



Contract Number

15-320 A-3

SAP Number

4400002640

Behavioral Health

Department Contract Representative	Sandra Becerra
Telephone Number	(909) 388-0856
Contractor	Mental Health Systems, Inc.
Contractor Representative	Melanie Carreon
Telephone Number	(909) 872-0223
Contract Term	July 1, 2015 – December 31, 2020
Original Contract Amount	\$2,222,000
Amendment Amount	\$697,500
Total Contract Amount	\$2,919,500
Cost Center	1018521000

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH:

WHEREAS, the County desires to purchase and Contractor desires to provide **Substance Use Disorder and Recovery Services Community-Based Recovery Service Center** services, and,

WHEREAS, this Agreement is authorized by law,

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

IN THAT CERTAIN **Contract No. 15-320** by and between the County of San Bernardino, a political subdivision of the State of California, and Contractor for, Substance Use Disorder and Recovery Services Community-Based Recovery Service Center services, which Contract first became effective July 1, 2015, the following changes are hereby made and agreed to, effective November 5, 2019:

- I. ARTICLE III Performance, paragraphs D.1. and 2., G.1.e., H., J., and Q. are hereby amended to read as follows:
 - D. Right to Monitor and Audit Performance and Records
 1. Right to Monitor

County or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, financial records, staff information, patient records other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Full cooperation shall be given by Contractor in any auditing or monitoring conducted, according to this agreement and per 42 C.F.R. § 2.53 Audit and Evaluation.

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

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

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

2. Availability of Records

Contractor and subcontractors, shall retain, all records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract, including beneficiary grievance and appeal records as indicated in 42 Code of Federal Regulations (CFR) section 438.416, and the data, information and documentation specified in 42 CFR sections 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten (10) years from the term end date of this Contract or until such time as the matter under audit or investigation has been resolved. Records and documents include, but are not limited to all physical and electronic records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract including working papers, reports, financial records and documents of account, beneficiary records,

prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries.

Contractor shall maintain all records and management books pertaining to local service delivery and demonstrate accountability for contract performance and maintain all fiscal, statistical, and management books and records pertaining to the program. Contractor shall ensure and oversee the existence of reasonable internal control over fiscal records and financial reporting.

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

Contractor shall permit DBH and the State access and inspection of electronic or print books and records, access to physical facilities, and access and ability to interview employees. Failure to permit access for inspection and/or ability to interview is a breach of this Contract and sufficient basis to terminate for cause or default.

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

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

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

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

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

In the event the Contract is terminated, ends its designated term or the Contractor ceases operation of its business, Contractor shall deliver or make available to DBH all financial records that may have been accumulated by Contractor or Subcontractor under this Contract, whether completed, partially completed or in progress within seven (7) calendar days of said termination/end date.

G. Cultural Competency

1. Cultural and Linguistic Competency

- e. 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. Staff who do not have direct contact providing services to clients/consumers shall complete a minimum of two (2) hours of cultural competency training, and direct service clinical staff shall complete a minimum of four (4) hours of cultural competency training each calendar year. Contractor shall upon request from the County, provide information and/or reports as to whether its provider staff completed cultural competency training.
 - iv. Interpreter training for DBH and Contractor personnel, when available.
 - v. Technical assistance for the Contractor in translating mental health and substance use disorder services information to DBH's threshold language (Spanish). Technical assistance will consist of final review and field testing of all translated materials as needed.
 - vi. Monitoring activities administered by DBH to demonstrate documented capacity to offer services in threshold language or contracted interpretation and translation.
 - vii. Contractor's written organizational procedures must be in place to determine multilingual and competency level(s).
 - viii. The Office of Cultural Competence and Ethnic Services (OCCES) may be contacted for technical assistance and training offerings at cultural_competency@dbh.sbcounty.gov or by phone at (909) 386-8223

H. Access by Public Transportation

Contractor shall ensure that services provided are accessible by transportation.

