



**Contract Number**

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**SAP Number**

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## Department of Behavioral Health

<b>Department Contract Representative</b>	Alia Caldwell
<b>Telephone Number</b>	(909) 388-0861
<b>Contractor</b>	Qualified Service Providers
<b>Contractor Representative</b>	
<b>Telephone Number</b>	
<b>Contract Term</b>	July 1, 2017- June 30, 2022
<b>Original Contract Amount</b>	\$15,242,733 Aggregate
<b>Amendment Amount</b>	\$361,350
<b>Total Contract Amount</b>	\$15,604,083 Total Aggregate
<b>Cost Center</b>	

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and (insert contractor's name here) referenced above, hereinafter called Contractor.

### IT IS HEREBY AGREED AS FOLLOWS:

#### WITNESSETH:

**WHEREAS**, the County desires to purchase and Contractor desires to provide certain mental health 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. 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.
- C. The term "County's billing and transactional database system" refers to the centralized data entry system used by the Department of Behavioral Health (DBH) for patient and billing information.
- 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 California Department of Public Health (CDPH), and the Office of Statewide Health Planning and Development (OSHPD).
- G. The "County Contract Rate" (CCR) is the maximum allowable reimbursement rate established by DBH.
- H. The "provisional rates" are the interim rates established for billing and payment purposes and are subject to change upon request and approval.
- I. The term Emergency Shelter means "any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless."
- J. A person is considered homeless only when he/she resides in one of the following places: in places not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings (on the street). In an emergency shelter. In transitional or supportive housing for homeless persons who originally came from the streets or emergency shelters. In any of the above places but is spending a short time (up to 90 consecutive days) in a hospital or other institution.

## 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 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 and/or Attachments conflicts with the basic Agreement, then information in the Addenda, and/or Attachments shall take precedence to the extent permitted by law.
- B. Contractor shall provide emergency shelter services to homeless, mentally ill or co-occurring consumers who are participating in comprehensive mental health and substance abuse disorder treatment services through the San Bernardino County Department of Behavioral Health Adult Forensic Services (AFS), Adult and Older Adult System of Care (ASOC/OASOC), Re-Integration Supportive Engagement Services (RISES), Diversion Opportunity for Outpatient Recovery Services (DOORS), Homeless Outreach Support Team (HOST), Transitional Age Youth (TAY), Pregnant and/or Mothering TAY programs or other programs as approved by DBH Administration.
- C. Notwithstanding any other provision of this Agreement, the County may withhold all payments due to the Contractor, if the 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.

#### D. 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 will be 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. 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. 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 behavioral health and substance use disorder services.
- b. Upon request provide DBH with cultural specific service options available to be provided by Contractor.
- c. 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 medically necessary specialty behavioral health and substance use disorder 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.
- d. To assist the Contractor's efforts towards cultural and linguistic competency, DBH shall provide the following:
  - i. Technical assistance to the Contractor regarding cultural competency implementation.
  - ii. Demographic information to the 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. Administrative staff shall complete a minimum of two (2) hours of cultural competency training, and direct service clinical staff shall complete a minimum of four (4) hours of cultural competency training each calendar year.
  - iv. Interpreter training for DBH and Contractor personnel, when available.
  - v. Technical assistance for the Contractor in translating behavioral health and substance use disorder services information to DBH's threshold language (Spanish).

E. Public Accessibility

Contractor shall ensure that services provided are accessible by public transportation (*if appropriate*).

F. Site Inspection

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

G. Disaster Response

In the event that a local, State, or Federal emergency is proclaimed within San Bernardino County, Contractor shall cooperate with the County in the implementation of the DBH Disaster Response Plan. This may include deployment of Contractor staff to provide services in the community, in and around county areas under mutual aid contracts, in shelters and/or other designated areas.

Contractor shall provide the DBH Disaster Coordinator with a roster of key administrative and response personnel including after-hour phone numbers, pagers, and/or cell phone numbers to be used in the event of a regional emergency or local disaster. These numbers will be kept current by quarterly reports to the County by Contractor. The County shall keep such information confidential and not release other than to authorized County personnel or as otherwise required by law.

Contractor shall ensure that, within three months from the Contract effective date, at least twenty-five percent (25%) of Contractor's permanent direct service staff participates in a disaster response orientation and training provided by the County or County's designee.

The County agrees to reimburse Contractor for all necessary and reasonable expenses incurred as a result of participating in the County's disaster response at the request of County. Any reasonable and allowable expenses above the Contract maximum will be subject to negotiations.

H. Collections Costs

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

I. Internal Control

Contractor must establish and maintain effective internal control over the County Fund to provide reasonable assurance that the Contractor manages the County Fund in compliance with Federal, State and County statutes, regulations, and terms and conditions of the Contract.

J. 2-1-1 Registration

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

K. 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

This Agreement is contingent upon sufficient funds being made available by Federal, State, and/or County 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.

V. Payment

- A. During the term of this Agreement, the County shall make payments to Contractor on a monthly basis as follows:
- Reimbursement for services provided by Contractor will be paid to Contractor at the contract rate in this Article, Paragraphs G.
- B. Contractor shall bill the County monthly in arrears for services provided by Contractor on claim forms provided by DBH. All claims submitted shall clearly reflect all required information specified regarding the services for which claims are made. Each claim shall reflect any and all payments made to Contractor by, or on behalf of patients. Claims for Reimbursement shall be completed and forwarded to DBH within ten days after the close of the month in which services were rendered. Following receipt of a complete and correct monthly claim, the County shall make payment within a reasonable period.
- 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. Contractor(s) should note that it can take as long as 60 days after DBH Fiscal Services receives an approved, correct and complete Claim for Reimbursement, Reimbursement Form and Referral Voucher to receive reimbursement for a service month; contractor(s) must be able to continue to provide all services as agreed to during the interim while waiting for reimbursement.
- E. Contractor shall be in compliance with the Deficit Reduction Act of 2005, Section 6032 Implementation. As a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must

comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act [42 USC 1396(a) (68)], set forth in that subsection and as the federal Secretary of the United States Department of Health and Human Services may specify.

- F. The reimbursement rate for this agreement for all consumers is \$44.00 per filled bed, per day.
- G. 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.

