

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY**

DEPT: Behavioral Health & Recovery Services

BOARD AGENDA: 6.B.4
AGENDA DATE: January 23, 2018

SUBJECT:

Approval to Enter into Agreements with BHC Fremont Hospital, Inc., Sutter Valley Hospitals dba Sutter Center for Psychiatry in Sacramento, and Bakersfield Behavioral Healthcare Hospital, LLC, for the Provision of Acute Psychiatric Hospitalization Services for Fiscal Years 2017-2018 and 2018-2019

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2018-0048

On motion of Supervisor Withrow, Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Behavioral Health & Recovery Services

BOARD AGENDA:6.B.4
AGENDA DATE: January 23, 2018

CONSENT:

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval to Enter into Agreements with BHC Fremont Hospital, Inc., Sutter Valley Hospitals dba Sutter Center for Psychiatry in Sacramento, and Bakersfield Behavioral Healthcare Hospital, LLC, for the Provision of Acute Psychiatric Hospitalization Services for Fiscal Years 2017-2018 and 2018-2019

STAFF RECOMMENDATION:

1. Approve the agreements with BHC Fremont Hospital, Inc., Sutter Valley Hospitals dba Sutter Center for Psychiatry in Sacramento, and Bakersfield Behavioral Healthcare Hospital, LLC, for the provision of acute psychiatric inpatient hospitalization services for Fiscal Years 2017-2018 and 2018-2019.
2. Authorize the Behavioral Health Director, or his designee, to sign the agreements with BHC Fremont Hospital, Inc., Sutter Valley Hospitals dba Sutter Center for Psychiatry, and Bakersfield Behavioral Healthcare Hospital, LLC, for Fiscal Years 2017-2018 and 2018-2019.
3. Authorize the Behavioral Health Director, or his designee, to negotiate and sign amendments to these agreements when necessary to modify services and adjust payment for services, up to \$75,000 per fiscal year for each agreement and budget permitting, throughout Fiscal Years 2017-2018 and 2018-2019.

DISCUSSION:

Behavioral Health and Recovery Services (BHRS) is required to provide or arrange for the provision of Medi-Cal Specialty Mental Health Services, including acute psychiatric hospitalization services for direct care and treatment of the acute crisis phase of a mental condition. As defined in the California Code of Regulations, Title 9, §1810.247 (b), these services include, but are not limited to, routine and all hospital-based ancillary services, to be provided by a licensed service provider. BHC Fremont Hospital, Inc. located in Fremont, Sutter Valley Hospitals dba Sutter Center for Psychiatry located in Sacramento, and Bakersfield Behavioral Healthcare Hospital, LLC, located in Bakersfield, are licensed acute psychiatric hospitals that provide services to Medi-Cal beneficiary and uninsured Stanislaus County residents who are in need of treatment for an acute crisis phase of a mental condition. The goal of placements at the psychiatric hospitals is to alleviate the patient's acute psychiatric symptoms and then to return him or her to a less restrictive level of care.

It is important for BHRS to establish and maintain close collaboration with each of these hospitals in order to preserve effective partnerships for the provision of the very best care for County beneficiaries. Establishing a contract with these three hospitals safeguards the availability of additional inpatient beds and ensures that the services received are the most efficient and effective in acute psychiatric care. Contracts with these hospitals will also allow BHRS to create and maintain important professional relationships to better serve the community.

As defined under General Services Agency (GSA) Purchasing Guidelines, these agreements do not meet the requirements for issuance of a Request for Proposal and can be executed as negotiated agreements. These agreements serve to ensure a contracted negotiated rate with multiple hospitals to address the continued increase in the number of residents requiring acute psychiatric hospitalization. Over the past year, Stanislaus County has seen an average of 273 placement days per month for acute psychiatric hospitalization in facilities located outside of the County, an increase of 33.1% over the previous year.

BHRS experiences occasional funding opportunities and unanticipated increases in service levels throughout the year. On many occasions, such additional funding and the need for increase in service levels is time sensitive. For this reason, the Department requests authorization for the Behavioral Health Director, or designee, to negotiate and execute amendments, when necessary, up to \$75,000 per fiscal year to the three agreements contained in this agenda item. Any amendments to the agreements will be subject to budgetary provisions and identified in subsequent quarterly financial reports to the Board of Supervisors.

POLICY ISSUE:

Board of Supervisors approval is required for any contract or agreement wherein the total cumulative compensation exceeds \$100,000. Cumulative refers to the total compensation paid by an individual department in the reporting year and the two fiscal years immediately prior thereto, where there has been no break in contractual services over six months. Additionally, the Board is required to approve any new agreements wherein the compensation exceeds \$100,000. Each of these new contracts is being established at or above this defined threshold.

FISCAL IMPACT:

The proposed two-year agreements with BHC Fremont Hospital, Inc., Sutter Valley Hospitals dba Sutter Center for Psychiatry, and Bakersfield Behavioral Healthcare Hospital, LLC, for the provision of acute psychiatric inpatient hospitalization services total \$550,000. The Behavioral Health and Recovery Services Adopted Final Budget for Fiscal Year 2017-2018 included appropriations and estimated Realignment revenue in the amount of \$275,000 for these agreements. Appropriations and estimated revenue

for the continuation of services through Fiscal Year 2018-2019 will be included in future budget cycles. There is no impact to the County General Fund.

The following table identifies cumulative value of prior contracts with Fremont Hospital, Sutter Center for Psychiatry and Bakersfield Behavioral Healthcare Hospital for the provision of psychiatric inpatient hospitalization services for the fiscal periods beginning July 1, 2015, through June 30, 2018, as required in Contract Reporting Policy Number One, originally approved by the Board on March 11, 2011.

Budget Unit	Contractor	Description of Services	Previous Contract Amounts for the Period 7/1/15 through 6/30/18	Proposed Additional Amount for FY 7/1/17 through 6/30/19	Cumulative Total Contract
Managed Care	BHC Fremont Hospital, Inc.	Provision of acute psychiatric inpatient hospitalization services	\$0	\$100,000	\$100,000
Managed Care	Sutter Valley Hospitals dba Sutter Center for Psychiatry	Provision of acute psychiatric inpatient hospitalization services	\$0	\$150,000	\$150,000
Managed Care	Bakersfield Behavioral Healthcare Hospital, LLC	Provision of acute psychiatric inpatient hospitalization services	\$0	\$300,000	\$300,000

BOARD OF SUPERVISORS’ PRIORITY:

This agenda item supports the Board of Supervisors’ priorities of Community Health and Wellness and Efficient Public Services by contracting with providers as close to the community as possible to deliver the needed services at appropriate levels in a cost-effective manner.

STAFFING IMPACT:

Existing staff will provide contract oversight and monitoring. There is no additional staffing impact associated with the approval of this agenda item.

CONTACT PERSON:

Rick DeGette, MA, MFT Behavioral Health Director Telephone: 525-6205

ATTACHMENT(S):

1. BHC Fremont Hospital Inc FY1718 1819
2. Sutter Valley Hospital dba Sutter Center for Psychiatry FY1718 1819
3. Bakersfield Behavioral Healthcare Hospital LLC FY1718 1819



PROVIDER AGREEMENT

BETWEEN

STANISLAUS COUNTY

BEHAVIORAL HEALTH AND RECOVERY SERVICES

AND

BHC FREMONT HOSPITAL, INC.

DECEMBER 1, 2017 – JUNE 30, 2019

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AGREEMENT

This Agreement is made and entered into in the City of Modesto, State of California, by and between the County of Stanislaus, through Behavioral Health and Recovery Services, hereinafter referred to as "County", and BHC Fremont Hospital, Inc., a Tennessee corporation dba Fremont Hospital, with its principal place of business identified in Section 24, hereinafter referred to as "Contractor", effective December 1, 2017, for and in consideration of the premises, and the mutual promises, covenants, terms, and conditions hereinafter contained.

WHEREAS, County, through Behavioral Health and Recovery Services in partnership with the Local Mental Health Plan, hereinafter referred to as "PLAN", is responsible to provide comprehensive acute psychiatric inpatient hospitalization services to Stanislaus County uninsured residents and Medi-Cal beneficiaries, as described in Title 9 of the California Code of Regulations, Chapter 11, Medi-Cal Specialty Mental Health Services, Subchapter 1, Article 1, beginning at Section 1810.100, (9 CCR Section 1810.100 et seq.), as it may be amended from time to time, and the Bronzan-McCorquodale Act contained in the California Welfare and Institutions Code, beginning at Section 5600, as it may be amended from time to time by the California Legislature.

WHEREAS, the California Welfare and Institutions Code (Section 5600 et seq.) provides a set of definitions, standards, procedures and regulations by and pursuant to which County and Contractor may lawfully contract for such services; and

WHEREAS, Contractor is specially trained, experienced and competent to perform and has agreed to provide acute inpatient hospitalization services.

NOW THEREFORE, the parties hereby agree as follows:

1. RECITALS

The recitals set forth above are a material part of this Agreement.

2. SERVICES

2.1 The Contractor shall ensure that covered services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for

which the services are furnished. The Contractor shall not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary except as specifically provided in the medical necessity criteria applicable to the situation as provided in Title 9, California Code of Regulations (CCR), Sections 1820.205, 1830.205, and 1830.210.