J. Disaster Response

1. In the event that a local, State, or Federal emergency is proclaimed within San Bernardino County, Contractor shall cooperate with the County in the implementation of the DBH Disaster Response Plan. This may include deployment of Contractor staff to provide services in the community, in and around county areas under mutual aid contracts, in shelters and/or other designated areas.
2. Contractor shall provide the DBH Disaster Coordinator with a roster of key administrative and response personnel including after-hours phone numbers, pagers, and/or cell phone numbers to be used in the event of a regional emergency or local disaster. These

numbers will be kept current by quarterly reports to the County by Contractor. The County shall keep such information confidential and not release other than to authorized County personnel or as otherwise required by law.

3. Contractor shall ensure that, within three months from the Contract effective date, at least twenty-five percent (25%) of Contractor's permanent direct service staff participates in a disaster response orientation and training provided by the County or County's designee.
4. Said twenty-five percent (25%) of designated Contractor permanent direct service staff shall complete the following disaster trainings as prerequisites to the DBH-live trainings held annually, which are available online on the Federal Emergency Management Agency (FEMA) website at <https://training.fema.gov/is/crslist.aspx>:
 - a. IS: 100
 - b. IS: 200
 - c. IS: 700
 - d. IS: 800
5. The County agrees to reimburse Contractor for all necessary and reasonable expenses incurred as a result of participating in the County's disaster response at the request of County. Any reasonable and allowable expenses above the Contract maximum will be subject to negotiations.
6. Contractor shall provide DBH with the key administrative and response personnel including after-hours phone numbers, pagers, and/or cell phone numbers to be used in the event of a regional emergency or local disaster. Updated reports are due fourteen (14) days after the close of each quarter. Please send updated reports to:

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

- Q. All services performed by the Contractor, regardless of funding, shall be entered into the County's billing and transactional database system no later than the seventh (7th) day of the following month. Reports will be run by DBH Fiscal after this date and the reports will be used for payment of services.

II. ARTICLE IV Funding, paragraphs E. and K. are hereby amended to read as follows:

- E. County will take into consideration requests for changes to Contract funding, within the existing contracted amount. All requests must be submitted in writing by Contractor to DBH Fiscal no later than March 01 for the operative fiscal year.
- K. Initial Contract amount of \$2,222,000 has been amended to reflect an increase in the amount of \$697,500 (\$465,000 for FY 2019/20 and \$232,500 for FY2020/21) resulting in the revised total contract amount of \$2,919,500 for the contract term. Schedules A & B for FY 2019/20 will be

submitted to and approved by the Director or designee at a later date. All previous approved schedules remain in effect.

III. ARTICLE V Payment, paragraphs A through P are hereby amended to read as follows:

- A. RECOVERY CENTER PAYMENT – During the term of this Agreement, the County shall pay Contractor in arrears for eligible service provided under this Agreement and in accordance with the terms. County payment to Contractor for performance of eligible services hereunder are cost reimbursement until completion of all settlement activities.
- B. RECOVERY SERVICES PAYMENT
 - 1. Payment for any mode of service covered hereunder, shall be limited to a maximum monthly amount, which amount shall be determined by County:
 - a. Approved interim rate or lower of net actual costs for eligible service identified by County;
 - b. Subsequent adjustments based on approval of services due to client eligibility; and/or
 - c. One-twelfth (1/12) of the maximum combined County allocations for the mode of service unless there have been payments of less than one-twelfth (1/12) of such amount for any prior month of the Agreement.
 - 2. After fiscal review and approval of the billing or invoice, County shall pay Contractor, subject to the limitations and conditions specified in this Agreement, in accordance with the following:
 - a. Reimbursement for SUD services claimed and billed through the DBH claims processing information system will utilize interim rates to be settled based on a Cost Reimbursement methodology under this Agreement.
 - b. County will provide Contractor a year-to date Medi-Cal denied claims report on a monthly basis. It is the responsibility of Contractor to make any necessary corrections to the denied services and notify the County. The County will resubmit the corrected services to DHCS for adjudication.
 - c. In the event that the denied claims cannot be corrected, and therefore the State DHCS will not approve the denied claims, the County may recover the paid funds from Contractor's current invoice payment.
- C. Contractor shall bill the County monthly in arrears for County 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. Contractor shall submit the organizations' general ledger with each monthly claim. Claims for Reimbursement shall be completed and forwarded to DBH within ten (10) 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.
- D. Where applicable, County adjustment to payments to Contractor will be based upon State adjudication of Medi-Cal claims, contractual limitations of this Agreement, annual cost report,

