patient/client records.
- E. The IIHI or PHI under this Contract shall be and remain the property of the County. The Contractor agrees that it acquires no title or rights to any of the types of client information.
- F. The County shall store the medical records for all the Contractor's County funded clients when a Contract ends its designated term, a Contract is terminated, a Contractor relinquishes its contracts or if the Contractor ceases operations.
 - 1. Contractor shall deliver to DBH all data, reports, records and other such information and materials (in electronic or hard copy format) pertaining to the medical 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.
 - 2. Contractor shall be responsible for the boxing, indexing and delivery of any and all records that will be stored by DBH Medical Records Unit. Contractor shall arrange for delivery of any and all records to DBH Medical Records Unit within seven (7) calendar days (this may be extended to thirty (30) calendar days with approval of DBH) of cessation of business operations.
 - 3. Should the Contractor fail to relinquish the medical records to the County, the County shall report the Contractor and its qualified professional personnel to the applicable licensing or certifying board(s).
 - 4. Contractor shall maintain responsibility for the medical records of non-county funded clients.

XVII. 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.

XVIII. 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.
 6. A budget sheet outlining how the subcontracting agency will spend the allocation.
- 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.

XIX. 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.

XX. 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.

XXI. 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.

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.

XXII. Contract Amendments

Contractor agrees that 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. Conclusion

- A. This Agreement consisting of thirty-nine (39) 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.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____

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 _____

Deputy

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

By _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Dawn Martin, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Natalie Kessee, Contracts Manager

Date _____

Reviewed/Approved by Department

►

Veronica Kelley, Director

Date _____

Mental Health Services Act Innovation Project - Cracked Eggs services
SERVICE DESCRIPTION

Bezerk Productions
P.O. Box 1972
Joshua Tree, CA 92252
(760) 808-5326
FY2021-22 – FY2024-25

I. DEFINITION OF RECOVERY, WELLNESS, AND RESILIENCE AND REHABILITATIVE MENTAL HEALTH SERVICES

- A. Mental Health Recovery, Wellness, and Resilience (RWR) is an approach to helping the individual to live a healthy, satisfying, and hopeful life despite limitations and/or continuing effects caused by his or her mental illness according to his or her own values and cultural framework. RWR focuses on client strengths, skills and possibilities, rather than on illness, deficits, and limitations, in order to encourage hope (in staff and clients) and progress toward the life the client desires. RWR involves collaboration with and encouragement of clients and their families, support systems and involved others to take control of major life decisions and client care; it encourages involvement or re-involvement of clients in family, social, and community roles that are consistent with their values, culture, and predominate language; it facilitates hope and empowerment with the goal of counteracting internal and external “stigma”; it improves self-esteem; it encourages client self-management of his/her life and the making of his/her own choices and decisions, it re-integrates the client back into his/her community as a contributing member; and it achieves a satisfying and fulfilling life for the individual. It is believed that all clients can recover, even if that recovery is not complete. This may at times involve risks as clients move to new levels of functioning. The individual is ultimately responsible for his or her own recovery choices.
- B. “Rehabilitation” is a strength-based approach to skills development that focuses on maximizing an individual’s functioning. Services will support the individual, family, support system, and/or involved others in accomplishing the desired results. Families, caregivers, human service agency personnel and other significant support persons should be encouraged to participate in the planning and implementation process in responding to the individual’s needs and desires, and in facilitating the individual’s choices and responsibilities.
- C. This is a new Innovation project for the Department of Behavioral Health (DBH) under Mental Health Services Act (MHSA) funding. The MHSA Innovation Project – Cracked Eggs will serve approximately 120 diverse and unduplicated individuals from throughout San Bernardino County that identify as suffering from mental illness.

The focus of the project will be to explore ways in which SBC-DBH's larger system of care can be enhanced and modified to create an empowered environment for individuals with lived experience through a series of peer designed art workshops. The art workshops were designed by Bezerk Productions, a peer-owned and operated production company. Each workshop session is focused on understanding and identifying individual thoughts from mental illness and helping workshop participants cope with difficulties and stress through the production of art. This will be achieved over the course of the five-year project.