- 2.2 The Contractor shall make covered services available in accordance with Title 9 CCR, Section 1810.345 and with Section 1810.405 with respect to timeliness of routine services.
- 2.3 The Contractor shall provide County's Medi-Cal beneficiaries with County's most current beneficiary brochure and provider list when a Medi-Cal beneficiary first receives a specialty mental health service from Contractor or upon request. Contractor may obtain copies of County's beneficiary brochure and provider list from County.
- 2.4 Contractor shall ensure that hours of operation are no less than the hours of operation offered to commercial enrollees, if enrollees of a commercial health plan receive services by Contractor.
- 2.5 Services required under this Agreement are described in the attached exhibits.

3. NONDISCRIMINATION

- 3.1 During the performance of this Agreement, Contractor and its officers, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment, unpaid intern, volunteer, independent contractor, or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age (over 40), political affiliation or belief, gender/sex, sexual orientation, gender identity, gender expression, or

military or veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Federal Regulations.

- 3.2 Consistent with the requirements of applicable Federal or State Law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.
- 3.3 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- 3.4 Contractor shall provide a system by which recipient of service shall have the opportunity to express and have considered their views, grievance, and complaints regarding Contractor's delivery of services.

4. ADMISSION POLICIES

- 4.1 All County referrals to Contractor's residential treatment facility shall be authorized by the Stanislaus County Interagency Resource Committee.
- 4.2 The final admission decision shall rest with Contractor.
- 4.3 If an admission is denied, County shall be notified of the reason(s) for

denial within 2 (two) business days. The denial shall include recommendations for alternative treatment.

- 4.4 Medi-Cal eligibility for County's clients shall remain with Stanislaus County.

5. BILLING AND PAYMENT

- 5.1 Payment information is identified in the attached exhibit(s).
- 5.2 Pursuant to CCR, Title 9, Chapter 11, Subchapter 4, a signed Claims Certification and Program Integrity form, as shown in the attached Claims Certification and Program Integrity Exhibit, must accompany each invoice. This certification must be signed by a duly authorized official.
- 5.3 County shall reimburse Contractor for only those services that were authorized and approved by local or State entities. County shall reconcile payments, which have been made for these services, periodically. The reconciliation will be based upon the total authorized and approved units of service captured in County's Electronic Health Record (EHR).
- 5.4 Upon request by County, Contractor shall repay County for audit exceptions as a function of BHRS, State, or Federal Medi-Cal audits which occur within the next five (5) fiscal years for the applicable fiscal year, within thirty (30) days from date of request, unless otherwise negotiated with County.
- 5.5 Payment by County to Contractor shall be payment in full for services provided.
- 5.6 Contractor shall hold harmless both the State and Medi-Cal beneficiaries in the event County cannot or will not pay for services performed by Contractor pursuant to this Agreement.
- 5.7 Both parties acknowledge that the State of California will continue to seek State or Federal revenue enhancements throughout the term of this Agreement. If a specific strategy adopted by the State affects the funding that County uses to support this Agreement, the parties agree to re-

negotiate the applicable terms.

- 5.8 Final payment for services provided under the terms of this Agreement may be withheld pending fiscal reconciliation.

6. CULTURAL COMPETENCY

Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community it serves.

7. COMPLIANCE

- 7.1 County has accepted as policy an Organizational Compliance Plan which addresses compliance with Federal, State, and local laws, regulations, rules and guidelines. It is expected that Contractor shall maintain a similar compliance plan for its organization, which is consistent with County's Plan.
- 7.2 Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the Centers for Medicare and Medicaid Services.
- 7.3 Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.
- 7.4 Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Social Security Act. Federal financial participation is not available for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.
- 7.5 Contractor shall not allow services to be provided under the terms of this Agreement by any officer, employee, subcontractor, agent or any other

individual or entity that is on the List of Excluded Individuals/Entities maintained by the U. S. Department of Health and Human Services, Office of the Inspector General (OIG), the Excluded Parties List System/System Award Management (EPLS/SAM) databases and the California State Medi-Cal Suspended and Ineligible Provider List (S&I), maintained by the California Department of Health Care Services.

7.5.1 Contractor shall insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section at the time of hiring. If they are on either or all of the three lists, they will not be hired to perform any duties under this agreement. Contractor agrees to provide evidence of verification prior to entering into the Agreement and/or upon request of the County.

7.5.2 Contractor shall thereafter monthly insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section or any exclusions databases that may be mandated by the Federal and/or State government within the duration of this Agreement. Contractor is to submit evidence of monthly reporting as part of the Monitoring process referenced in Section 11 (11.4).

7.5.3 Contractor shall immediately notify the County upon discovery of any officer, employee, subcontractor, agent or other individual or entity who are found on any of the three lists in this section. In the event of this discovery, Contractor also agrees to immediately cease the staff member from performing services, that the staff member will be restricted from submitting a claim for any Medi-Cal services and that the Contractor will internally address any corrective and/or disciplinary action in regards to this staff member.

7.5.4 County provides to Contractor the following references to the two

lists found in this section. County does not guarantee that these references will not change from time to time.

7.5.4.1 OIG list is currently found at the following web address: <http://exclusions.oig.hhs.gov/>

7.5.4.2 A link to the S&I list is currently found at the following web address: <http://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp> Near the bottom of the page click, on the “Suspended & Ineligible Provider List.”

7.5.4.3 A link to the EPLS/SAM list is currently found at the following web address: <https://www.sam.gov/portal/SAM/#1>

7.6 Pursuant to Section 6032 of the Deficit Reduction Act of 2005, CONTRACTOR shall communicate to its employees, subcontractors, agents and other persons providing services on behalf of Contractor the policies and procedures related to the Federal and State False Claims Act.

8. PATIENTS’ RIGHTS AND PROBLEM RESOLUTION

8.1 Contractor shall comply with all relevant rules, regulations, statutes, and County policies and procedures related to individuals’ rights to a grievance process, an appeal process, and an expedited appeal process.

8.2 Contractor shall comply with the PLAN’s Medi-Cal beneficiary problem resolution process as stated in the PLAN’s Beneficiary Handbook. This does not preclude Contractor’s commitment to resolve problems or complaints by Medi-Cal beneficiaries at the informal level as simply and quickly as possible. Nothing in this Agreement shall prevent Medi-Cal beneficiaries from utilizing the PLAN’s and other rights and processes regarding grievances and appeals, which are guaranteed by statute.

8.3 Contractor shall ensure that each beneficiary has adequate information about the Contractor’s processes to include at a minimum:

8.3.1 Description of grievance and appeal process;

8.3.2 Posting notices explaining the process procedures;

8.3.3 Making grievance forms and appeal forms along with self-addressed envelopes available for beneficiaries at Contractor sites;

8.3.4 Making interpreter services and TDD/TTY available to beneficiaries during normal business hours.

8.4 No provision of this Agreement shall be construed to replace or conflict with the duties of County's Patients' Rights Advocates as described in Section 5520 of the Welfare and Institutions Code.

9. CONFIDENTIALITY AND INFORMATION SECURITY

9.1 Contractor and its officers, employees, agents representative, subcontractors and all others acting on behalf of Contractor shall comply with applicable laws and regulations, including but not limited to Section 14100.2 and 5328 et seq. of the California Welfare and Institutions (W&I) Code, and 45 CFR Parts 160, 162, and 164 regarding the confidentiality and security of individually identifiable health information as required by the attached Confidentiality and Information Security Exhibit of this Agreement.

9.2 Records shall be disclosed only in accordance with all applicable State and Federal laws and regulations, including those relating to the privacy of protected health information, confidentiality of medical records, patient consents to release information, and the therapist-patient privilege. Such information shall be used only for appropriate claims and quality management purposes, unless specifically authorized by the client. Confidentiality regulations shall apply to all electronic media.

10. MONITORING/REVIEW ASSISTANCE

10.1 Contractor agrees to maintain books, records, documents, and other evidence necessary to facilitate contract monitoring and audits pursuant to Section 640, Title 9, Division 1, Chapter 3, Article 9, of the California Code of Regulations and the policies of Behavioral Health and Recovery Services.

- 10.2 Contractor agrees that the County shall have access to facilities, program documents, records, staff, clients/patients, or other material or persons the County deems necessary to monitor and audit services rendered
- 10.3 Contractor shall provide any necessary assistance to County in its conduct of facility inspections, and operational reviews of the quality of care being provided to beneficiaries, including providing County with any requested documentation or reports in advance of a scheduled on-site review. Contractor shall also provide any necessary assistance to County and the External Quality Review Organization contracting with the California Department of Health Care Services (DHCS) in the annual external quality review of the quality of care, quality outcomes, timeliness of, and access to, the services being provided to beneficiaries under this Agreement. Contractor shall provide a corrective action plan when requested and correct deficiencies as identified by such inspections and reviews according to the time frames delineated in the resulting reports
- 10.4 Contractor shall participate in regularly scheduled contract monitoring designed to review various aspects of contract services, including providing evidence of required licenses, certificates and permits, evidence of monthly review of all exclusion databases mandated by Federal and/or State regulation, Medi-Cal eligibility, discussion of actual costs, cost per unit, number of units, amount of required match, and State rates. County shall document and file the contract monitoring review and evidence and distribute a copy to the Contractor.