- application of various County, State and/or Federal reimbursement limitations, and/or County, State or Federal audits, all of which take precedence over monthly claim for reimbursement.
- E. In order for the County to properly report accurate expenditures to the State at the end of the fiscal year, Contractor must have the final Claim for Reimbursement Report to the County within 30 (thirty) days following the end of the fiscal year
 - F. Where applicable, Contractor shall make its best effort to ensure that the proposed Interim reimbursement rates do not exceed the Contractor's actual cost.
 - G. Reportable revenues are fees paid by persons receiving services or fees paid on behalf of such persons by the Federal Government, by the California, Medical Assistance Program (set for the commencing with Section 14000 of the Welfare and Institutions Code) and by other public or private sources.
 - H. Total revenue collected pursuant to this Agreement from fees collected for services rendered and/or claims for reimbursement from the County shall not exceed the cost of services delivered by the Contractor. In no instance will the Contractor be reimbursed more than the actual net cost of delivering services under this Contract.
 - I. Contractor shall input Charge Data Invoices (CDI's) into the County's billing and transactional database system by the seventh (7th) day of the month for the previous month's services. Contractor will be paid based on Drug Medi-Cal claimed services in the County's billing and transactional database system for the previous month. Services cannot be billed by the County to the State until they are input into the County's billing and transactional database system.
 - 1. In order to properly reimburse Contractor for eligible monthly services, service data entry must be entered in the month of service. Failure to enter current data may result in delay of payment or non-payment.
 - J. Contractor shall accept all payments from the 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 the County required to process EFT payments.
 - K. When applicable, 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
 - L. Contractor agrees that no part of any federal funds provided under this Contract shall be used to pay the salary of an individual per fiscal year at a rate in excess of Level 1 of the Executive Schedule at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/18Tables/exec/html/EX.aspx> (U.S. Office of Personnel Management).
 - M. 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.

N. Contractor shall have a written policy and procedures which outline the allocation of direct and indirect costs. These policies and procedures should follow the guidelines set forth in the Uniform Grant Guidance, Cost Principles and Audit Requirements for Federal Awards. Calculation of allocation rates must be based on actual data (total direct cost, labor costs, labor hours, etc.) from current fiscal year. If current data is not available, the most recent data may be used. Contractor shall acquire actual data necessary for indirect costs allocation purpose. Estimated costs must be reconciled to actual cost and contractor must notify DBH in writing if the indirect cost rate changes.

O. As applicable, for Federal Funded Program, Contractor shall charge the County program a de Minimis ten percent (10%) of the Modified Total Direct Cost (MTDC) as indirect cost unless Contractor has obtained a "Negotiated Indirect Cost Rates Agreement" from a cognizant agency responsible for negotiating and approving indirect cost rate for non-profit organizations on behalf of all Federal agencies

For non-Federal funded programs, the County will take into consideration the program requirements and contractor's documented Indirect Cost-Rate as applicable

The total cost of the program must be composed of the total allowable direct cost and allocable indirect cost less applicable credits. Cost must be consistently charged as either indirect or direct costs but, may not be double charged or inconsistently charged as both, reference Title II Code of Federal Regulations (CFR) §200.414 indirect costs. All cost must be based on actual instead of estimated costs.

P. Contractor shall not request additional payments and acknowledges payment for services covered under this contract can only be made to the Contractor, no other network provider or agency.