II. DEFINITIONS

- A. Client Driven - The client takes an active and directive role in his/her wellness goals. In this model the clinician and support staff take a supportive role in assisting the client to identify and achieve their goals that promote wellness, however the client defines it.
- B. Clubhouse - Peer support centers for people with lived mental health experience ages 18 and over.
- C. Cohort – a group of individuals taking part in the workshop series at one time.
- D. Cultural Competence – 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. The DBH Office of Equity and Inclusion (OEI) will be involved to ensure compliance with cultural competency standards to ensure that the services provided address diverse cultural and linguistic needs.
- E. Engagement – An interaction with a consumer, family member, or significant other for the purpose of supporting efforts to activate the consumer into treatment
- F. Facilitator-trainee – An individual with lived experience that will be trained by Bezerk Productions to facilitate a Cracked Eggs workshop
- G. Innovation Project – Time-limited, 5 year maximum, research-based project funded with MHSA Innovation funds
- H. Non-clinical – Not involving the administration of mental health or substance abuse treatment.
- I. Office of Innovation – Internal SBC-DBH team responsible for the administration of Innovation projects
- J. One Stop TAY Center – Center that provides outpatient mental health (Full Service Partnership), case-management and placement services to TAY. TAY Centers coordinate the transition of youth from child to adult services and assist youth in adjusting to the new, adult environment.

- K. Peer and Family Advocate – An individual with lived-experience who identifies as a consumer of behavioral health services.
- L. Transitional Age Youth (TAY) – Unserved, underserved and inappropriately served San Bernardino County residents ages 16 to 26th birthday with emotional and/or behavioral health issues.

III. PROGRAM PURPOSE

This is a new Innovation project for the Department of Behavioral Health (DBH) under Mental Health Services Act (MHSA) funding. The MHSA Innovation Project – Cracked Eggs will serve approximately 120 diverse and unduplicated individuals from throughout San Bernardino County that identify as suffering from mental illness.

The focus of the project will be to explore ways in which SBC-DBH's larger system of care can be enhanced and modified to create an empowered environment for individuals with lived experience through a series of peer designed art workshops. The art workshops were designed by Bezerk Productions, a peer-owned and operated production company. Each workshop session is focused on understanding and identifying individual thoughts from mental illness and helping workshop participants cope with difficulties and stress through the production of art. This will be achieved over the course of the project.

The learning goals for Cracked Eggs are:

- A. Examine if participation in Cracked Eggs leads to clients reaching treatment, social, educational/vocational, and other goals. Examine how participation in Cracked Eggs influences clients' goals and identities.
- B. Examine if participation in Cracked Eggs leads to improved client outcomes.
- C. Examine the challenges and opportunities in scaling-up Cracked Eggs, including developing a train-the-trainer model/curriculum/toolkit.
- D. Examine if Cracked Eggs, and not least of all Cracked Eggs exhibits and performances, lead to stigma reduction and increased understanding about mental health issues for both clients and community participants.
- E. Examine how program evaluation can adapt to best capture emerging themes that clients find important from their Cracked Eggs experience. Is there a way to include and centralize art as a leading indicator in an evaluation?

IV. PERSONS TO BE SERVED

- A. The target population Transitional-aged youth (16 – 25 yrs. old) and adults (over 26 yrs. old), who have been diagnosed or identified as having a mental illness.
- B. Provider Adequacy (If Applicable)

Contractor shall submit to DBH documentation verifying it has the capacity to serve the expected enrollment in its service area in accordance with the network adequacy standards developed by DHCS. Documentation shall be submitted no less frequently than the following:

1. At the time it enters into this Contract with the County;
2. On an annual basis; and
3. At any time there has been a significant change, as defined by DBH, in the Contractor's operations that would affect the adequacy capacity of services, including the following:
 - a. A decrease of twenty-five percent (25%) or more in services or providers available to beneficiaries;
 - b. Changes in benefits;
 - c. Changes in geographic service area; and
 - d. Details regarding the change and Contractor's plans to ensure beneficiaries continue to have access to adequate services and providers.

V. DESCRIPTION OF SPECIFIC SERVICES TO BE PROVIDED

- A. Bezerk Productions will facilitate or co-facilitate 12 cohorts of the Cracked Eggs art workshop. Each cohort will last 12 weeks, with eight weeks of workshops, two 3 ½ hour workshops per week for eight weeks and with up to four weeks for an art exhibition and or performance preparations. Three cohorts will take place each of the first four years of the contract. The last year of the contract will be used for analysis and evaluation of the project data and to complete the final report.