11. MEDI-CAL CERTIFICATION

- 11.1 Contractor shall maintain certification as an organizational provider of Medi-Cal Specialty Mental Health Services during the term of this Agreement. This includes meeting all staffing and facility standards required for organizational providers of Medi-Cal Specialty Mental Health Services which are claimed and notifying County's Contract Services

Manager in writing of anticipated changes in service locations at least sixty (60) days prior to such change.

- 11.2 A Medi-Cal site certification review is required for all new locations. A review can only be conducted after a fire clearance on the new site is obtained. All Medi-Cal billing for services at locations not yet certified shall be suspended until a fire clearance is received and certification has been concluded. Contractor may not be reimbursed for services provided which are not Medi-Cal billable.
- 11.3 The storage and dispensing of medications on site shall be in compliance with all pertinent State and Federal standards.

12. RECORDS

- 12.1 Clinical records of each patient in placement at Contractor's facilities shall be the property of Contractor and shall be kept until all audit findings are resolved. For each patient who has received services, a legible record shall be kept in detail which permits effective quality management processes and external operational audit processes and which facilitates an adequate system for follow-up treatment.
- 12.2 The Contractor shall be subject to the examination and audit of the Department or California State Auditor for a period of three years after final payment under agreement (Government Code § 8546.7).
- 12.3 Contractor shall allow the Department, DHCS, HHS and the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Agreement, and to inspect and evaluate, and audit any and all books, records, and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance

under this Agreement including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the Department, DCHS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

- 12.4 These books and records shall be maintained for a term of at least five (5) years after final payment is made and all pending matters closed, or, in the event the Contractor has been duly notified that the County, State, HHS, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, whichever is later.

13. REPORTING

- 13.1 Contractor shall provide County with other reports which may be required by State, Federal or local agencies for compliance with this Agreement.
- 13.2 Contractor shall establish and maintain accounting and fiscal practices that comply with its obligations pursuant to Section 1804.105, Chapter 11, Medi-Cal Specialty Mental Health Services and Title 9, California Code of Regulations.

14. PERSONNEL

- 14.1 Contractor shall adhere to the Statement of Compliance as specified in the attached Statement of Compliance Exhibit.
- 14.2 All Contractor staff providing services under the terms of this Agreement shall have successfully passed a criminal background check appropriate to their job classification and duties. Contractor shall not knowingly allow services to be provided under the terms of this Agreement by any person

convicted of financial fraud involving Federal or State funds.

- 14.3 Contractor assures County that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- 14.4 All personnel rendering services under this Agreement shall be employed by, or under contract to Contractor, and shall be appropriately supervised. Services shall be under the direction of Contractor's Clinical Director or employee who shall be a licensed mental health professional or other appropriate individual as described in Sections 622 through 630 of Title 9, of the California Code of Regulations.
- 14.5 All staff providing service under registration with the California State Board of Behavioral Health Science, or the Board of Psychology, shall be supervised by a licensed mental health professional, i.e., a Licensed Clinical Social Worker; Marriage Family Therapist; or Clinical Psychologist.
- 14.6 All staff providing services under this Agreement must obtain a National Provider Identifier (NPI).
- 14.7 Contractor shall ensure a process for credentialing of licensed staff is in place, which includes at a minimum, background checks and license verification.
- 14.8 All Contractor staff transporting clients under the terms of this Agreement shall have received and possess a valid California Driver's License and, if not covered by Contractor for automobile liability insurance, shall maintain at least the current California state minimum coverage.
- 14.9 Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community. Contractor shall ensure that staff providing bilingual services are fluent in their identified language.

15. WORKPLACE REQUIREMENTS

- 15.1 Contractor shall report all incidents of client suicides, homicides, or other unusual occurrences resulting in serious harm to clients or staff.
- 15.2 Contractor shall maintain a safe facility that is as free from safety hazards as is possible. Any reporting of unsafe working conditions by employees or others shall be immediately appraised and addressed.
- 15.3 Contractor hereby certifies that it complies with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and provides a drug-free workplace.
- 15.4 Contractor failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future Agreements if the County determines that any of the following has occurred: (1) Contractor has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

16. FINANCIAL RELATIONSHIPS

- 16.1 Contractor shall maintain program statistical records in the manner required by the County, California Department of Health Care Services, and applicable licensing agencies, and make such records available to County upon request.
- 16.2 Contractor shall maintain accurate accounting records of its costs and operating expenses. Such records shall be maintained until State audit findings are resolved. They shall be open to inspection by County, the Grand Jury, the State Controller, and the State Director of the Department of Health Care Services, or any of their deputies.
- 16.3 Contractor shall adhere to Title XIX of the Social Security Act, and conform to all other applicable Federal and State statutes and regulations.

17. REQUIRED LICENSES, CERTIFICATES, OR PERMITS

Any licenses, certificates, or permits required by the Federal, State, County, or

municipal governments for Contractor to provide the services and work described in this Agreement must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits shall be procured and maintained in force by Contractor at no expense to County.

18. INDEMNIFICATION

18.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend County and its agents, officers, and employees against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Contractor's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Contractor in contributing to such claim, damage, loss and expense.

18.2 Contractor's obligation to defend, indemnify and hold County and its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

18.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Contractor and its officers, employees, agents, representatives or subcontractors from and against all claims, damages,

losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

19. INSURANCE

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

20. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement, which either party shall be required or may desire to make, shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

County: County of Stanislaus
Behavioral Health and Recovery Services
Attention: Contract Services Manager
800 Scenic Drive
Modesto, CA 95350

Contractor: Fremont Hospital
Attention: Chief Executive Officer
39001 Sundale Drive
Fremont, CA 94538

21. CONFLICTS

Contractor agrees that it has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

22. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it

is found in contravention of any Federal, State or County statute, ordinance, regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated there and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

23. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from by mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

24. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

25. RELATIONSHIP OF PARTIES

This is an Agreement by and between two (2) independent contractors and is not intended to, and shall not be construed to be, nor create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

26. REFERENCES TO LAWS AND RULES

In the event any statute, regulation, or policy referred to in this Agreement is amended during the term of this Agreement, the parties shall comply with the amended provision as of the effective date of such amendment.

27. ASSIGNMENT

27.1 County has relied upon the skills, knowledge, experience, and training

presented by Contractor, as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, either in whole or in part, without prior written consent of County, which shall not be unreasonably withheld.

27.2 Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

28. AVAILABILITY OF FUNDS

Payments for services provided in accordance with the provisions of this Agreement are contingent upon the availability of County, State, and Federal funds. If Federal, State, or local entities do not appropriate sufficient funds for this program, the County has the option to terminate this Agreement or amend the Agreement to reflect any reduction of funds.

29. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.

30. VENUE

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

31. TERM

31.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other time of termination is listed in Exhibit A. Either party may terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice to the other

party. County may suspend or terminate this Agreement for cause upon written notice to Contractor immediately, or upon such notice, as County deems reasonable. If the default is cured by Contractor to the satisfaction of County, or County determines that the default should be excused, County may reinstate the Agreement, or revoke the termination upon application by Contractor.

31.2 In the event of termination or expiration of this Agreement, Contractor shall assist County in the orderly transfer of clients. In doing this, Contractor shall make available any pertinent information necessary for efficient case management of clients as determined by County. In no case shall a client be billed for this service.

31.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

32. SURVIVAL

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 5, "Billing and Payment", Paragraph 10, "Confidentiality and Information Security", Paragraph 13, "Records", Paragraph 22, "Indemnification", Paragraph 31, "Assignment".

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

(SIGNATURES SET FORTH ON FOLLOWING PAGE)

EXHIBIT A-DEFINITIONS AND SCOPE OF WORK

A. DEFINITIONS

1. "County Patients" shall mean all of the following: (i) Medi-Cal adult beneficiaries of Stanislaus County pursuant to a contract between County and the California Department of Health Care Services, or any successor state agency; (ii) adult indigent uninsured residents of Stanislaus County ("County Uninsured patients") to the extent funding is available.
2. "Covered Services" shall mean acute inpatient hospital psychiatric services for direct care and treatment of the acute crisis phase of a mental condition, including but not limited to routine services and all hospital-based ancillary services, at a licensed provider, as defined in Title 9, CCR §1810.247 (b) – Specialty Mental Health Services, with appropriate notification to County as defined in Title 9, CCR §1820.225.
3. "Excluded Services" shall mean those services that are not Covered Services and for which the Mental Health Plan and County are not responsible pursuant to Title 9, §1810.355.

B. SCOPE OF WORK

1. The Covered Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation to County Patients.
2. Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation.
3. Contractor shall be responsible for all physician services including medical-related consultations, treatment of non-psychiatric medical illnesses, specialized testing, and diagnostic work-ups which may be needed by a patient at the Contractor's facility.
4. Contractor shall not bill the County or any County Patient, pursuant to this Agreement, for any of those services set forth listed in Title 9, CCR § 1810.355 entitled "Excluded Services."

C. INFORMATION NOTICES FOR THERAPEUTIC BEHAVIORAL SERVICES (TBS) AND EARLY PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT)

At the time of an emergency psychiatric admission, Contractor shall provide notices to any Medi-Cal adult beneficiary who is under twenty-one (21) years of age, and to such beneficiary's representatives, regarding the availability of TBS and EPSDT services.