#### 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.

#### VI. Electronic Signatures

- A. The State has established the requirements for electronic signatures in electronic health record systems. DBH has sole discretion to authorize contractors to use e-signatures as



applicable. If a contractor desires to use e-signatures in the performance of this Contract, the Contractor shall:

1. Submit the request in writing to DBH Office of Compliance at the following address:  
DBH Office of Compliance  
303 East Vanderbilt Way  
San Bernardino, CA 92415-0026  
  
or send via email to: Compliance\_Questions@dbh.sbcounty.gov
  2. Fulfill all requisite pre-conditions, including, but not limited to, having a policy regarding electronic signatures, providing related policies for DBH review and approval and completing a checklist of the requisites, and meet all the latest requirements of DBH and the applicable State agency(ies).
  3. Obtain written approval from the Director of DBH or designee prior to the use of electronic signatures.
- B. DBH reserves the right to change or update the e-signature requirements as the governing State agency(ies) modifies requirements.
- C. DBH reserves the right to terminate e-signature authorization at will and/or should the contract agency fail to uphold the requirements.

#### VII. 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. Said County or State representative shall provide a signed copy of a confidentiality statement similar to that provided for in Section 5328(e) of the Welfare and Institutions Code, when requesting access to any patient records. Contractor will retain said statement for its records.
- C. If the appropriate agency of the State of California, or the County, determines that all, or any part of, the payments made by the County to Contractor pursuant hereto are not reimbursable in accordance with this Agreement, said payments will be repaid by Contractor to the County. In the event such payment is not made on demand, the County may withhold monthly payment on Contractor's claims until such disallowances are paid by Contractor.

#### VIII. Final Settlement: Audit

- A. Contractor agrees 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, final settlement, or until audit findings are resolved, whichever is later. This is not to be construed to relieve Contractor of the obligations concerning retention of medical records as set forth in Personally Identifiable Information Article.

- 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 record is being requested for research and/or auditing purposes. Contractor will retain the confidentiality statement for its records.
- C. If the appropriate agency of the State of California, or the County, determines that all, or any part of, the payments made by the County to Contractor pursuant hereto are not reimbursable in accordance with this Agreement, said payments will be repaid by Contractor to the County. In the event such payment is not made on demand, the County may withhold monthly payment on Contractor's claims until such disallowances are paid by Contractor, may refer for collections, and/or the County may terminate and/or indefinitely suspend this Agreement immediately upon serving written notice to the Contractor.
- D. The eligibility determination and the fees charged to, and collected from, consumers whose treatment is provided for hereunder may be audited periodically by the County and the State.
- E. Contractor expressly acknowledges and will comply with all audit requirements contained in the Contract documents. These requirements include, but are not limited to, the agreement that the County or its designated representative shall have the right to audit, to review, and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Contractor shall have fourteen (14) days to provide a response and additional supporting documentation upon receipt of the draft post Contract audit report. DBH – Administration Audits will review the response(s) and supporting documentation for reasonableness and consider updating the audit information. After said time, the post Contract audit report will be final.
- F. If a post Contract audit finds that funds reimbursed to Contractor under this Agreement were in excess of the contract rate in this Article, Paragraph G, or for unauthorized services, the difference shall be reimbursed on demand by Contractor to the County using one of the following methods, which shall be at the election of the County:
  - 1. Payment of total.
  - 2. Payment on a monthly schedule of reimbursement agreed upon by both the Contractor and the County.
- G. If there is a conflict between a State of California audit of this Agreement and a County audit of this Agreement, the State audit shall take precedence.
- H. In the event this Agreement is terminated, the last reimbursement claim shall be submitted within sixty (60) days after the Contractor discontinues operating under the terms of this Agreement. When such termination occurs, the County shall conduct a final audit of the Contractor within the ninety (90) day period following the termination date, and final reimbursement to the Contractor by the County shall not be made until audit results are

known and all accounts are reconciled. No claims for reimbursement shall be accepted after the sixtieth (60th) day following the date of contract termination.

IX. Single Audit Requirement

A. 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:

1. The audit shall be performed by a licensed Certified Public Accountant (CPA).
2. 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.
3. 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.
4. 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 are fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
5. 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:
  - a. Financial statements and schedule of expenditures of Federal awards
  - b. Summary schedule of prior audit findings
  - c. Auditor's report(s)
  - d. 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 three (3) years from the date of submission to the FAC.

6. 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:

- a. 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.
- b. 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.

- 7. 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.
- 8. Audit work papers shall be made available upon request to the County, and copies shall be made as reasonable and necessary.

#### X. 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.

#### XI. 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.

## XII. Duration and Termination

- A. The term of this Agreement shall be from July 1, 2017 through June 30, 2022 inclusive.
- B. This Agreement may be terminated immediately by the Director at any time if:
1. The appropriate office of the State of California indicates that this Agreement is not subject to reimbursement under law; or
  2. There are insufficient funds available to County; or
  3. There is evidence of fraud or misuse of funds by Contractor; or
  4. There is an immediate threat to the health and safety of Medi-Cal beneficiaries; or
  5. Contractor is found not to be in compliance with any or all of the terms of the herein incorporated Articles of this Agreement or any other material terms of the Contract, including the corrective action plan.
  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.

## XIII. Personnel

- A. Contractor shall operate continuously throughout the term of this Agreement with at least the minimum number of staff as required by Title 9 of the California Code of Regulations for the mode(s) of service described in this Agreement. Contractor shall also satisfy any other staffing requirements necessary to participate in the Short-Doyle/Medi-Cal program, if so funded.
- B. 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.

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

#### XIV. Licensing and Certification

- 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 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 Code of Regulations, Title 9
  2. California Business and Professions Code, Division 2
  3. California Code of Regulations, Title 16.
- D. Contractor shall comply with the United States Department of Health and Human Services, Office of Inspector General (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 control interest of the Contractor for eligibility against the United States General Services Administration's System for Award Management (SAM) and the OIG's List of Excluded Individuals/Entities (LEIE) respectively to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract. Contractor shall conduct these reviews before hire or contract start date and then no less than once a month thereafter.
    - a. SAM can be accessed at <http://www.sam.gov/portal/public/SAM>.
    - b. LEIE can be accessed at <http://oig.hhs.gov/exclusions/index.asp>.
  3. If the Contractor receives Medi-Cal reimbursement, Contractor shall review the organization and all its employees, subcontractors, agents and physicians for eligibility against the California Department of Health Care Services Suspended and Ineligible Provider (S&I) List to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract. Contractor shall conduct this review before hire or contract start date and then no less than once a month thereafter.
    - a. S&I List can be accessed at: <http://medi-cal.ca.gov/default.asp>.