Bezerk Productions will host each cohort in a different region in San Bernardino County over the course of the first four years of the project to serve approximately 120 individuals, up to 15 individuals per cohort. Specific dates for each cohort will be arranged between Bezerk Production and SBC-DBH Office of Innovation.

1. The first six cohorts will be facilitated directly by an instructor from Bezerk Productions. Workshops will include performance, writing and art using a series of techniques that include the use of the psychological model, known as the biopsychosocial model of health and illness, as a method of expression. Workshop participants will be empowered to give voice to experiences and feelings not easily expressed in words, develop self-awareness and self-esteem, work on social skills, explore other means to manage behaviors and/or symptoms and gain different perspectives to assist in problem solving. These sessions will serve as an opportunity to identify, empower and train facilitator-trainees identified by the Office of Innovation and in collaboration with Bezerk Productions to conduct the second set of cohorts.
2. A train the trainer cohort will take place during year three of the project where the instructor from Bezerk will train participants to facilitate the Cracked Eggs curriculum. The second set of cohorts will be led by the

facilitator-trainee with Bezerk Productions overseeing, rather than facilitating, these workshop sessions. The number of cohorts will depend on the number of facilitator trainees. The Office of Innovation will work with Bezerk Productions to develop a train the trainer manual and evaluation mode for the facilitator-trainees.

3. Program participants will come from, but are not limited to, the Clubhouses and One Stop Transitional Age Youth Centers located in all regions of San Bernardino County.

B. The following are program elements of this project:

1. Peer-designed workshop series
2. Evaluation and analysis of established learning goals
3. Development of Train the trainer manual
4. Final report

Bezerk Productions will provide all necessary supplies for each art workshop.

VI. PAYMENT

- A. Contractor may incur and claim a maximum \$38,483 of the total contract amount for one-time startup related expenses. One-time startup costs must be incurred during the first six (6) months of the contract period or until the first day the program is operational, whichever comes first. Contractor may submit a monthly claim for reimbursement of one-time costs that are appropriate for the initial startup of the program. Contractor must submit the organization's general ledger or profit and loss report with each monthly claim.
- B. The contractor understands that compliance with all standards listed is required by the County of San Bernardino. Contractor shall achieve specified services/activities/work plans/deliverables as indicated in the proposal. Failure to achieve deliverables, provide agreed upon provisions of service, activities and/or strategies, could result in reimbursement checks being withheld, reduced payment or reduction in overall award until the contractor is in full compliance, and/or termination of the contract.

VII. DOCUMENT PREPARATION AND TRAINING MATERIALS

- A. All materials developed under this contract shall acknowledge San Bernardino County and the Mental Health Services Act as the funding source and Contractor as the creator of the publication.
- B. Bezerk Productions retains copyright and patent right to the material and art produced as part of facilitating Cracked Eggs workshops. Individual participants will retain the copyright and patent right to their art created during these workshops. As part of this agreement SBC-DBH will retain the right to use any teaching and/or training curriculum developed during the course of the innovation project. At project's end, any developed curriculum will not be modified without the written permission of Bezerk Productions.

C. Materials Developed is defined as:

Printed materials, training materials, curriculums, booklets, outreach materials, flyers, press releases, community information or any other materials printed or otherwise used in the workshops. This list is not exhaustive.

VIII. REPORTING

- A. A report containing relevant data (statistical and anecdotal) including actual costs with supporting documentation and participant demographic data shall accompany invoices for payment. DBH Office of Innovation will provide the format for the monthly report. Monthly reports and invoices, including supporting documentation, are due to DBH at the end of each cohort. Office of Innovation will provide assistance and technical support to ensure timely completion of reporting. Office of Innovation will coordinate with Bezerk Productions if/when additional statistical data as needed as required under the approved Cracked Eggs Project Plan.
- B. Bezerk Productions will work collaboratively with DBH to evaluate program outcomes quarterly and annually, to assess progress toward achieving goals and objectives, and use the evaluation results to refine, improve, and strengthen programs.