D. BILLING AND PAYMENT

1. County shall reimburse Contractor for services delivered under the terms of this Agreement from the following funding sources: 2011 Realignment and 1991 Realignment.

2. In consideration of Contractor's provision of services required under this Agreement, County shall reimburse Contractor an amount not to exceed the contract maximum of \$100,000.
3. The County and Contractor agree to the following rate schedule, unless adjusted by the Department of Health Care Services:

MEDI-CAL BENEFICIARIES	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$1,255/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$1,255/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$1,300/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$115.00/day
Professional Fees – Psychiatry – Subsequent Days	\$115.00/day

COUNTY FUNDED CLIENTS, NON-MEDI-CAL BENEFICIARIES, NO OTHER PAYOR SOURCE AVAILABLE	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$1,255/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$1,255/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$1,300/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$115.00/day
Professional Fees – Psychiatry – Subsequent Days	\$115.00/day

4. COUNTY shall make payment for services within thirty-(30) days after receipt of Contractor's undisputed invoice by County. Contractor shall submit invoices by mail to the following address:

Stanislaus County Behavioral Health & Recovery Services
800 Scenic Drive, Building 4
Modesto, CA 95350
Attention: Managed Care Claims

F. TERM

These services shall commence on December 1, 2017, and continue through June 30, 2019.

G. FUNDING

If, during the time which this Agreement is in effect, funds are not allocated to County or Behavioral Health and Recovery Services, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement without penalty from or further obligation to Contractor. Contractor shall have no further obligation to County.

EXHIBIT B

Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits not less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL and the Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability and Auto Liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employee's, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the County.**

Waiver of Subrogation

Consultant hereby grants to County a waiver of any right to subrogation (except for Professional Liability) which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors. Consultant's obligation to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Consultant to procure and maintain a policy of insurance.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

EXHIBIT C-CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS FOR DIRECT SERVICE PROVIDERS

1. As a covered entity, the Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code and with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-91), also known as “HIPAA”, and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), “the ARRA/HITECH Act” or “the HITECH Act”, as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as “HIPAA”.
2. Permitted Uses and Disclosures of IIHI by the Contractor.
 - A. *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
 - B. *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the Contractor may:
 - (1) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.
 - (2) Use IIHI to provide data aggregation services to County. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this Agreement with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of County.
3. Responsibilities of the Contractor.

The Contractor agrees:

- A. *Safeguards.* To prevent use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor’s operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time.

The Contractor shall restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network.

The Contractor shall protect all the hardware and electronic media that contain electronic protected health information (EPHI). This includes, but is not limited to, personal computers, PDAs, laptops, storage systems, back up tapes, CD-ROM disks, and removable disks. EPHI shall not be stored on laptops except as a temporary measure when capturing or creating information in the field. Such information shall be encrypted for protection and deleted after printing or transfer to a secure network server.

Contractors that transmit EPHI outside the County wide area network (WAN) are responsible for ensuring the information is safeguarded by using encryption when using the public internet or a wireless device.

- B. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of IIHI by Contractor or its subcontractors in violation of the requirements of this Agreement.
- C. *Agents and Subcontractors of the Contractor.* To ensure that any agent, including a subcontractor to which the Contractor provides IIHI received from County, or created or received by the Contractor, for the purposes of this contract shall comply with the same restrictions and conditions that apply through this Agreement to the Contractor with respect to such information.
- D. *Notification of Electronic Breach or Improper Disclosure.* During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of IIHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the County BHRS Privacy Officer, within five (5) business days of discovery. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the results of the investigation, including any corrective actions taken, and copies of all Notifications made as a result of the breach, to the BHRS Officer, postmarked within thirty (30) calendar days of the discovery of the breach to the address below:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95320
(209) 525-6225**

- E. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose IIHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.

4. Termination.

- A. *Termination for Cause.* Upon County's knowledge of a material breach of this Agreement by Contractor, County shall either:

- (1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by County.
- (2) Immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not possible; or
- (3) If neither cure nor termination is feasible, the BHRS Privacy Officer shall report the violation to the DHCS Information Security Officer of the Department of Health Care Services.

- B. *Judicial or Administrative Proceedings.* County may terminate this Agreement, effective immediately, if (i) Contractor is found liable in a civil matter or guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation is made, in an administrative or civil proceeding in which the Contractor is a party, that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws.
- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all IIHI received from County that Contractor still maintains in any form, and shall retain no copies of such IIHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of subcontractors or agents of the Contractor.

5. Miscellaneous Provisions.

- A. *Disclaimer.* County makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IIHI.
- B. *Assistance in Litigation or Administrative Proceedings.* Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against County, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
- C. *No Third-Party Beneficiaries.* Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than County or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
- D. *Interpretation.* The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and

conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws.

- E. *Regulatory References.* A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
- F. *Survival.* The respective rights and obligations of Contractor under Section 5.B of this Exhibit shall survive the termination or expiration of this Agreement.
- G. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

EXHIBIT D-STATEMENT OF COMPLIANCE

- A. Contractor agrees, unless specifically exempted, to comply with Government Code Section 12900 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Employment of personnel shall be made solely on the basis of merit.
1. Action shall be taken to ensure applicants are employed, and employees are treated during employment, without regard to their race, religion, color, sex, national origin, age, physical or mental handicap. Such action shall include, but not be limited to, the following: Employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff; or apprenticeship. However, recruitment and employment of applicants shall reflect the ethnic and racial composition of the County, particularly those groups not previously, nor currently, having adequate representation in recruitment or hiring. There shall be posted, in conspicuous places, notices available to employees and applicants for employment provided by the County Officer responsible for contracts setting forth the provisions of the Equal Opportunity clause.
 2. All solicitations or advertisements for employees placed by or on behalf of Contractor and/or the subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, or physical or mental handicap.
 3. Each labor union or representative of workers with which the County and/or the subcontractor has a collective bargaining agreement, or other contract or understanding, must post a notice provided by the County Officer responsible for contracts, advising the labor union or workers representative of Contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. In the event of noncompliance with the discrimination clause of this contract or as otherwise provided by State and Federal law, this contract may be canceled, terminated or suspended, in whole or in part, and Contractor and/or the subcontractor may be declared ineligible for further State contracts in accordance with the procedures authorized in the Behavioral Health and Recovery Service's Complaint Process.
 5. All provisions of Paragraph 1 through this paragraph 5 will be included in every subcontract unless exempted by rules, regulations or orders of the Director of the Behavioral Health and Recovery Services so such provisions will be binding upon each subcontractor. Contractor will take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction by the State, Contractor may request in writing to the State, who, in turn, may request the United States to enter into such litigation to protect the interest of the State and the United States.
- B. Services, benefits and facilities shall be provided to patients without regard to their race, color, creed, national origin, sex, age or physical or mental handicap, and no one will be refused service because of inability to pay for such services.
1. Nondiscrimination in Services, Benefits and Facilities: There shall be no discrimination in the provision of services because of color, race, creed, national origin, sex, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by State and Federal law. For the purpose of the contract, distinctions on the grounds of color, race, creed, national origin, sex, or age include, but are not limited to, the following: denying a participant any service or benefit to the participant which is different, or is provided in a different manner or at a different time, from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to this receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he/she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of the race, color, creed, or national origin of the participants to be served. The County and all subcontractors will take action to ensure intended beneficiaries are provided services without regard to color, race, creed, national origin, sex, age, or physical or mental handicap.
 2. Procedure for Complaint Process: All complaints alleging discrimination in the delivery of services by the County and/or the subcontractor because of race, color, creed, national origin, sex, age, or physical or mental handicap, may be resolved by the State through the State Department of Health Care Services' Action Complaint Process.
 3. Notice of Complaint Process: The County and all subcontractors shall, subject to the approval of the Behavioral Health and Recovery Services, establish procedures under which recipients of the service are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the State Department of Health Care Services.
- C. The County and any subcontractor will furnish all information and reports required by the Behavioral Health and Recovery Services and will permit access to books, records and accounts for purposes of investigation to ascertain compliance with above paragraphs.
- D. The County and all subcontractors assure all recipients of service are provided information in accordance with provisions of Welfare and Institutions Code, Sections 5325 and 5325.1, and Sections 5520 through 5550, Cal. Code Regs., tit. 9 §§ 860 through 868, and 42 CFR § 438.100 pertaining to their rights as patients, that the County has established a system whereby recipients of service may file a complaint for alleged violations of their rights.
- E. Contractor agrees to the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all Federally-assisted programs or activities, as detailed in regulations signed by the Secretary of Health, Education and Welfare, effective June 3, 1977, and found in the Federal Register, Volume 42, Number 86, dated May 4, 1977.

EXHIBIT E-MHP CLAIMS CERTIFICATION AND PROGRAM INTEGRITY

TO: Stanislaus County, Behavioral Health and Recovery Services

I HEREBY CERTIFY based on best knowledge, information, and belief to the following: An assessment of all Medi-Cal beneficiaries were conducted in compliance with the requirements established by the Stanislaus County Mental Health Plan (MHP). The beneficiaries were eligible to receive Medi-Cal services at the time the services were provided to the beneficiaries. Medical necessity was established for each beneficiary for the services provided, for the timeframe in which the services were provided. A client plan was developed and maintained for each beneficiary that met all client plan requirements established by the MHP. For each beneficiary receiving day rehabilitation, day treatment intensive, or EPSDT supplemental specialty mental health services included in the claim, all requirements for MHP payment authorization have been met and reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established by the MHP. All documentation for services meets the standards established by the MHP and is in the clinical record.