IV. ARTICLE VII Electronic Signatures is hereby amended to read as follows:

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 the DBH Office of Compliance (Compliance) along with the E-Signature Checklist and requested policies to the Compliance general email inbox at compliance_questions@dbh.sbcounty.gov
2. Compliance will review the request and forward the submitted checklist and policies to the DBH Information Technology (IT) for review. This review period will be based on the completeness of the material submitted.
3. Contractor will receive a formal letter with tentative approval and the E-Signature Agreement. Contractor shall obtain all signatures for staff participating in E-Signature and submit the Agreement with signatures, as directed in the formal letter.
4. Once final, the DBH Compliance will send a second formal letter with the DBH Director's approval and a copy of fully executed E-Signature Agreement will be sent to the Contractor.
5. DBH reserves the right to change or update the e-signature requirements as the governing State Agenc(ies) modifies requirements.

6. DBH reserves the right to terminate e-signature authorization at will and/or should the contract agency fail to uphold the requirements.
 - 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.
- V. ARTICLE IX Fiscal Award Monitoring, paragraphs B and C are hereby amended to read as follows:
- B. Contractor agrees to furnish duly authorized representatives from the County and the State access to patient/client records, in accordance with 42 CFR §2.53, 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 ensure County or State representative signs an Oath of Confidentiality/confidentiality statement when requesting access to any patient records. Contractor will retain said statement for its records.
- VI. ARTICLE XIX Personnel, paragraph A is hereby amended to read as follows:
- A. Contractor shall furnish such qualified professional personnel prescribed by Title 9 of the California Code of Regulations as are required for the types of services Contractor shall perform, which services are described in such Addenda as may be attached hereto and/or in all memos, letters, or instruction given by the Director and/or Program Manager II or designee in the provision of any and all Substance Use Disorder programs. This includes any counselor or registrant providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in a DHCS licensed or certified program. Contractor shall ensure requirements set forth in DHCS' Certification Standards, including Personnel Practices, are followed.
- VII. ARTICLE XXI Licensing, Certification and Accreditation, paragraph E. is amended to read as follows:
- E. 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 as set forth in Executive Order 12549; Social Security Act, 42 U.S. Code, Section 1128 and 1320 a-7; Title 42 CFR, Parts 1001 and 1002, et al; and Welfare and Institutions Code, Section 14043.6 and 14123.
 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, and physicians 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 of contract start date and then no less than once a month thereafter.

- a. SAM can be accessed at <http://www.sam.gov/portal/SAM/#1>
 - b. LEIE can be accessed at <http://oig.hhs.gov/exclusions/index.asp>
3. If the Contractor receives Drug 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://files.medi-cal.ca.gov/pubsdoco/sandilanding.asp>
4. Contractor shall certify or attest that no staff member, officer, director, partner or principal, or sub-contractor is “excluded” or “suspended” from any federal health care program, federally funded contract, state health care program or state funded contract. This certification shall be documented by completing the Attestation Regarding Ineligible/Excluded Persons (**ATTACHMENT II**) at time of the initial contract execution and annually thereafter. Contractor shall not certify or attest any excluded person working/contracting for its agency and acknowledges that the County shall not pay the Contractor for any excluded person. The Attestation Regarding Ineligible/Excluded Persons shall be submitted to the following program and address:
- DBH Office of Compliance
303 East Vanderbilt Way
San Bernardino, CA 92415-0026
- Or send via email to: Compliance_Questions@dbh.sbcounty.gov
5. Contractor acknowledges that Ineligible Persons are precluded from employment and from providing Federal and State funded health care services by contract with the County.
 6. Contractor shall have a policy regarding prohibition of employment of sanctioned or excluded employees that includes the requirement for employees to notify the Contractor should the employee become sanctioned or excluded by the OIG, General Services Administration (GSA), and/or the DHCS.
 7. Contractor acknowledges any payment received for an excluded person may be subject to recovery and/or considered an overpayment by DBH/DHCS and/or be the basis for other sanctions by DHCS.
 8. Contractor shall immediately notify DBH should an employee become sanctioned or excluded by the OIG, GSA, and/or the DHCS.
 9. If a contractor subcontracts or employs an excluded party, DBH has the right to withhold

payments, disallow costs, or issue a CAP, as appropriate pursuant to HSC Code 11817.8(h).