4. Contractor shall certify that no staff member, officer, director, partner or principal, or sub-contractor is "excluded" or "suspended" from any federal health care program, federally funded contract, state health care program or state funded contract. This certification shall be documented by completing the Attestation Regarding Ineligible/Excluded Persons (Attachment II) at time of the initial contract execution and annually thereafter. 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
5. Contractor acknowledges that Ineligible Persons are precluded from employment and from providing Federal and State funded health care services by contract with County.
6. Contractor shall have a policy regarding the employment of sanctioned or excluded employees that includes the requirement for employees to notify the Contractor should the employee become sanctioned or excluded by the Office of the Inspector General, General Services Administration, and/or the Department of Health Care Services.
7. Contractor shall immediately notify DBH should an employee become sanctioned or excluded by the Office of the Inspector General, General Services Administration, and/or the Department of Health Care Services.

XV. Administrative Procedures

- A. Contractor agrees to adhere to all applicable provisions of:
  1. State Notices, and;
  2. 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. Provider List

Contractor shall ensure that staff is knowledgeable of State and DBH policy/procedure regarding DBH Provider Directories. Contractor agrees to demonstrate that staff knows how to access Provider List as required by DBH.
- D. Beneficiary Brochure

Contractor shall ensure that staff is knowledgeable of State and DBH policy/procedure regarding 2006 State Informing Materials which includes, but is not limited to the Beneficiary Brochure.



- E. If a dispute arises between the parties to this Agreement concerning the interpretation of any State Notice or a policy/procedure within the DBH SPM, the parties agree to meet with the Director to attempt to resolve the dispute.
- F. State Notices shall take precedence in the event of conflict with the terms and conditions of this Agreement.
- G. If a dispute arises between the parties concerning the performance of this Agreement, DBH and Contractor agree to meet informally to attempt to reach a just and equitable solution.
- H. Grievance and Complaint Procedures  
Contractor shall ensure that staff are knowledgeable of and compliant with the San Bernardino County Beneficiary Grievance and Appeals Procedures and ensure that any complaints by recipients are referred to DBH in accordance with the procedure.
- I. Notice of Action Procedures  
Contractor shall ensure that staff is knowledgeable of State law and DBH policy/procedure regarding the issuance of Notice of Actions (NOAs).
- J. 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. Vendor shall submit a written report to DBH within three (3) business days of occurrence on DBH Unusual Occurrence/Incident Report form or on Vendor'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.
- K. Copyright  
County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino Department of Behavioral Health as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with and approved by the

County prior to publication. Contractor shall receive written permission from DBH prior to publication of said training materials.

L. 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.

M. Ownership of Documents

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

XVI. Laws and Regulations

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

1. Mental Health Plan (MHP) Contract with the State;
2. California Code of Regulations, Title 9;
3. California Code of Regulations, Title 22; and
4. Welfare and Institutions Code, Division 5.

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. County requires Contractor to adhere to the protection of personally identifiable information (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.

F. Reporting of Improper Access, use or Disclosure or Breach

Contractor shall report to DBH's Office of Compliance any unauthorized use, access or disclosure of unsecured PII or any other security incident with respect to PII no later than one (1) business day upon the discovery of a breach. Upon discovery of a breach or suspected breach, the Business Associate shall complete the following actions.

1. Provide 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 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 Contractor may be required to notify affected Individual(s).
- 4. Make available to County 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.

G. Program Integrity Requirements

1. General Requirement

Pursuant to Title 42 C.F.R. Section 438.608, Contractor must have administrative and management arrangements or procedures, including a mandatory compliance plan, that are designed to guard against fraud and abuse.

- a. If Contractor identifies an issue or receives notification of a complaint concerning an incident of possible fraud or abuse, the Contractor shall 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 develop a method to verify whether services were actually furnished to beneficiaries and demonstrate the results to DBH.

2. Compliance Program

DBH has established an Office of Compliance 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 and related programs. Contractor shall establish its own Compliance 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 and compliance committee that is accountable to senior management and/or Board of Directors.

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 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.
- ii. 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](mailto: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](mailto: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 that such persons have received, read, understand and will abide by said Code.

d. Compliance Training

Contractor is responsible for ensuring its Compliance Officer attends 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.

e. 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.

f. Communication

Contractor shall establish and maintain effective lines of communication between its Compliance Program and DBH's Compliance Officer. 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.

g. 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.

h. Subpoena

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

XVII. Patients' Rights

Contractor shall take all appropriate steps to fully protect patients' rights, as specified in Welfare and Institutions Code Sections 5325 et seq; Title 9 California Code of Regulations (CCR), Sections 861-862, 883, 884; and Title 22 CCR, Sections 72453 and 72527.

XVIII. Confidentiality

A. Contractor shall not use or disclose PII other than as permitted or required by law.

XIX. Admission Policies

A. Contractor shall develop patient/client admission policies, which are in writing and available to the public.

- B. Contractor's admission policies shall adhere to policies that are compatible with Department of Behavioral Health service priorities, and Contractor shall admit clients according to procedures and time frames established by DBH.
- C. If Contractor is found not to be in compliance with the terms of Admission Policies Article, this Agreement may be subject to termination.

XX. Personally Identifiable Information

- A. Contractor agrees to maintain and retain medical records according to the following:
  - 1. The minimum legal requirement for the retention of shelter service records.
- B. Should 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 PII in violation. Contractor shall ensure that all 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.
- C. The PII 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.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

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

XXV. Nondiscrimination

A. General

Contractor agrees to serve all clients without regard to race, color, sex, religion, national origins or ancestry pursuant to the Civil Rights Act of 1964, as amended (42 USCA, Section 2000 D), and Executive Order No. 11246, September 24, 1965, as amended.

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

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.

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. Policy Prohibiting Discrimination, Harassment, and Retaliation

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

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

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

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

XXVI. Contract Amendments

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

XXVII. 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.

XXVIII. 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.

XXIX. Improper Consideration

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.

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.

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.

XXX. 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.

XXXI. Conclusion

- A. This Agreement consisting of thirty-two (32) pages, Addenda, and Attachments inclusive is the full and complete document describing the services to be rendered by Contractor to the County, including all covenants, conditions and benefits.
- B. IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino has caused this Agreement to be subscribed by the Clerk thereof, and Contractor has caused this Agreement to be subscribed on its behalf by its duly authorized officers, the day, month, and year first above written.