I also certify based on best knowledge, information, and belief that all claims for services provided to Medi-Cal beneficiaries were, in fact, provided to those beneficiaries.

I understand that payment of these claims will be from Federal and/or State funds, and any falsification or concealment of a material fact may be prosecuted under Federal and/or State laws.

Name

Date

Title

Agency

EXHIBIT F-DEPARTMENT OF HEALTH CARE SERVICES MENTAL HEALTH PLAN ADDITIONAL TERMS AND CONDITIONS

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Plan, to provide Specialty Mental Health Services to beneficiaries of Stanislaus County, the following terms of this Exhibit are used and apply:

1. Service, Administrative and Operational Requirements

Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the Contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. Provider Selection and Certification

- A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.
- B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.
- C. Contractor will comply with provisions of 42 C.F.R Part 2, which relates to facilitating health integration and information exchange with new health care models, while continuing to protect the privacy and confidentiality of patients seeking treatment for substance abuse disorders.

3. Requirements for Day Treatment and Day Rehabilitation

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the Contractor shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

- A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:
 - 1) Day treatment or day rehabilitation will be provided for more than five days a week;
 - 2) At least every three months for continuation of day treatment intensive;
 - 3) At least every six months for continuation of day rehabilitation;
 - 4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.
- B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day

treatment intensive or day rehabilitation services.

- C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § §1840.318, 1840.328, 1840.350 and 1840.352
- D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:
 - 1) *Community meetings.* These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:
 - 2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;
 - a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.
 - b) *Therapeutic milieu.* This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.
 - c) *Process groups.* These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.
 - d) *Skill-building groups.* In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

- e) *Adjunctive therapies.* These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

- 1) *Psychotherapy.* Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.
 - 2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.
 - 3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.
- F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal.Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.
- 1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

- 2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.
 - 3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.
- G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.
- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of the Department of Health Care Services Mental Health Plan, Exhibit A, Attachment 1, Documentation Standards. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* County shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically

necessary day treatment intensive and day rehabilitation.

- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:
 - 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
 - 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
 - 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
 - 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. **Disclosures**

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2) Date of birth and Social Security Number (in the case of an individual);
- 3) Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4) Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
- 5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and
- 6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

- B. *Disclosures Related to Business Transactions.* Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

- 1) The following information must be disclosed:
 - a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,
 - b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. *Disclosures Related to Persons Convicted of Crimes.* Contractor shall submit the following disclosures to the County regarding the Contractor's management:

- 1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)
- 2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.
- 3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. **Beneficiary Liability for Payment**

Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. **Audits and Recovery of Overpayments**

Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. **Federal Equal Opportunity Requirements**

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212), The Drug Abuse Office and Treatment Act of 1972, as amended, The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616, as amended, and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. **Travel and Per Diem Reimbursement**

CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for non-represented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. **Procurement Rules**

A. *Equipment/Property definitions*

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.
- B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a) Avoid purchasing unnecessary or duplicate items;
 - b) Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c) Take positive steps to utilize small and veteran owned businesses.
 - 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRM Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
 - 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
 - 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**

- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
 - C. In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.
11. **Motor Vehicles**
The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.
12. **Income Restrictions**
Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.
13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
 - C. The Contractor and/or Subcontractor shall comply with the above

requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. **Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. **Federal Contract Funds**

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. **Intellectual Property Rights**

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner

of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. **Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. **Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. **Use of Small, Minority Owned and Women's Businesses**

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or

services). Contractors shall take all of the following steps to further this goal.

- 1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- 2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- 3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- 4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. **Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. **Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
As used herein, fringe benefits do not include:
 - 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - 2) Director's and executive committee member's fees.
 - 3) Incentive awards and/or bonus incentive pay.

- 4) Allowances for off-site pay.
- 5) Location allowances.
- 6) Hardship pay.
- 7) Cost-of-living differentials.

C. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted accounting principles;
 - c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
- 4) Earned/Accrued Compensation
 - a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a

one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

22. **Lobbying Prohibition**

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

23. **Patient Rights**

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that

they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.

- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

24. **Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. **Trafficking Victims Protection Act of 2000**

Contractor and its Subcontractors that provide services covered by this Agreement shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as amended by section 1702. The County is authorized to terminate a contract, without penalty, if the contractor: (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the award is in effect; or (c) Uses forced labor in the performance of the award and/or sub awards under the award.



PROVIDER AGREEMENT

BETWEEN

STANISLAUS COUNTY

BEHAVIORAL HEALTH AND RECOVERY SERVICES

AND

**SUTTER VALLEY HOSPITALS, INC. dba SUTTER
CENTER FOR PSYCHIATRY**

DECEMBER 1, 2017 – JUNE 30, 2019

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AGREEMENT

This Agreement is made and entered into in the City of Modesto, State of California, by and between the County of Stanislaus, through Behavioral Health and Recovery Services, hereinafter referred to as “County”, and Sutter Valley Hospitals, a California non-profit corporation dba Sutter Center for Psychiatry, with its principal place of business identified in Section 24, hereinafter referred to as “Contractor”, effective December 1, 2017, for and in consideration of the premises, and the mutual promises, covenants, terms, and conditions hereinafter contained.

WHEREAS, County, through Behavioral Health and Recovery Services in partnership with the Local Mental Health Plan, hereinafter referred to as “PLAN”, is responsible to provide comprehensive acute psychiatric inpatient hospitalization services to Stanislaus County uninsured residents and Medi-Cal beneficiaries, as described in Title 9 of the California Code of Regulations, Chapter 11, Medi-Cal Specialty Mental Health Services, Subchapter 1, Article 1, beginning at Section 1810.100, (9 CCR Section 1810.100 et seq.), as it may be amended from time to time, and the Bronzan-McCorquodale Act contained in the California Welfare and Institutions Code, beginning at Section 5600, as it may be amended from time to time by the California Legislature.

WHEREAS, the California Welfare and Institutions Code (Section 5600 et seq.) provides a set of definitions, standards, procedures and regulations by and pursuant to which County and Contractor may lawfully contract for such services; and

WHEREAS, Contractor is specially trained, experienced and competent to perform and has agreed to provide acute inpatient hospitalization services.

NOW THEREFORE, the parties hereby agree as follows:

1. RECITALS

The recitals set forth above are a material part of this Agreement.

2. SERVICES

2.1 The Contractor shall ensure that covered services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for

which the services are furnished. The Contractor shall not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary except as specifically provided in the medical necessity criteria applicable to the situation as provided in Title 9, California Code of Regulations (CCR), Sections 1820.205, 1830.205, and 1830.210.

- 2.2 The Contractor shall make covered services available in accordance with Title 9 CCR, Section 1810.345 and with Section 1810.405 with respect to timeliness of routine services.
- 2.3 The Contractor shall provide County's Medi-Cal beneficiaries with County's most current beneficiary brochure and provider list when a Medi-Cal beneficiary first receives a specialty mental health service from Contractor or upon request. Contractor may obtain copies of County's beneficiary brochure and provider list from County.
- 2.4 Contractor shall ensure that hours of operation are no less than the hours of operation offered to commercial enrollees, if enrollees of a commercial health plan receive services by Contractor.
- 2.5 Services required under this Agreement are described in the attached exhibits.

3. NONDISCRIMINATION

- 3.1 During the performance of this Agreement, Contractor and its officers, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment, unpaid intern, volunteer, independent contractor, or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age (over 40), political affiliation or belief, gender/sex, sexual orientation, gender identity, gender expression, or

military or veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Federal Regulations.

- 3.2 Consistent with the requirements of applicable Federal or State Law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.
- 3.3 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- 3.4 Contractor shall provide a system by which recipient of service shall have the opportunity to express and have considered their views, grievance, and complaints regarding Contractor's delivery of services.

4. ADMISSION POLICIES

- 4.1 All County referrals to Contractor's residential treatment facility shall be authorized by the Stanislaus County Interagency Resource Committee.
- 4.2 The final admission decision shall rest with Contractor.
- 4.3 If an admission is denied, County shall be notified of the reason(s) for

denial within 2 (two) business days. The denial shall include recommendations for alternative treatment.

- 4.4 Medi-Cal eligibility for County's clients shall remain with Stanislaus County.

5. BILLING AND PAYMENT

- 5.1 Payment information is identified in the attached exhibit(s).
- 5.2 Pursuant to CCR, Title 9, Chapter 11, Subchapter 4, a signed Claims Certification and Program Integrity form, as shown in the attached Claims Certification and Program Integrity Exhibit, must accompany each invoice. This certification must be signed by a duly authorized official.
- 5.3 County shall reimburse Contractor for only those services that were authorized and approved by local or State entities. County shall reconcile payments, which have been made for these services, periodically. The reconciliation will be based upon the total authorized and approved units of service captured in County's Electronic Health Record (EHR).
- 5.4 Upon request by County, Contractor shall repay County for audit exceptions as a function of BHRS, State, or Federal Medi-Cal audits which occur within the next five (5) fiscal years for the applicable fiscal year, within thirty (30) days from date of request, unless otherwise negotiated with County.
- 5.5 Payment by County to Contractor shall be payment in full for services provided.
- 5.6 Contractor shall hold harmless both the State and Medi-Cal beneficiaries in the event County cannot or will not pay for services performed by Contractor pursuant to this Agreement.
- 5.7 Both parties acknowledge that the State of California will continue to seek State or Federal revenue enhancements throughout the term of this Agreement. If a specific strategy adopted by the State affects the funding that County uses to support this Agreement, the parties agree to re-

negotiate the applicable terms.