IX. AUDIT REQUIREMENT

The contractor agrees to a quarterly, semi-annual, and/or annual on-site review(s) by the Department of Behavioral Health, or its designees. All materials to be audited must be available in the contractor's office located within San Bernardino County or a location bordering San Bernardino County.

X. FACILITY LOCATION

- A. SBC-DBH will be responsible for providing a location/facility to host each workshop cohort.
- B. If applicable, Contractor shall have hours of operation posted at the facility and visible to consumers/customers that match the hours listed in the Contract. Contractor is responsible for notifying DBH of any changes in hours or availability. Notice of change in hours must be provided in writing to the DBH Access Unit at fax number 909-890-0353, as well as the DBH program contact overseeing the Contract.
- C. Workshop Supplies
 - 1. Bezerk Productions will provide all necessary supplies for each art workshop.
- D. Equipment
 - 1. Bezerk Productions will maintain phone, computer and internet access to send and receive documents and to communicate with DBH electronically, for purposes of reporting requirements.

2. Bezerk Productions will purchase all necessary equipment needed to provide services including the purchase/lease of a vehicle, office equipment, and supplies for workshops. Vehicle must be insured.
3. During the term of contract, SBC-DBH will provide funding for the purchase/lease of vehicle. The primary purpose of this vehicle is to support the transportation needs of Bezerk Production personal in providing the Cracked Eggs workshops. This includes, but is not limited to, transportation to various locations throughout the county for the purpose of: workshop meetings and other DBH meetings, purchase of workshop supplies, commuting to presentations highlighting Cracked Eggs, as well as any other efforts to support the facilitation and running of Cracked Eggs workshops.

XI. STAFFING

All staff shall be employed, or contracted for, by the Contractor. The staff described will work the designated number of hours per week in full time equivalents (FTE's), perform the job functions specified and shall meet the California Code of Regulations requirements. All clinical treatment staff providing services with DBH funding shall be licensed or waived by viable internship by the State.

- A. Bezerk Productions shall provide adequate staff to manage the program. This staff will include (at a minimum) the following members:
 1. Director – 20 hours per week: responsible for overseeing the delivery of all Cracked Eggs workshops, facilitates first six cohorts while training co-facilitator on Cracked Eggs facilitation techniques, will supervise co-facilitator in the final six cohorts. Will serve as primary contact for Bezerk Productions.
 2. Finance Manager – 20 hours per week: responsible for submitting all Cracked Eggs billing.
 3. Office Manager – 20 hours per week: will maintain workshop supply inventory, request/purchase supplies for workshops, provide other administrative/clerical assistance to Bezerk Productions as directed.
 4. Workshop Assistant – 20 hours per week: provide assistance with workshop sessions, work closely with other members of Bezerk Team in presentation of workshops. Assist and support other administrative duties as directed.
 5. Videographer – 7 hours per week: responsible for recording workshops and other live events presented by Cracked Eggs for the purpose for small scale video productions.
- B. Staff Responsibilities

1. Provide structure and support.
 2. Assist the participants in engaging in appropriate activities.
 3. Increase social and community competencies by building or reinstating those daily living skills that will assist the participants to live successfully in the community.
 4. Serve as a positive role model and assist in developing the ability to sustain self-directed appropriate behaviors, internalize a sense of social responsibility, and/or enable appropriate participation in community activities.
 5. Provide a plan to deal with a crisis during services in collaboration with the client, significant others, and team. In escalating situations, staff shall utilize the Community Crisis Response Team(s) as its first resource before engaging other community agencies.
- C. Staff Training Plan – Contractor shall provide training for staff on an ongoing basis, including cultural competency training that addresses service delivery to diverse children and their families.