VIII. ARTICLE XXIII Administrative Procedures, paragraph V.1. is hereby amended to read as follows:

V. SUDRS Information and Guidelines

1. Contractor agrees to adhere to all memos, letters, or instruction given by the Director, Deputy Director, Program Manager II or designee(s) in the provision of any and all Substance Use Disorder programs. Contractor acknowledges full understanding of the provisions referenced in any memos, letters, or instruction given and agrees to operate the respective substance use disorder programs in accordance with the provisions of such information and the provisions of this Contract. At the option of the County, changes may be made during the Contract period. Such changes, when made, will be binding on the Contractor.

IX. ARTICLE XXIV Laws and Regulations, paragraph E. is hereby amended, and paragraphs F.2.l. and F.2.m. are hereby added to read as follows:

E. Privacy and Security

1. Contractor shall comply with all applicable State and Federal regulations pertaining to privacy and security of client information including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH), as incorporated in the American Recovery and Reinvestment Act of 2009 (ARRA), and Code of Federal Regulations, Title 42, Part 2. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) and/or Protected Health Information (PHI) or electronic Protected Health Information (ePHI).
2. In addition to the aforementioned protection of IIHI, PHI and e-PHI, the County requires Contractor to adhere to the protection of personally identifiable information (PII) and Medi-Cal PII, and in accordance to 42 C.F.R. §2.13 Confidentiality Restrictions and Safeguards and HIPAA Privacy and Security rules. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining or verifying eligibility that can be used alone or in conjunction with any other information to identify an individual.
3. Disclosure of PHI, including acknowledgement of participation or referral to/from Part 2 services is prohibited unless a valid client authorization (also referred to as "consent" of disclosure) per 42 CFR §2.31. Contractor shall ensure disclosure without client authorization/consent occurs only for medical emergencies, research, and/or audit and evaluation, as specified under 42 CFR §2.51, §2.52, §2.53, respectively.
4. Contractor shall comply with 42 C.F.R. §2.13 Confidentiality Restrictions and Safeguards and §2.16 Security for Records and the HIPAA Privacy and Security Rules, which includes but is not limited to implementing administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of PHI,

PII, IIHI, and e-PHI; implementing and providing a copy to DBH of reasonable and appropriate written policies and procedures to comply with the standards; conducting a risk analysis regarding the potential risks and vulnerabilities of the confidentiality, integrity and availability of PHI, PII, IIHI, and e-PHI, conducting privacy and security awareness and training at least annually and retain training records for six (6) years, and limiting access to those persons, who have a business need. Any disclosure made under 42 C.F.R. Part 2 must be limited to that information which is necessary to carry out the purpose of the disclosure.

5. Violations of privacy and security requirements as specified under 42 CFR Part 2 may be subject to criminal penalty under 42 U.S.C. 290 dd-2(f) and may be subject to fines in accordance with Title 18 of the U.S.C.
6. Contractor shall comply with the data security requirements set forth by the County as referenced in **Attachment III**.
7. Reporting of Improper Access, Use or Disclosure or Breach

Contractor shall report to DBH Office of Compliance any unauthorized use, access or disclosure of unsecured Protected Health Information or any other security incident with respect to Protected Health Information no later than one (1) business day upon the discovery of a potential breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D. Upon discovery of the potential breach, the Contractor shall complete the following actions:

- a. Provide DBH Office of Compliance with the following information to include but not limited to:
 - i. Date the potential breach occurred;
 - ii. Date the potential breach was discovered;
 - iii. Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
 - iv. Number of potentially affected patients/clients; and
 - v. Description of how the potential breach allegedly occurred.
- b. Provide an update of applicable information to the extent known at that time without reasonable delay and in no case later than three (3) calendar days of discovery of the potential breach.
- c. Provide completed risk assessment and investigation documentation to the DBH Office of Compliance within ten (10) calendar days of discovery of the potential breach with decision whether a breach has occurred, including the following information:
 - i. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - ii. The unauthorized person who used PHI or to whom it was made;