COUNTY OF SAN BERNARDINO  
DEPARTMENT OF BEHAVIORAL HEALTH

►  
\_\_\_\_\_  
Veronica Kelley, Director

Dated: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM  
COUNTY COUNSEL**

By \_\_\_\_\_  
*Dawn Martin, Deputy County Counsel*

\_\_\_\_\_  
*(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 \_\_\_\_\_  
\_\_\_\_\_



## DEPARTMENT OF BEHAVIORAL HEALTH PROVISION OF EMERGENCY SHELTER SERVICES

## DESCRIPTION OF PROGRAM SERVICES

July 1, 2017 through June 30, 2022

The Department of Behavioral Health is receiving emergency shelter services from the following named Contractor for the terms noted below:

<b>Contractor Name:</b>
<b>Contractor Billing Address:</b>
<b>Emergency Shelter Name:</b>
<b>Shelter Address:</b>
<b>Consumer Description (Population and gender preference):</b>
<b>Emergency Shelter Owner Name:</b>
<b>Emergency Shelter Owner Contact Information:</b>

## A. Population Definitions

1. **Adult Criminal Justice (ACJ):** This population includes the following:
  - a. **CHOICE:** Consumers on adult formal probation supervision ages 18 and above who are participating in the Choosing Health Options to Instill Change and Empowerment (CHOICE) program and are in need of housing for maintaining stabilization upon their release into the community from a restrictive correctional setting or transition from a lower level of care within an involuntary or voluntary setting upon acquiring stabilization.
  - b. **STAR:** Consumers on adult formal probation supervision ages 18 and above who are participating in the Supervised Treatment after Release (STAR) program through the Mental Health Court, including aftercare services when requirements are met by the consumer and acceptable by program, court, and probation.
  - c. **Community STAR (CSTAR):** Consumers ages 18 and above who are in need of stable housing during their transition to a lower level of care. Unlike CHOICE and STAR, these consumers are no longer under supervision within the criminal justice system.
  - d. **Re-Integration Supportive Engagement Services (RISES):** Consumers ages 18-59 who are being linked to behavioral health services after being diverted or released from San Bernardino County Detention Centers.
  - e. **Diversion Opportunity for Outpatient Recovery Services (DOORS):** Consumers ages 18-64 who are participating in the DOORS program through Mental Health Diversion Courts and are in need of housing to maintain stabilization upon their release into the community from a restrictive correctional setting or during transition to a lower level of care upon completion of Mental Health Diversion requirements.

**Note: Consumers in the listed ACJ programs may have this special requirement:** Emergency shelters that house consumers ages 18-58 with convictions relating to sexual offenses for which registration is required (Penal Code 290 Registrants) must be located at least 2,000 feet away from schools or places where children congregate.

2. **Regional Outpatient Services:** This population includes the following:
  - a. Adults: Consumers ages 18-58 who are receiving services due to temporary homelessness and co-occurring disorders.
  - b. Older Adults: Consumers ages 59 and above who are receiving services due to temporary homelessness and co-occurring disorders.
  - c. Adults with special requirements: Consumers ages 18-58 with previous convictions relating to registered sexual offenses (Penal Code 290 Registrants). NOTE: These emergency shelters must be located at least 2,000 feet away from schools or places where children congregate.
3. **Homeless Outreach Support Team (HOST):** Consumers ages 18 and above who are chronically homeless and living with a mental illness or co-occurring disorder and require emergency shelter during an interim period (bridge housing) while the program works to obtain permanent supportive housing for the consumer.
4. **Transitional Age Youth (TAY):** This population includes the following:
  - a. TAY: Consumers ages 18-25 who are receiving services due to temporary homelessness and co-occurring disorders. Consumers are in need of age appropriate housing that will assist their recovery along with the overall TAY program goals.
  - b. Pregnant and/or Mothering TAY: Consumers ages 18-25 who are receiving services due to temporary homelessness and co-occurring disorders. Consumers will either have legal custody of younger children (ages 0-7) or an approved reunification plan from the appropriate County department. Consumers are in need of family appropriate housing that will assist their recovery along with the overall TAY program goals.
5. **24 - Hour and Emergency Services:** This population includes the following:
  - a. Triage Transitional Services (TTS): Adult consumers ages 18-59 who voluntarily walk-in to Arrowhead Regional Medical Center Behavioral Health Unit (ARMC BHU), evaluated and do not meet medical necessity for inpatient hospitalization, are homeless, and require emergency shelter.
  - b. Community Crisis Response Team (CCRT): Adult consumers ages 18-59 who are in the community experiencing a behavioral health crisis, evaluated, and do not meet medical necessity for inpatient hospitalization, are homeless, and require emergency shelter.
  - c. Placement After Stabilization (PAS): Adult consumers ages 18-59 who are transitioning from a Crisis Residential Treatment (CRT) facility, are homeless, and require emergency housing.
  - d. Adult Continuing Care Program (ACCP): Adult consumers ages 18-59 who are transitioning from an acute psychiatric inpatient hospital, at risk of homelessness, and require emergency housing during an interim period (bridge housing) while the program works to obtain more permanent housing.

- e. Community Reintegration Services (CRS): Adult consumers ages 18-59 who are transitioning from locked residential settings or State Hospitals who are at risk of homelessness and require emergency housing during an interim period (bridge housing) while the program works to obtain more permanent housing.
- f. Therapeutic Alliance Program (TAP): Adult consumers ages 18-59 living with co-occurring behavioral health condition who are transitioning from co-occurring treatment at a Substance Use Disorder Recovery Services (SUDRS) residential facility, homeless, and require emergency housing.
- g. Triage Engagement and Support Teams (TEST): Adult consumers ages 18-59 living with a behavioral health condition whom law enforcement has made contact with and are homeless requiring emergency housing.

## B. Program Description

- 1. **Program Objective** – The objective of this program is to provide emergency shelter services to homeless, mentally ill or co-occurring consumers who are participating in comprehensive mental health and substance abuse disorder treatment services.
- 2. **NO TRANSPORTATION IS TO BE PROVIDED TO ANY DBH CONSUMER AT ANY TIME.**
- 3. **Emergency Shelter Program Requirements** – The following requirements are for all of the types of consumers noted in this Addendum I. Pregnant and/or Mothering TAY emergency shelters are held to these requirements as well as the specific requirements noted below in Article B, Section 4. Any requests for exceptions to these items will need to be approved by both the emergency shelter owner and the respective Program Manager II.