XII. ADMINISTRATIVE AND PROGRAMMATIC REQUIREMENTS

- A. The main office will be available a minimum of twenty (20) hours per week by appointment. Services will primarily be field-based and available via a virtual environment, when appropriate, or at a mutually agreed upon location. Contractor shall participate in DBH's annual evaluation of the program and shall make required changes in areas of deficiency.
- B. Contractor shall ensure that there are adequate budgeted funds to pay for all necessary staff, supplies and tools.
- C. Contractor shall maintain a separate and clear audit trail reflecting expenditure of funds under this Agreement.
- D. Contractor shall make available to the DBH Program Manager copies of all administrative policies and procedures utilized and developed for services and shall maintain ongoing communication with the Program Manager regarding those policies and procedures.
- E. Contractor must submit a report to the DBH Program Manager by the fifth of each month. As a minimum, the monthly report must include an overview of the total number of participants, services, and related demographic information. The report is to cover changes and status of staffing, program and services that impact service delivery under the Contract. Contractor shall submit additional reports as required by DBH.
- F. Contractor's Director or designee must attend regularly scheduled meetings to discuss program progress, outcomes, evaluation and other relevant topics related to the project.
- G. Vacancies or changes in staffing plan shall be submitted to the appropriate DBH Program Manager within 48 hours of Contractor's knowledge of such occurrence.

Such notice shall include a plan of action to address the vacancy or a justification for the staffing plan change.

- H. Contractor understands that compliance with all standards listed is required by the State and the County of San Bernardino. Failure to comply with any of the above requirements or Special Provisions below may result in reimbursement checks being withheld until Contractor is in full compliance.

XIII. COUNTY DEPARTMENT OF BEHAVIORAL HEALTH RESPONSIBILITIES

The Office of Innovation shall:

- A. Have final approval of all activities/programs/events planned for the Cracked Eggs Project.
- B. Be responsible for all evaluation aspects of the project, including conducting surveys, focus groups, pre & posttests, and comment cards. Contractor shall collect and report anecdotal information and collect workshop participant demographics. Office of Innovation will provide the format for any data collection.
- C. Find facilities for each workshop cohort.
- D. Provide support and technical assistance to Bezerk Productions for any provision covered in this agreement
- E. Provide or help development any forms used to claim reimbursement.
- F. Collaborate with Bezerk Productions in ensuring timely submission of Claims for Reimbursement.
- G. Review participant needs related to participation via virtual platform and work with Contractor to ensure participants have necessary items.

XIV. SPECIAL PROVISIONS

- A. A review of productivity of Contractor shall be conducted after the end of each quarter of each fiscal year.
- B. Contractor and DBH will work jointly to monitor outcome measures.
- C. Contractor and DBH will participate in evaluating the progress of the overall program in regard to responding to the mental health needs of local communities (i.e. Annual Program Review, quarterly site reviews, audits, etc.).
- D. Contractor must comply with California Vehicle Restraint Laws which state that children transported in motor vehicles must be restrained in the rear seat until they are eight years old or are at least 4 feet 9 inches in height.

ATTESTATION REGARDING INELIGIBLE/EXCLUDED PERSONS**Contractor Bezerk Productions 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.

 Printed name of authorized official

 Signature of authorized official

 Date

DATA SECURITY REQUIREMENTS

Pursuant to its contract with the State Department of Health Care Services, the Department of Behavioral Health (DBH) requires Contractor adhere to the following data security requirements:

A. Personnel Controls

1. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of DBH, or access or disclose DBH Protected Health Information (PHI) or Personal Information (PI) must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
2. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
3. Confidentiality Statement. All persons that will be working with DBH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The Statement must be signed by the workforce member prior to accessing DBH PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DBH inspection for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
4. Background Check. Before a member of the workforce may access DBH PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.

B. Technical Security Controls

1. Workstation/Laptop Encryption. All workstations and laptops that store DBH PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved in writing by DBH's Office of Information Technology.
2. Server Security. Servers containing unencrypted DBH PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
3. Minimum Necessary. Only the minimum necessary amount of DBH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
4. Removable Media Devices. All electronic files that contain DBH PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes, etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
5. Antivirus / Malware Software. All workstations, laptops and other systems that process and/or store DBH PHI or PI must install and actively use comprehensive anti-virus software / Antimalware software solution with automatic updates scheduled at least daily.