- iii. Whether the PHI was actually acquired or viewed; and
- iv. The extent to which the risk to PHI has been mitigated.
- d. Contractor is responsible for notifying the client and for any associated costs that are not reimbursable under this Contract, if a breach has occurred. Contractor must provide the client notification letter to DBH for review and approval prior to sending to the affected client(s).
- e. Make available to the County and governing State and Federal agencies in a time and manner designated by the County or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a potential breach for the purposes of audit or should the County reserve the right to conduct its own investigation and analysis.

F. Program Integrity Requirements

2. Compliance Program

- l. Contractor shall ensure all workforce members adhere to code of conduct requirements as specified under CCR Title 9 Section 9846 and 13060; DHCS Certification Standards 1320 – Program Code of Conduct; and DBH Code of Professional Conduct Policy (ADS060202).

m. 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.

X ARTICLE XXVI. Confidentiality, is amended to read as follows:

Contractor agrees to comply with confidentiality requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), commencing with Subchapter C; 42 Code of Federal Regulations Part 2; and all State and Federal statutes and regulations regarding confidentiality, including but not limited to applicable provisions of Welfare and Institutions Code Sections 5328 et. seq. and 14100.2; Section 11812 of the Health and Safety Code; and Title 22, California Code of Regulations Section 51009. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.

- A. Contractor and its employees, agents or subcontractors shall protect from unauthorized disclosure of PII or PHI concerning persons receiving services or being referred for services related to this agreement.
- B. Contractor shall have all employees acknowledge an Oath of Confidentiality mirroring that of DBH's, including confidentiality and disclosure requirements, as well as sanctions related to non-

compliance. Contractor shall have all employees sign acknowledgement of the Oath on an annual basis. Said confidentiality statements must be kept for inspection for a period of six (6) years following contract termination.

- C. Contractor shall not use or disclose PHI other than as permitted or required by law.
- D. Contractor shall provide patients with a notice of Federal confidentiality requirements, as specified under Admission Policies, Paragraph C.

XI. ARTICLE XXIX. Medical Records/Protected Health Information, paragraphs A.2. and B. are amended to read as follows:

- A. 2. The minimum legal requirement for the retention of medical records is:
 - a. For adults and emancipated minors, ten (10) years following discharge (last date of service), contract end date or completion date of any audit, whichever is later);
 - b. For unemancipated minors, a minimum of seven (7) years after they have attained the age of 18, but in no event less than ten (10) years following discharge (last date of service), contract end date or completion date of any audit, whichever is later).
 - c. County shall be informed within three (3) business days, in writing, if client medical records are defaced or destroyed prior to the expiration of the required retention period.
- B. Should patient/client records be misplaced and cannot be located after the Contractor has performed due diligence, the Contractor shall report to DBH as a possible breach of PHI in violation of HIPAA and 42 CFR Part 2. Should the County and Contractor determine the chart cannot be located, all billable services shall be disallowed/rejected.

XII. ARTICLE XXXV. Indemnification and Insurance, paragraph F. is amended to read as follows:

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.

XIII. ARTICLE XXXVI. Nondiscrimination, paragraphs A., C.2.b., and H. are hereby amended to read as follows:

A. General

Contractor agrees to serve all clients without regard to race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or

disability pursuant to the Civil Rights Act of 1964, as amended (42 U.S.C., Section 2000d), Executive Order No. 11246, September 24, 1965, as amended, Title IX of the Education Amendments of 1972, and Age Discrimination Act of 1975.

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

C. Employment and Civil Rights

2. Civil Rights Compliance

- b. Contractor shall prohibit discrimination on the basis of race, color, national origin, sex, gender identity, age, disability, or limited English proficiency (LEP) in accordance with Section 1557 of the Affordable Care Act (ACA), appropriate notices, publications, and DBH Non-Discrimination-Section 1557 of the Affordable Care Act Policy (COM0953).