- 5.8 Final payment for services provided under the terms of this Agreement may be withheld pending fiscal reconciliation.

6. CULTURAL COMPETENCY

Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community it serves.

7. COMPLIANCE

- 7.1 County has accepted as policy an Organizational Compliance Plan which addresses compliance with Federal, State, and local laws, regulations, rules and guidelines. It is expected that Contractor shall maintain a similar compliance plan for its organization, which is consistent with County's Plan.
- 7.2 Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the Centers for Medicare and Medicaid Services.
- 7.3 Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.
- 7.4 Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Social Security Act. Federal financial participation is not available for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.
- 7.5 Contractor shall not allow services to be provided under the terms of this Agreement by any officer, employee, subcontractor, agent or any other

individual or entity that is on the List of Excluded Individuals/Entities maintained by the U. S. Department of Health and Human Services, Office of the Inspector General (OIG), the Excluded Parties List System/System Award Management (EPLS/SAM) databases and the California State Medi-Cal Suspended and Ineligible Provider List (S&I), maintained by the California Department of Health Care Services.

7.5.1 Contractor shall insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section at the time of hiring. If they are on either or all of the three lists, they will not be hired to perform any duties under this agreement. Contractor agrees to provide evidence of verification prior to entering into the Agreement and/or upon request of the County.

7.5.2 Contractor shall thereafter monthly insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section or any exclusions databases that may be mandated by the Federal and/or State government within the duration of this Agreement. Contractor is to submit evidence of monthly reporting as part of the Monitoring process referenced in Section 11 (11.4).

7.5.3 Contractor shall immediately notify the County upon discovery of any officer, employee, subcontractor, agent or other individual or entity who are found on any of the three lists in this section. In the event of this discovery, Contractor also agrees to immediately cease the staff member from performing services, that the staff member will be restricted from submitting a claim for any Medi-Cal services and that the Contractor will internally address any corrective and/or disciplinary action in regards to this staff member.

7.5.4 County provides to Contractor the following references to the two

lists found in this section. County does not guarantee that these references will not change from time to time.

7.5.4.1 OIG list is currently found at the following web address: <http://exclusions.oig.hhs.gov/>

7.5.4.2 A link to the S&I list is currently found at the following web address: <http://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp> Near the bottom of the page click, on the "Suspended & Ineligible Provider List."

7.5.4.3 A link to the EPLS/SAM list is currently found at the following web address: <https://www.sam.gov/portal/SAM/#1>

7.6 Pursuant to Section 6032 of the Deficit Reduction Act of 2005, CONTRACTOR shall communicate to its employees, subcontractors, agents and other persons providing services on behalf of Contractor the policies and procedures related to the Federal and State False Claims Act.

8. PATIENTS' RIGHTS AND PROBLEM RESOLUTION

8.1 Contractor shall comply with all relevant rules, regulations, statutes, and County policies and procedures related to individuals' rights to a grievance process, an appeal process, and an expedited appeal process.

8.2 Contractor shall comply with the PLAN's Medi-Cal beneficiary problem resolution process as stated in the PLAN's Beneficiary Handbook. This does not preclude Contractor's commitment to resolve problems or complaints by Medi-Cal beneficiaries at the informal level as simply and quickly as possible. Nothing in this Agreement shall prevent Medi-Cal beneficiaries from utilizing the PLAN's and other rights and processes regarding grievances and appeals, which are guaranteed by statute.

8.3 Contractor shall ensure that each beneficiary has adequate information about the Contractor's processes to include at a minimum:

8.3.1 Description of grievance and appeal process;

8.3.2 Posting notices explaining the process procedures;

8.3.3 Making grievance forms and appeal forms along with self-addressed envelopes available for beneficiaries at Contractor sites;

8.3.4 Making interpreter services and TDD/TTY available to beneficiaries during normal business hours.

8.4 No provision of this Agreement shall be construed to replace or conflict with the duties of County's Patients' Rights Advocates as described in Section 5520 of the Welfare and Institutions Code.

9. CONFIDENTIALITY AND INFORMATION SECURITY

9.1 Contractor and its officers, employees, agents representative, subcontractors and all others acting on behalf of Contractor shall comply with applicable laws and regulations, including but not limited to Section 14100.2 and 5328 et seq. of the California Welfare and Institutions (W&I) Code, and 45 CFR Parts 160, 162, and 164 regarding the confidentiality and security of individually identifiable health information as required by the attached Confidentiality and Information Security Exhibit of this Agreement.

9.2 Records shall be disclosed only in accordance with all applicable State and Federal laws and regulations, including those relating to the privacy of protected health information, confidentiality of medical records, patient consents to release information, and the therapist-patient privilege. Such information shall be used only for appropriate claims and quality management purposes, unless specifically authorized by the client. Confidentiality regulations shall apply to all electronic media.

10. MONITORING/REVIEW ASSISTANCE

10.1 Contractor agrees to maintain books, records, documents, and other evidence necessary to facilitate contract monitoring and audits pursuant to Section 640, Title 9, Division 1, Chapter 3, Article 9, of the California Code of Regulations and the policies of Behavioral Health and Recovery Services.

- 10.2 Contractor agrees that the County shall have access to facilities, program documents, records, staff, clients/patients, or other material or persons the County deems necessary to monitor and audit services rendered
- 10.3 Contractor shall provide any necessary assistance to County in its conduct of facility inspections, and operational reviews of the quality of care being provided to beneficiaries, including providing County with any requested documentation or reports in advance of a scheduled on-site review. Contractor shall also provide any necessary assistance to County and the External Quality Review Organization contracting with the California Department of Health Care Services (DHCS) in the annual external quality review of the quality of care, quality outcomes, timeliness of, and access to, the services being provided to beneficiaries under this Agreement. Contractor shall provide a corrective action plan when requested and correct deficiencies as identified by such inspections and reviews according to the time frames delineated in the resulting reports
- 10.4 Contractor shall participate in regularly scheduled contract monitoring designed to review various aspects of contract services, including providing evidence of required licenses, certificates and permits, evidence of monthly review of all exclusion databases mandated by Federal and/or State regulation, Medi-Cal eligibility, discussion of actual costs, cost per unit, number of units, amount of required match, and State rates. County shall document and file the contract monitoring review and evidence and distribute a copy to the Contractor.

11. MEDI-CAL CERTIFICATION

- 11.1 Contractor shall maintain certification as an organizational provider of Medi-Cal Specialty Mental Health Services during the term of this Agreement. This includes meeting all staffing and facility standards required for organizational providers of Medi-Cal Specialty Mental Health Services which are claimed and notifying County's Contract Services

Manager in writing of anticipated changes in service locations at least sixty (60) days prior to such change.

- 11.2 A Medi-Cal site certification review is required for all new locations. A review can only be conducted after a fire clearance on the new site is obtained. All Medi-Cal billing for services at locations not yet certified shall be suspended until a fire clearance is received and certification has been concluded. Contractor may not be reimbursed for services provided which are not Medi-Cal billable.
- 11.3 The storage and dispensing of medications on site shall be in compliance with all pertinent State and Federal standards.

12. RECORDS

- 12.1 Clinical records of each patient in placement at Contractor's facilities shall be the property of Contractor and shall be kept until all audit findings are resolved. For each patient who has received services, a legible record shall be kept in detail which permits effective quality management processes and external operational audit processes and which facilitates an adequate system for follow-up treatment.
- 12.2 The Contractor shall be subject to the examination and audit of the Department or California State Auditor for a period of three years after final payment under agreement (Government Code § 8546.7).
- 12.3 Contractor shall allow the Department, DHCS, HHS and the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Agreement, and to inspect and evaluate, and audit any and all books, records, and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance

under this Agreement including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the Department, DCHS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

- 12.4 These books and records shall be maintained for a term of at least five (5) years after final payment is made and all pending matters closed, or, in the event the Contractor has been duly notified that the County, State, HHS, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, whichever is later.

13. REPORTING

- 13.1 Contractor shall provide County with other reports which may be required by State, Federal or local agencies for compliance with this Agreement.
- 13.2 Contractor shall establish and maintain accounting and fiscal practices that comply with its obligations pursuant to Section 1804.105, Chapter 11, Medi-Cal Specialty Mental Health Services and Title 9, California Code of Regulations.

14. PERSONNEL

- 14.1 Contractor shall adhere to the Statement of Compliance as specified in the attached Statement of Compliance Exhibit.
- 14.2 All Contractor staff providing services under the terms of this Agreement shall have successfully passed a criminal background check appropriate to their job classification and duties. Contractor shall not knowingly allow services to be provided under the terms of this Agreement by any person

convicted of financial fraud involving Federal or State funds.