**All** Contractors shall perform, provide and abide by the following:

- a. Placements will typically be between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. However, the contractor must be willing to accept placements after 5:00 p.m. during weekends and on holidays, with prior notification and agreement.
  - Contractor and/or House Manager should verify the identity of the DBH employee making a consumer placement along with the population the consumer is under.
  - Appropriate Referral Voucher for Emergency Shelter Services form should also be provided upon consumer placement.
- b. Provide and maintain a safe and sanitary living environment and physical plant conducive to quality care and treatment of mentally ill or co-occurring individuals; this includes the provision of utilities and appliances in continual, correct working order, and ongoing maintenance repair and/or replacement as needed of beds, linen, flooring, paint, window coverings, fixtures, landscape, etc.
  - Emergency shelter site must have a properly functioning cooling and heating system.
  - Windows, sliding doors, etc., shall be in working order and door and window screens shall be intact with no tears.
- c. Provide each consumer a safe and sanitary bedroom, on a nightly basis which includes the provision of clean bed linens, blankets and a pillow and does not include common areas.

- Emergency Shelter House Rules will state that the consumer will wash bed linens on a weekly basis.
- d. Bedrooms shall not be used as a passageway to other bedrooms and must each have their own dedicated entrance or must be accessible via a common hallway.
  - e. Contractor must ensure that emergency shelter site is free of any alcohol, marijuana or illegal substances.
  - f. Provide a working landline telephone (if multiple units, access in each unit) that is available 24 hours per day, 7 days a week for emergency and/or local use.
  - g. Security and video cameras may only be placed in common areas and must be monitored by the contractor internally. Third party camera or video monitoring is not permitted.
  - h. Firearms or weapons that can cause great bodily injury are prohibited and cannot be stored on the property or be in the possession of managers or consumers while on the property.
  - i. Provide clean, functional and safe toilet and shower facilities for consumers. Personal hygiene supplies, such as, but not limited to, shampoo, soap, toothpaste, toilet paper, deodorant, lotion and feminine hygiene products shall be provided. Each consumer will be issued their own bath towel for use while at the facility and consumer shall not be required to share towel with another consumer.
  - j. Provide an individual, lockable storage box for each consumer. Boxes are to have two keys, one is to be given to the consumer and one is kept by the House Manager. Boxes are to be kept in a secondary secured/locked location and are not to be kept in the consumer's room. The House Manager shall oversee these requirements and ensure consumers shall have access to their storage box upon request. Note: Consumer owned over the counter medications are to be kept in the consumer's locked storage box.
  - k. The House Manager or emergency shelter staff shall not dispense nor provide assistance or verbal reminders to the consumer in taking prescription medication.
  - l. Contractor shall assure that bedroom doors do not have locks that restrict House Manager, DBH or Probation staff from complete access during required inspections.
  - m. Prepare and provide three (3) adult sized, well-balanced meals and two (2) separate snacks on-site and on a daily basis, as per USDA guidelines. Reasonable accommodations shall be made for special diets.
    - Providing "store-cards" is not sufficient for this requirement.
    - Food for meals shall not be acquired from community based agencies or organizations such as food banks and/or churches.
    - Contractor may not provide expired food items, as identified per manufacturer's label.
    - Consumers are not eligible for Food Stamp benefits (CalFresh benefits). Encouraging consumers to apply for CalFresh is considered fraud.
    - Consumers shall not be asked to pay for their food.

Meals/snacks must be available to consumers at pre-set times throughout the day. Menus are to be posted and updated on a weekly basis at minimum. Meals and snacks are two separate

services. Snacks are to be available in the mid-morning and the mid-afternoon and should be kept on site and available to the consumers. For those consumers attending day treatment, lunch and snacks are to be prepared for the consumers to take with them.

Well-balanced meals may be prepared off-site, delivered to the emergency shelter and served to consumers at the emergency shelter at pre-set times on a daily basis. This provision does not allow “fast-food” to be served to consumers.

- n. Emergency shelter must have on-site, working laundry facilities available to DBH consumers. This includes a clothes washer and clothes dryer and the provision of laundry soap.
- o. Due to consumer health and general hygiene concerns, contractor shall not allow animals to reside inside the emergency shelter (unless prior approval is received from Program Manager). However, contractor shall be ADA compliant in the instance of a consumer with a registered indoor service animal.
- p. Contractor shall not allow smoking at the emergency shelter other than outdoors in a designated area.
- q. Contractor shall obtain an appropriate business license, Community Care License, Conditional Use Permit and/or Fire Clearance, as designated by local ordinances. All licenses and/or necessary permits shall remain current throughout the term of the agreement and will be reviewed annually or as necessary.
  - When obtaining business licenses, contractors should verify with the appropriate agency that the correct type of license is obtained for the services to be performed and for the number of consumers proposed to be served.
  - For consumer safety, fire clearances will be conducted/updated annually by an appropriate agency, at contractors’ expense, if not required annually by local ordinance.
- r. Contractor can contact a program representative via telephone or email to request assistance with and/or the possible removal of consumer(s) from the residence. Email requests shall not be made unless encryption is used. Information regarding consumers is protected and, therefore, return responses from the programs cannot be disclosed or addressed through email correspondence.
- s. In the event that the consumer leaves without notice or does not return to retrieve their personal belongings, the Contractor shall notify the program immediately and will be responsible for storing consumer belongings, including prescription drugs, for thirty (30) days after the consumer has been discharged or removed from the site. The Contractor can request assistance from program staff with the storage or disposal of personal belongings.
- t. Contractor shall have house rules posted and copies made available to each consumer upon admission and request.
- u. Contractor shall have an Emergency Disaster Plan (LIC 610D) posted in the home next to the telephone along with an attached Earthquake Preparedness Checklist (LIC 9148). These forms can be located and printed at: [www.ca.gov](http://www.ca.gov).

Posted list of contacts must include, but is not limited to:

- Fire/Paramedics

- Police/Sheriff
  - Hospital
  - Adult Protective Services
  - Access Unit
  - Child Protective Services
  - Poison Control
  - Program Specific Hotline Numbers
  - DBH Community Crisis Response Team (CCRT)
- v. Contractor shall have a Home Evacuation Plan mapped, posted and provided to all consumers upon arrival. Contractor is to execute periodic evacuation drills with consumers.
- w. Contractor shall have consumer Grievance Procedures posted for consumer use.
- x. Contractor shall give DBH and Probation staff 24/7 access to consumers and facility for the purpose of evaluation regarding meeting consumer and program needs and unannounced inspections.
- y. All Contractors will be required to attend mandatory scheduled contractor meetings; an agency representative from each facility must attend. Failure to attend may result in the agency's removal from the Emergency Shelter Contractor List. The date, location and time will be provided in advance of each meeting.
- z. Emergency shelter inspections will be performed at random intervals by DBH staff. If there are any deficiencies found in service provision or physical plant, per the agreement, the contractor will be given an opportunity with an appropriate amount of time to correct such deficiencies. The DBH Program Manager or designee has the discretion to remove consumers temporarily from the residence until deficiencies that address safety are resolved. If contractor fails to make necessary corrections, the DBH Program Manager or designee, at his/her discretion, may authorize the removal of all consumers, if not already removed, and the agreement may be terminated.
- aa. Contractors who are found to be in gross violation of contractual guidelines, policies or procedures, that compromise the safety or well-being of DBH consumers as outlined in this agreement and as identified by DBH staff will be placed on the Contractor "Do Not Use List." For ongoing violations that do not compromise the safety or well-being of DBH consumers, contractors may be placed on the "No New Referrals List" until identified deficiencies are corrected by the contractor and approved by DBH.
- bb. In instances where DBH staff identify an infestation of pests or vermin (e.g., cockroaches, bed bugs and mice), the Contractor will be required to obtain professional extermination services. DBH staff will determine if routine professional preventive pest maintenance is required.
- cc. Only two (2) consumers may be placed in a bedroom (except TAY), unless prior approval is given by DBH Program Manager or designee. However, **no more than two (2)** Criminal Justice-Involved consumers shall be placed in a bedroom at any time.
- dd. Minor children shall not be allowed on-site at any time (except TAY).

- ee. Contractor shall not house known felony offenders (on probation and/or parole) with DBH Criminal Justice-Involved consumers.
- ff. Perimeter fencing is required for all back yards. At least one latched gate, prohibiting outside entrance onto the property is required. Gates should be operable and in good working order. For consumer safety and in the event of an emergency, gates shall remain unlocked at all times.
- gg. If at any time it becomes necessary for the Contractor to change the emergency shelter location due to a physical plant concern (e.g., mold or loss of lease) or a natural disaster outside the Contractor's control (e.g., earthquake, fire or flood), the Contractor will notify the Program Manager immediately and if a replacement site is identified by the Contractor, the site shall require DBH approval prior to resuming services.
- hh. If a Contractor requests to change their population group for a respective site, the Contractor will notify the DBH Contracts Department via a written request. Requests will be evaluated and reviewed by the Program Manager and a decision will be mailed to the Contractor.
- ii. If DBH identifies a need for additional emergency shelter beds in a specific region of the County, for a specific priority population(s), DBH will reach out to the Contractor and that Contractor will be given the option to add additional shelter locations during the term of this contract. These additional sites will require a DBH site visit, shelter required documentation, and an amended contract to be issued to the Contractor prior to approval and referral of DBH consumers.
- jj. If a Contractor requests to close a location or cease business with DBH per Duration and Termination Article of this contract, the Contractor must notify DBH at least 30 days prior to the closing of the site to allow for the relocation of DBH consumers.
- kk. Contractor shall use a consumer sign-in/out log on a daily basis. Sign-in/out sheets will be stored by the Contractor in a binder and made available to all program staff upon request.
- ll. Contractor shall complete all necessary forms, as requested, including but not limited to:
  - 1) Claim for Reimbursement
  - 2) Referral Voucher
  - 3) Reimbursement Form
  - 4) Contractors Request for House Manager Review, Clearance and PM Approval

**Approved forms will be provided by DBH Program staff as appropriate.**

**4. Pregnant and/or Mothering TAY Requirements:**

- a. Contractor is not responsible for providing food for infants or toddlers; Mothers will provide food for infants/toddlers.
- b. Contractor must have appropriate bedding/furniture for infants/toddlers; this would include cribs and/or smaller beds/bedding and high-chairs for meals.
- c. Contractor shall take all home precautions to ensure the safety of infants/toddlers. This includes, but is not limited to, child locks on cabinets, review of "items within reach", furniture secured properly, gates for stair access on upper and lower floors, window shade/curtain ties, bathroom safety, kitchen safety, etc.
- d. Any outdoor play areas shall be fenced properly.

- e. House Manager shall be currently certified in infant/child CPR and First Aid; this certification must be maintained throughout agreement period and shall be submitted to DBH Program Manager on an annual basis.
- f. If the emergency shelter has any bodies of water on the property, which includes, but is not limited to, pools, spas, fish ponds, etc., the area must have appropriate fencing of at least 5 feet in height with a self-latching gate that opens away from the pool or body of water. If using a cover, it must support the weight of a full grown adult and shall be kept covered **and** locked when not in use.
- g. Due to a high instance of injury, baby walkers, bouncers, jumpers and similar items shall **NOT** be used for children in care and must be kept inaccessible.

5. **Emergency Shelter/House Manager Requirements**

- a. All emergency shelters must have an **on-site** House Manager who is approved by DBH. If they live on-site they must have separate sleeping quarters (unless other arrangements are approved by DBH prior to manager placement.) The House Manager or an approved designated Back-up House Manager must be on the premises between the hours of 3 p.m. to 8 a.m. when consumers are present. If the House Manager or the assigned Back-up House Manager is off-site during these hours for any reason, s/he must be able to report to the facility within fifteen (15) minutes. Note: At the discretion of the DBH Program Manager or designee, more than one (1) House Manager may be required on site to ensure adequate monitoring and safety of consumers.
- b. All House Managers and Back-up House Managers must have a DOJ clearance. The House Manager must have no previous convictions with any correlation to that position, which may cause risk to consumers. Contractors are required to have at least one (1) approved Back-up House Manager and no more than five (5) approved Back-up House Managers listed per each emergency shelter site. Contractors may utilize each other's approved Back-up House Managers on a temporary basis when they do not have one available. Final determination for this requirement will be made by the DBH Emergency Shelter Program Manager or the Deputy Director, if necessary.
- c. House Managers shall not have any friends or family members visiting or residing in the emergency shelter, either on a temporary or permanent basis, at any time, **unless they are functioning as an approved Back-up House Manager.**
- d. House Manager shall not possess alcohol, marijuana or illegal substances on the emergency shelter premises at any time.
- e. The owner of the emergency shelter agrees to have the House Managers' room searched by Probation Department staff in the presence of the House Manager during routine Probation Department visits.
- f. At no time will the Emergency Shelter Owner, House Manager or facility employees request that DBH consumers "fund-raise", "pan-handle" or otherwise request donations, public or private, or payment of any kind on behalf of the emergency shelter.
- g. Consumers may not be employed by the Emergency Shelter Owner, House Manager or facility as long as they are a resident.