6. Patch Management. All workstations, laptops and other systems that process and/or store DBH PHI or PI must have all critical security patches applied with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Application and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
7. User IDs and Password Controls. All users must be issued a unique user name for accessing DBH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
 - a. Upper case letters (A-Z)
 - b. Lower case letters (a-z)
 - c. Arabic numerals (0-9)
 - d. Non-alphanumeric characters (special characters)
8. Data Destruction. When no longer needed, all DBH PHI or PI must be wiped using the Gutmann or U.S. Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of DBH's Office of Information Technology.
9. System Timeout. The system providing access to DBH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
10. Warning Banners. All systems providing access to DBH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
11. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DBH PHI or PI, or which alters DBH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DBH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived 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.
12. Access Controls. The system providing access to DBH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
13. Transmission Encryption. All data transmissions of DBH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing DBH PHI can be encrypted. This requirement pertains to any type of DBH PHI or PI in motion such as website access, file transfer, and E-Mail.
14. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting DBH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

C. Audit Controls

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

D. Business Continuity/Disaster Recovery Controls

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

E. Paper Document Controls

1. Supervision of Data. DBH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DBH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
2. Escorting Visitors. Visitors to areas where DBH PHI or PI is contained shall be escorted and DBH PHI or PI shall be kept out of sight while visitors are in the area.
3. Confidential Destruction. DBH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
4. Removal of Data. Only the minimum necessary DBH PHI or PI may be removed from the premises of Contractor except with express written permission of DBH. DBH PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
5. Faxing. Faxes containing DBH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
6. Mailing. Mailings containing DBH PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible.

Mailings which include 500 or more individually identifiable records of DBH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DBH to use another method is obtained.

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, **Bezerk Productions**, 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, Welfare and Institutions Code (WIC) 5328, 42 CFR 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), WIC 5328 or 42 CFR Part 2, 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. "Designated Record Set" means:
 - 1. A group of records maintained by or for a covered entity that is:
 - (a) The medical records and billing records about individuals maintained by or for a covered health care provider;
 - (b) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (c) Used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - 2. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
- F. "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.
- G. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the Security Rule.
- H. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- I. "HITECH" means the privacy and security Breach notification provisions applicable to Business Associate under Title XIII of ARRA.
- J. "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).
- K. "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.
- L. "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.

- M. "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.
- N. "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.
- O. "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.
- P. 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, WIC 5328 or 42 CFR Part 2. 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. Business Associate must ensure disclosure of SUD Part 2 records/information is in alignment with 42 CFR Part 2 restrictions and requirements.
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), WIC 5328 (25), or 42 Part 2.52 and/or 2.53.

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), WIC 5328 (7) or (18) or (20) or 42 CFR Part 2.12 (5) or (6).
4. If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

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. If SUD Part 2 records/information are part of Business Associate's operations, formal policies and procedures must address 1) paper records and 2) electronic records, as specified in 42 CFR Part 2.16.
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, as well as 42 CFR Part 2. 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 and 42 CFR Part 2.53, as applicable.

To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule and 42 CFR Part 2.53. If Business Associate maintains ePHI, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act. If Business Associate receives a request from an Individual or Entity (e.g., Public Records Act request, litigation-related requests, etc.) for access to PHI, Business Associate shall immediately forward such request to Covered Entity.

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. Destruction of Protected Health Information

Upon termination of this Agreement, Business Associate shall return all PHI required to be retained 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. Additionally, the Business Associate must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the Covered Entity a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed, as well as 42 CFR Part 2.16 (a)(2)(ii) if applicable. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. Judicial or Administrative Proceedings

Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the Business Associate has been joined that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

O. Insurance

In addition to any general and/or professional liability insurance coverage required of Business Associate under the Contract for services, Business Associate shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of Business Associate, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

P. Assistance in Litigation or Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party

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. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

E. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within thirty (30) days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to

be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by Business Associate and Covered Entity.

F. Interpretation

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

G. 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.

H. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, Business Associate acknowledges that Business Associate and Covered Entity may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act [Cal. Civil Code §56, et seq. ("CMIA")] and WIC 5328. If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or WIC section 5328 or any other California State law regarding the degree of protection provided for PHI and patient medical records, then Business Associate shall comply with the more restrictive requirements.

I. Survival

The respective rights and obligations and rights of Covered Entity and Business Associate relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

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

COVERED ENTITY

County of San Bernardino

BUSINESS ASSOCIATE

Bezerk Productions

Signature

Signature

Dated

Dated

Curt Hagman

Name

Name

Chairman, Board of Supervisors

Title

Title