- 14.3 Contractor assures County that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- 14.4 All personnel rendering services under this Agreement shall be employed by, or under contract to Contractor, and shall be appropriately supervised. Services shall be under the direction of Contractor's Clinical Director or employee who shall be a licensed mental health professional or other appropriate individual as described in Sections 622 through 630 of Title 9, of the California Code of Regulations.
- 14.5 All staff providing service under registration with the California State Board of Behavioral Health Science, or the Board of Psychology, shall be supervised by a licensed mental health professional, i.e., a Licensed Clinical Social Worker; Marriage Family Therapist; or Clinical Psychologist.
- 14.6 All staff providing services under this Agreement must obtain a National Provider Identifier (NPI).
- 14.7 Contractor shall ensure a process for credentialing of licensed staff is in place, which includes at a minimum, background checks and license verification.
- 14.8 All Contractor staff transporting clients under the terms of this Agreement shall have received and possess a valid California Driver's License and, if not covered by Contractor for automobile liability insurance, shall maintain at least the current California state minimum coverage.
- 14.9 Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community. Contractor shall ensure that staff providing bilingual services are fluent in their identified language.

15. WORKPLACE REQUIREMENTS

- 15.1 Contractor shall report all incidents of client suicides, homicides, or other unusual occurrences resulting in serious harm to clients or staff.
- 15.2 Contractor shall maintain a safe facility that is as free from safety hazards as is possible. Any reporting of unsafe working conditions by employees or others shall be immediately appraised and addressed.
- 15.3 Contractor hereby certifies that it complies with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and provides a drug-free workplace.
- 15.4 Contractor failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future Agreements if the County determines that any of the following has occurred: (1) Contractor has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

16. FINANCIAL RELATIONSHIPS

- 16.1 Contractor shall maintain program statistical records in the manner required by the County, California Department of Health Care Services, and applicable licensing agencies, and make such records available to County upon request.
- 16.2 Contractor shall maintain accurate accounting records of its costs and operating expenses. Such records shall be maintained until State audit findings are resolved. They shall be open to inspection by County, the Grand Jury, the State Controller, and the State Director of the Department of Health Care Services, or any of their deputies.
- 16.3 Contractor shall adhere to Title XIX of the Social Security Act, and conform to all other applicable Federal and State statutes and regulations.

17. REQUIRED LICENSES, CERTIFICATES, OR PERMITS

Any licenses, certificates, or permits required by the Federal, State, County, or

municipal governments for Contractor to provide the services and work described in this Agreement must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits shall be procured and maintained in force by Contractor at no expense to County.

18. INDEMNIFICATION

18.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend County and its agents, officers, and employees against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Contractor's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Contractor in contributing to such claim, damage, loss and expense.

18.2 Contractor's obligation to defend, indemnify and hold County and its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

18.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Contractor and its officers, employees, agents, representatives or subcontractors from and against all claims, damages,

losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

19. INSURANCE

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

20. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement, which either party shall be required or may desire to make, shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

County: County of Stanislaus
Behavioral Health and Recovery Services
Attention: Contract Services Manager
800 Scenic Drive
Modesto, CA 95350

Contractor: Sutter Valley Hospitals dba Sutter Center for Psychiatry
Attention: Cody Pepper
7700 Folsom Blvd.
Sacramento, CA 95826

21. CONFLICTS

Contractor agrees that it has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

22. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it

is found in contravention of any Federal, State or County statute, ordinance, regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated there and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

23. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from by mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

24. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

25. RELATIONSHIP OF PARTIES

This is an Agreement by and between two (2) independent contractors and is not intended to, and shall not be construed to be, nor create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

26. REFERENCES TO LAWS AND RULES

In the event any statute, regulation, or policy referred to in this Agreement is amended during the term of this Agreement, the parties shall comply with the amended provision as of the effective date of such amendment.

27. ASSIGNMENT

27.1 County has relied upon the skills, knowledge, experience, and training

presented by Contractor, as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, either in whole or in part, without prior written consent of County, which shall not be unreasonably withheld.

27.2 Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

28. AVAILABILITY OF FUNDS

Payments for services provided in accordance with the provisions of this Agreement are contingent upon the availability of County, State, and Federal funds. If Federal, State, or local entities do not appropriate sufficient funds for this program, the County has the option to terminate this Agreement or amend the Agreement to reflect any reduction of funds.

29. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.

30. VENUE

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

31. TERM

31.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other time of termination is listed in Exhibit A. Either party may terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice to the other

party. County may suspend or terminate this Agreement for cause upon written notice to Contractor immediately, or upon such notice, as County deems reasonable. If the default is cured by Contractor to the satisfaction of County, or County determines that the default should be excused, County may reinstate the Agreement, or revoke the termination upon application by Contractor.

31.2 In the event of termination or expiration of this Agreement, Contractor shall assist County in the orderly transfer of clients. In doing this, Contractor shall make available any pertinent information necessary for efficient case management of clients as determined by County. In no case shall a client be billed for this service.

31.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

32. SURVIVAL

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 5, "Billing and Payment", Paragraph 10, "Confidentiality and Information Security", Paragraph 13, "Records", Paragraph 22, "Indemnification", Paragraph 31, "Assignment".

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

(SIGNATURES SET FORTH ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

**COUNTY OF STANISLAUS
BEHAVIORAL HEALTH AND
RECOVERY SERVICES**

**SUTTER VALLEY HOSPITALS, INC. dba
SUTTER CENTER FOR PSYCHAITRY**

 6-8-18
Rick DeGette MA, MFT Date
Behavioral Health Director

John Boyd Date
Chief Administrative Officer

APPROVED AS TO FORM
John P. Doering, County Counsel

Marc Hartley
Deputy County Counsel

BOS Action Item: 2018-0048, January 23, 2018

EXHIBIT A-DEFINITIONS AND SCOPE OF WORK

A. DEFINITIONS

1. "County Patients" shall mean all of the following: (i) Medi-Cal adult beneficiaries of Stanislaus County pursuant to a contract between County and the California Department of Health Care Services, or any successor state agency; (ii) adult indigent uninsured residents of Stanislaus County ("County Uninsured patients") to the extent funding is available.
2. "Covered Services" shall mean acute inpatient hospital psychiatric services for direct care and treatment of the acute crisis phase of a mental condition, including but not limited to routine services and all hospital-based ancillary services, at a licensed provider, as defined in Title 9, CCR §1810.247 (b) – Specialty Mental Health Services, with appropriate notification to County as defined in Title 9, CCR §1820.225.
3. "Excluded Services" shall mean those services that are not Covered Services and for which the Mental Health Plan and County are not responsible pursuant to Title 9, §1810.355.

B. SCOPE OF WORK

1. The Covered Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation to County Patients.
2. Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation.
3. Contractor shall be responsible for all physician services including medical-related consultations, treatment of non-psychiatric medical illnesses, specialized testing, and diagnostic work-ups which may be needed by a patient at the Contractor's facility.
4. Contractor shall not bill the County or any County Patient, pursuant to this Agreement, for any of those services set forth listed in Title 9, CCR § 1810.355 entitled "Excluded Services."

C. INFORMATION NOTICES FOR THERAPEUTIC BEHAVIORAL SERVICES (TBS) AND EARLY PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT)

At the time of an emergency psychiatric admission, Contractor shall provide notices to any Medi-Cal adult beneficiary who is under twenty-one (21) years of age, and to such beneficiary's representatives, regarding the availability of TBS and EPSDT services.

D. BILLING AND PAYMENT

1. County shall reimburse Contractor for services delivered under the terms of this Agreement from the following funding sources: 2011 Realignment and 1991 Realignment.

2. In consideration of Contractor's provision of services required under this Agreement, County shall reimburse Contractor an amount not to exceed the contract maximum of \$150,000.
3. The County and Contractor agree to the following rate schedule, unless adjusted by the Department of Health Care Services:

MEDI-CAL BENEFICIARIES	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$950/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$950/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$770/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$90.00/day
Professional Fees – Psychiatry – Subsequent Days	\$90.00/day

COUNTY FUNDED CLIENTS, NON-MEDI-CAL BENEFICIARIES, NO OTHER PAYOR SOURCE AVAILABLE	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$950/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$950/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$860/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$90.00/day
Professional Fees – Psychiatry – Subsequent Days	\$90.00/day

4. COUNTY shall make payment for services within thirty-(30) days after receipt of Contractor's undisputed invoice by County. Contractor shall submit invoices by mail to the following address:

Stanislaus County Behavioral Health & Recovery Services
800 Scenic Drive, Building 4
Modesto, CA 95350
Attention: Managed Care Claims

F. TERM

These services shall commence on December 1, 2017, and continue through June 30, 2019.

G. FUNDING

If, during the time which this Agreement is in effect, funds are not allocated to County or Behavioral Health and Recovery Services, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement without penalty from or further obligation to Contractor. Contractor shall have no further obligation to County.

EXHIBIT B

Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits not less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL and the Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability and Auto Liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least** as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance primary coverage **at least** as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employee's, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the County.**

Waiver of Subrogation

Consultant hereby grants to County a waiver of any right to subrogation (except for Professional Liability) which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for **at least five (5) years** after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. **All certificates and endorsements are to be received and approved by the County before work commences.** However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors. Consultant's obligation to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Consultant to procure and maintain a policy of insurance.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

_____ Exempt from Auto -- I will not utilize a vehicle in the performance of my work with the County.

_____ Exempt from WC -- I am exempt from providing workers' compensation coverage as required under section 1861 and 3700 of the California Labor Code.