- h. House Manager and Back-up House Managers shall be familiar and well oriented to the contract for emergency shelter services. In addition, House Manager and Back-up House Managers shall be familiar and well versed with their respective Contractor's house rules.
- i. House Manager shall have knowledge and ability to handle the oversight of general operation of the emergency shelter, including, but not limited to, housekeeping, meal preparation, assisting consumers with activities of daily living (e.g., hygiene, bed-making and keeping doctor/therapy/case management/ court appointments), and assigning and overseeing chores of consumers. No consumer can be placed in the temporary position of House Manager while the House Manager is away from the facility. The emergency shelter shall be appropriately staffed at all times.
- j. House Manager, and all who handle food are required to have a valid San Bernardino County food handler card approved by the San Bernardino County Department of Public Health prior to providing services.  
  
Information regarding food handler training and testing can be accessed online at: [http://www.sbcounty.gov/dph/dehs/Depts/EnvironmentalHealth/FIRST/food\\_worker\\_training.aspx](http://www.sbcounty.gov/dph/dehs/Depts/EnvironmentalHealth/FIRST/food_worker_training.aspx) or by calling the San Bernardino County Department of Public Health at (800) 442-2283.
- k. If at any time during the agreement period it becomes necessary to change House Managers, the Contractor shall notify the appropriate Program Manager or designee within 24 hours of change. Replacement must have DOJ clearance before being allowed on premises.
- l. House Manager will be required to enforce any restrictions imposed on the consumer by DBH program staff and/or Probation. This includes notifying the appropriate program staff of any absences from the facility without authorization and when a consumer placed on any restrictions has violated that restriction.

6. **Notice of Unusual Occurrences or Incident/Injury Reports**

Any unusual incident(s) or event(s) that occur while providing emergency shelter services under this Contract, which may result in reputational harm to either the Contractor or the County, shall be reported as follows:

- a. If the incident occurs within normal business hours, Contractor shall notify the appropriate DBH Program Manager or designee immediately by contacting the Program business telephone number provided.
- b. If the incident occurs outside of normal business hours, Contractor shall contact the ACCESS Unit immediately and the Program Manager the beginning of the next business day. This shall include contacting the Program when a consumer has not returned to the designated home by curfew. Additionally, a follow-up phone call shall be made to the Program if the consumer returns to the home.
- c. If the event involves an attempted suicide or death of a consumer, the appropriate DBH program must be notified immediately either through the program business line or hotline number, or the ACCESS number if a hotline number is not available.
- d. Contractor shall submit a written report to the DBH Program Manager within three (3) business days following the occurrence on a DBH Unusual Occurrence/Incident Report form or on the Contractor's own DBH approved form. The written report shall be submitted by hand or faxed

to the program facility. Reports shall not be submitted via email unless encryption is used. Appropriate form(s) will be provided to Contractors.

- e. If Contractor is required to report occurrences, incidents or injuries as part of licensing requirements, Contractor shall provide DBH with a copy of the report submitted to the applicable State agency. Written reports shall not be made via email unless encryption is used.

## 7. **Department of Justice Clearance**

Prior to employment, all potential House Managers shall submit fingerprints to the California Department of Justice (DOJ) for a criminal record review. Contractor(s) shall obtain from the DOJ records of all convictions involving any sex crimes, drug crimes, or crimes of violence for House Managers and any adult residing in Emergency Shelter Services residence responsible for oversight of the daily activities of the home. DBH must receive and approve the Emergency Shelter Services Contractors Request for House Manager Review, Clearance and PM Approval Form..

There are over 40 locations in San Bernardino County to obtain the Live Scan / DOJ Clearance. Any required fees for this service are the responsibility of the Contractor. Locations can be found by accessing the following link: <http://ag.ca.gov/fingerprints/publications/contact.php>.

**The Contractors Request for House Manager Review, Clearance and PM Approval Form must be sent to the DBH Program Manager, by Contractor, prior to any services being performed:**

Based on the DOJ transcripts results, the Contractors Request for House Manager Review, Clearance and PM Approval Form must be submitted to the Program Manager for the purpose of obtaining a criminal record clearance from DBH. If the Contractors Request for House Manager Review, Clearance and PM Approval Form or attachments indicate a conviction for any crime other than a minor traffic violation, an exemption is required and must be granted by DBH. DBH will notify the individual and emergency shelter owner if there is need for an exemption. In assessing for an exemption, the Department will consider convincing evidence that the individual has been rehabilitated and is currently of good moral character by considering the following items:

- a. Nature of the crime
- b. Length of time since last conviction and number of convictions
- c. Circumstances surrounding the commission of the crime
- d. Activities since commission of the crime that demonstrate the behavior has changed
- e. Two character references
- f. Certificate of rehabilitation
- g. Written statement/explanation from the individual of the conviction and circumstances surrounding the arrest.

No exemptions shall be provided from the Department for the following crimes:

- a. Gang related activity PC186.22/186.1
- b. Murder/attempted murder PC 664/187
- c. Mayhem PC 203

- d. Torture PC 206
- e. Kidnapping PC 207-9-9-10
- f. Robbery PC 211
- g. Carjacking PC 215
- h. Assault with intent to commit mayhem, rape, sodomy PC 220
- i. Sexual battery PC 243.4
- j. Rape PC 261 and 262(a) and 264.1
- k. Enticing a minor into prostitution PC 266
- l. Induce sexual intercourse by fear PC 266 (c)
- m. Pimping a minor PC 266 (h) (b)
- n. Pandering a minor PC 266 (i) (b)
- o. Lewd lascivious acts with minor PC 266 (j)
- p. Contributing to the delinquency of a minor PC 272
- q. Child endangerment PC 273 (a)(1)
- r. Corporal punishment on a child PC 273 (d)
- s. Oral copulation PC 288 (a)
- t. Distributing lewd material to a minor PC 288.2
- u. Continuous sexual abuse of a minor PC 288.5 (a)
- v. Anal penetration PC 289
- w. All crimes requiring registration as a sex offender PC 290 (a)
- x. Child pornography PC 311.2 (b) (c) (d), 311.4, 311.10
- y. Obscene exposure PC 314 (1) (a)
- z. Poisoning or altering food, drink, meds PC 347 (a)
- aa. Elder/dependent abuse PC 368 (b) (c)
- bb. Exhibiting a firearm PC 417 (b)
- cc. Arson PC 451 (a) (b)
- dd. First degree burglary PC 460 (a)
- ee. Gang extortion PC 786.22/518
- ff. Child molestation PC 647.6
- gg. Solicit rape of another PC 653 (f) (c)

Findings of the DBH background clearance review will be sent in writing to the individual and the emergency shelter owner.