H. Policy Prohibiting Discrimination, Harassment, and Retaliation

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

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

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

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

- XIV. Attachment II, Attestation Regarding Ineligible/Excluded Persons, is replaced.
- XV. Attachment III, Data Security Requirements, is replaced.
- XVI. All other terms, conditions, and covenants in the basic agreement remain in full force and effect.

--INTENTIONALLY LEFT BLANK--

COUNTY OF SAN BERNARDINO



Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

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

By _____
Deputy

Mental Health Systems, Inc.

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

By _____
(Authorized signature - sign in blue ink)

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

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

► _____
Dawn Martin, County Counsel

Date _____

Reviewed for Contract Compliance

► _____
Natalie Kessee, Contracts Manager

Date _____

Reviewed/Approved by Department

► _____
Veronica Kelley, Director

Date _____

ATTESTATION REGARDING INELIGIBLE/EXCLUDED PERSONS**Contractor Mental Health Systems, Inc. shall:**

To the extent consistent with the provisions of this Agreement, comply with regulations as set forth in Executive Order 12549; Social Security Act, 42 U.S. Code, Section 1128 and 1320 a-7; Title 42 Code of Federal Regulations (CFR), Parts 1001 and 1002, et al; and Welfare and Institutions Code, Section 14043.6 and 14123 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, and/or sub-contractors 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, and/or sub-contractors 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 healthcare program payment may be made.

 Printed name of authorized official

 Signature of authorized official

 Date

DATA SECURITY REQUIREMENTS

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

A. Personnel Controls

1. **Formal Policies and Procedures.** Policies and procedures must be in place to reasonably protect against unauthorized uses and disclosures of patient identifying information and protect against reasonably anticipated threats or hazards to the security of patient identifying information. Formal policies and procedures must address 1) paper records and 2) electronic records, as specified in 42 CFR §2.16.
2. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DBH, or access or disclose DBH Protected Health Information (PHI) or Personal Information (PI) must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
3. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
4. **Confidentiality Statement.** All persons that will be working with DBH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The Statement must be signed by the workforce member prior to accessing DBH PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DBH inspection for a period of six (6) years following termination of the Agreement.
5. **Background Check.** Before a member of the workforce may access DBH PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

B. Technical Security Controls

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

documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Application and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.

7. User IDs and Password Controls. All users must be issued a unique user name for accessing DBH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
 - a. Upper case letters (A-Z)
 - b. Lower case letters (a-z)
 - c. Arabic numerals (0-9)
 - d. Non-alphanumeric characters (special characters))
8. Data Destruction. When no longer needed, all DBH PHI or PI must be wiped using the Gutmann or U.S. Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing and in accordance with 42 C.F.R. § 2.16 Security for Records. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of DBH's Office of Information Technology.
9. System Timeout. The system providing access to DBH PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
10. Warning Banners. All systems providing access to DBH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
11. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DBH PHI or PI, or which alters DBH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DBH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.
12. Access Controls. The system providing access to DBH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
13. Transmission Encryption. All data transmissions of DBH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing DBH PHI can be encrypted. This requirement pertains to any type of DBH PHI or PI in motion such as website access, file transfer, and E-Mail.
14. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting DBH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

C. Audit Controls

1. System Security Review. Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing DBH PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical,

and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

2. Log Review. All systems processing and/or storing DBH PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
3. Change Control. All systems processing and/or storing DBH PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

D. Business Continuity/Disaster Recovery Controls

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

E. Paper Document Controls

1. Supervision of Data. DBH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DBH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
2. Escorting Visitors. Visitors to areas where DBH PHI or PI is contained shall be escorted and DBH PHI or PI shall be kept out of sight while visitors are in the area.
3. Confidential Destruction. DBH PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing and in accordance with 42 C.F.R. § 2.16 Security for Records.
4. Removal of Data. Removal of DBH PHI or PI may not be removed from the premises of Contractor unless authorized under 42 CFR Part 2.
5. Faxing. Faxes containing DBH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
6. Mailing. Mailings containing DBH PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible.

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