## **C. REQUIRED LINKAGE WITH COUNTY SYSTEM**

Contractor will be expected to work cooperatively with the San Bernardino County DBH Program staff. Contractor will maintain close communication with the existing San Bernardino County referral system in the coordination of consumer placement so that emergency shelter services can be accessed in a timely manner.

1. **Facilities**

- a. Emergency shelter settings shall be as close to a normal home environment as possible without sacrificing consumer safety or care.
- b. Emergency shelter settings shall have the appearance of a non-institutional setting; exteriors shall be aesthetically pleasing.
- c. Mentally ill individuals, where possible, should be in separate facilities, and not part of one large facility attempting to serve an entire range of consumers. Individuals who have a history of violence shall not be housed with mentally ill consumers.
- d. In order to meet the clinical needs of the target population, several facilities may be designated as either male or female only.

2. **Services**

- a. Emergency Shelter services are encouraged to exist in every geographic area to the extent resources are available for consumers in the target population categories.
- b. Services to the target population shall be delivered county-wide to ensure access by members of the target populations.
- c. Automotive Insurance  
While automotive insurance language is noted in the Indemnification and Insurance Article, Paragraph K Insurance Specifications, sub-section 3 of this agreement, DBH is suspending the requirement for Automobile Insurance for Emergency Shelter Services Contractors since Contractors are not allowed to transport DBH consumers at any time. If at a future date the requirement for transportation changes, Contractors will be notified of appropriate steps.

3. **Coordination**

- a. Contractor shall allow DBH Program staff 24/7 access to the facility.
- b. Contractor shall notify the DBH Program contact immediately following the departure, for any reason, of a consumer who was referred to that facility by DBH.
- c. Contractor shall cooperate with the DBH Program staff in all matters related to the monitoring of this program.
- d. Placements into Emergency Shelter will take place as necessary, which will be determined by DBH staff.

4. **Consumer Admission Criteria (as determined by DBH Program Manager)**

Contractor shall collaborate with DBH regarding appropriateness of admission and discharge of consumers. DBH will determine the length of stay for consumers, and has sole authority to relocate a consumer if it deems necessary to better meet consumer needs.

- a. Consumers who have a qualifying mental health condition and have no income.

- b. Consumers who are linked to a DBH/Contract program and are willing to participate in treatment.
- c. Consumers must be able to provide for their own personal care, including taking any prescribed medications.
- d. Consumers who need convalescent or nursing care will not be admitted to emergency shelters.
- e. Consumers must not display any acts of violence or intentions to harm self or others within the month prior to admission.
- f. Consumers who have a substance abuse diagnosis only will not be admitted to the program. Contractor is not authorized to perform or obtain drug screen tests of the consumer.
- g. Contractor shall develop, in writing, a consumer admission policy and make it available to the public, upon their request.

5. **Consumer Exit Criteria (as determined by DBH Program Manager)**

- a. Consumers may stay no longer than 6 months in Emergency Shelter.
  - This does not pertain to consumers in “bridge housing”
  - DBH program staff can request an extension for an additional month with their Program Manager II approval.
  - DBH program staff must have a housing plan for consumer for any additional extensions.
- b. When alternative housing is acquired by the consumer.
- c. Any violations of prohibitions against violence, substance use, stealing, or negative interactions with other emergency shelter consumer.
- d. Upon the receipt of alternate funds, such as SSI benefits or employment.
  - Consumer may be granted one additional month, at the discretion of the DBH program staff in order to save money toward moving costs.
  - Consumer will be exited from the Emergency Shelter Voucher at the end of the month.
  - Consumer may make arrangements with Contractor to stay and pay on their own.
  - Consumers may not make “partial payment” and DBH make “partial payment” of bed.
- e. Consumers who need inpatient treatment, or those who display behavior which require a higher level of placement services, will be assisted by DBH Program staff to move to another facility.

**Emergency Shelter Referral Voucher Procedure**

1. DBH program staff will contact DBH Shelter Coordinator to determine if consumer is eligible for placement
2. DBH Shelter Coordinator will complete the Emergency Shelter Referral Voucher (Voucher) and email it to the placing DBH program staff.
3. DBH program staff will print the Voucher and give it to the receiving shelter staff upon consumer arrival. This Voucher will authorize placement from the starting date until the consumer leaves.
4. A copy of the Voucher will be uploaded into the consumer's electronic health record and a copy will be kept with DBH Shelter Coordinator.
5. At any point during month, if the consumer leaves the emergency shelter, the Contractor is to contact DBH Shelter Coordinator to inform them of the last night consumer was onsite.
6. DBH Shelter Coordinator will enter the Date of Last Shelter Night Authorized on the Voucher on file and send a copy to the Contractor.
7. The first day of the following month, the Contractor shall submit any Vouchers of terminated consumers along with the Emergency Shelter Monthly Summary – Claim for Reimbursement and the Emergency Shelter Reimbursement Form. The Vouchers should be signed by the Contractor, certifying that the placement was terminated on the date stated.
8. Form Descriptions:
  - a. **Emergency Shelter Referral Voucher** – This authorizes the placement of the consumer. The authorization remains active until the DBH program staff terminate placement.
  - b. **Emergency Shelter Reimbursement Form** – This is completed based on the consumers stay for the month. Please use only one form for each program. For example, do not put HOST and CHOICE clients on the same Reimbursement Form. You can put multiple clients on the same form as long as the clients are from the same program. Please leave designated DBH spaces blank, such as the DBH Signature lines or DBH Cost Center line.
  - c. **Emergency Shelter Monthly Summary – Claim for Reimbursement** – This is completed based on the total consumer nights and total monthly amount you are claiming based on the completed Emergency Shelter Reimbursement Form. Remember to check the appropriate program box.
9. Your completed packet should be sent to the DBH Shelter Coordinator for the program you are billing for payment. If you are unsure who the form should be sent to, please reach out to the Program Manager for DBH Homeless and Supportive Services for assistance.
10. Reimbursement for providing emergency shelter services can take up to 60 days after the **correct and complete** packet is submitted for payment. If it has been at least 60 days since you turned in your completed packet, you can call the Program Manager for payment status. Emergency Shelter contractors are expected to continue to provide all necessary emergency shelter services while awaiting payment for past services.

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

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 Printed name of authorized official

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 Signature of authorized official

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 Date

## BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, **Name of Business Associate**, 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 **[Insert Department Name]**, 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:

5. 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.
6. 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.
7. 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.
8. 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**

**Entity**

\_\_\_\_\_  
**Signature**

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**Signature**

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