I acknowledge the insurance requirements listed above.

Print Name: JOHN BOYD Date: 1-4-18

Signature: [Handwritten Signature] Date: 1-4-18

Vendor Name: Sutter Valley Hospitals dba Sutter Center for Psychiatry

For CEO-Risk Management Division use only

Exception: _____

Approved by CEO-Risk Management Division: [Handwritten Signature] Date: 10/23/17

EXHIBIT C-CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS FOR DIRECT SERVICE PROVIDERS

1. As a covered entity, the Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code and with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-91), also known as “HIPAA”, and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), “the ARRA/HITECH Act” or “the HITECH Act”, as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as “HIPAA”.
2. Permitted Uses and Disclosures of IIHI by the Contractor.
 - A. *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
 - B. *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the Contractor may:
 - (1) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.
 - (2) Use IIHI to provide data aggregation services to County. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this Agreement with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of County.
3. Responsibilities of the Contractor.

The Contractor agrees:

- A. *Safeguards.* To prevent use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor’s operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time.

The Contractor shall restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network.

The Contractor shall protect all the hardware and electronic media that contain electronic protected health information (EPHI). This includes, but is not limited to, personal computers, PDAs, laptops, storage systems, back up tapes, CD-ROM disks, and removable disks. EPHI shall not be stored on laptops except as a temporary measure when capturing or creating information in the field. Such information shall be encrypted for protection and deleted after printing or transfer to a secure network server.

Contractors that transmit EPHI outside the County wide area network (WAN) are responsible for ensuring the information is safeguarded by using encryption when using the public internet or a wireless device.

- B. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of IIHI by Contractor or its subcontractors in violation of the requirements of this Agreement.
- C. *Agents and Subcontractors of the Contractor.* To ensure that any agent, including a subcontractor to which the Contractor provides IIHI received from County, or created or received by the Contractor, for the purposes of this contract shall comply with the same restrictions and conditions that apply through this Agreement to the Contractor with respect to such information.
- D. *Notification of Electronic Breach or Improper Disclosure.* During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of IIHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the County BHRS Privacy Officer, within five (5) business days of discovery. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the results of the investigation, including any corrective actions taken, and copies of all Notifications made as a result of the breach, to the BHRS Officer, postmarked within thirty (30) calendar days of the discovery of the breach to the address below:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95320
(209) 525-6225**

- E. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose IIHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.

4. Termination.

- A. *Termination for Cause.* Upon County's knowledge of a material breach of this Agreement by Contractor, County shall either:

- (1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by County.
- (2) Immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not possible; or
- (3) If neither cure nor termination is feasible, the BHRS Privacy Officer shall report the violation to the DHCS Information Security Officer of the Department of Health Care Services.

- B. *Judicial or Administrative Proceedings.* County may terminate this Agreement, effective immediately, if (i) Contractor is found liable in a civil matter or guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation is made, in an administrative or civil proceeding in which the Contractor is a party, that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws.
- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all IIHI received from County that Contractor still maintains in any form, and shall retain no copies of such IIHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of subcontractors or agents of the Contractor.

5. Miscellaneous Provisions.

- A. *Disclaimer.* County makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IIHI.
- B. *Assistance in Litigation or Administrative Proceedings.* Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against County, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
- C. *No Third-Party Beneficiaries.* Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than County or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
- D. *Interpretation.* The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and

conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws.

- E. *Regulatory References.* A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
- F. *Survival.* The respective rights and obligations of Contractor under Section 5.B of this Exhibit shall survive the termination or expiration of this Agreement.
- G. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

EXHIBIT D-STATEMENT OF COMPLIANCE

- A. Contractor agrees, unless specifically exempted, to comply with Government Code Section 12900 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Employment of personnel shall be made solely on the basis of merit.
1. Action shall be taken to ensure applicants are employed, and employees are treated during employment, without regard to their race, religion, color, sex, national origin, age, physical or mental handicap. Such action shall include, but not be limited to, the following: Employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff; or apprenticeship. However, recruitment and employment of applicants shall reflect the ethnic and racial composition of the County, particularly those groups not previously, nor currently, having adequate representation in recruitment or hiring. There shall be posted, in conspicuous places, notices available to employees and applicants for employment provided by the County Officer responsible for contracts setting forth the provisions of the Equal Opportunity clause.
 2. All solicitations or advertisements for employees placed by or on behalf of Contractor and/or the subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, or physical or mental handicap.
 3. Each labor union or representative of workers with which the County and/or the subcontractor has a collective bargaining agreement, or other contract or understanding, must post a notice provided by the County Officer responsible for contracts, advising the labor union or workers representative of Contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. In the event of noncompliance with the discrimination clause of this contract or as otherwise provided by State and Federal law, this contract may be canceled, terminated or suspended, in whole or in part, and Contractor and/or the subcontractor may be declared ineligible for further State contracts in accordance with the procedures authorized in the Behavioral Health and Recovery Service's Complaint Process.
 5. All provisions of Paragraph 1 through this paragraph 5 will be included in every subcontract unless exempted by rules, regulations or orders of the Director of the Behavioral Health and Recovery Services so such provisions will be binding upon each subcontractor. Contractor will take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction by the State, Contractor may request in writing to the State, who, in turn, may request the United States to enter into such litigation to protect the interest of the State and the United States.
- B. Services, benefits and facilities shall be provided to patients without regard to their race, color, creed, national origin, sex, age or physical or mental handicap, and no one will be refused service because of inability to pay for such services.
1. Nondiscrimination in Services, Benefits and Facilities: There shall be no discrimination in the provision of services because of color, race, creed, national origin, sex, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by State and Federal law. For the purpose of the contract, distinctions on the grounds of color, race, creed, national origin, sex, or age include, but are not limited to, the following: denying a participant any service or benefit to the participant which is different, or is provided in a different manner or at a different time, from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to this receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he/she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of the race, color, creed, or national origin of the participants to be served. The County and all subcontractors will take action to ensure intended beneficiaries are provided services without regard to color, race, creed, national origin, sex, age, or physical or mental handicap.
 2. Procedure for Complaint Process: All complaints alleging discrimination in the delivery of services by the County and/or the subcontractor because of race, color, creed, national origin, sex, age, or physical or mental handicap, may be resolved by the State through the State Department of Health Care Services' Action Complaint Process.
 3. Notice of Complaint Process: The County and all subcontractors shall, subject to the approval of the Behavioral Health and Recovery Services, establish procedures under which recipients of the service are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the State Department of Health Care Services.
- C. The County and any subcontractor will furnish all information and reports required by the Behavioral Health and Recovery Services and will permit access to books, records and accounts for purposes of investigation to ascertain compliance with above paragraphs.
- D. The County and all subcontractors assure all recipients of service are provided information in accordance with provisions of Welfare and Institutions Code, Sections 5325 and 5325.1, and Sections 5520 through 5550, Cal. Code Regs., tit. 9 §§ 860 through 868, and 42 CFR § 438.100 pertaining to their rights as patients, that the County has established a system whereby recipients of service may file a complaint for alleged violations of their rights.
- E. Contractor agrees to the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all Federally-assisted programs or activities, as detailed in regulations signed by the Secretary of Health, Education and Welfare, effective June 3, 1977, and found in the Federal Register, Volume 42, Number 86, dated May 4, 1977.

EXHIBIT E-MHP CLAIMS CERTIFICATION AND PROGRAM INTEGRITY

TO: Stanislaus County, Behavioral Health and Recovery Services

I HEREBY CERTIFY based on best knowledge, information, and belief to the following: An assessment of all Medi-Cal beneficiaries were conducted in compliance with the requirements established by the Stanislaus County Mental Health Plan (MHP). The beneficiaries were eligible to receive Medi-Cal services at the time the services were provided to the beneficiaries. Medical necessity was established for each beneficiary for the services provided, for the timeframe in which the services were provided. A client plan was developed and maintained for each beneficiary that met all client plan requirements established by the MHP. For each beneficiary receiving day rehabilitation, day treatment intensive, or EPSDT supplemental specialty mental health services included in the claim, all requirements for MHP payment authorization have been met and reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established by the MHP. All documentation for services meets the standards established by the MHP and is in the clinical record.

I also certify based on best knowledge, information, and belief that all claims for services provided to Medi-Cal beneficiaries were, in fact, provided to those beneficiaries.

I understand that payment of these claims will be from Federal and/or State funds, and any falsification or concealment of a material fact may be prosecuted under Federal and/or State laws.

Name

Date

Title

Agency

EXHIBIT F-DEPARTMENT OF HEALTH CARE SERVICES MENTAL HEALTH PLAN ADDITIONAL TERMS AND CONDITIONS

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Plan, to provide Specialty Mental Health Services to beneficiaries of Stanislaus County, the following terms of this Exhibit are used and apply:

1. Service, Administrative and Operational Requirements

Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the Contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. Provider Selection and Certification

- A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.
- B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.
- C. Contractor will comply with provisions of 42 C.F.R. Part 2, which relates to facilitating health integration and information exchange with new health care models, while continuing to protect the privacy and confidentiality of patients seeking treatment for substance abuse disorders.

3. Requirements for Day Treatment and Day Rehabilitation

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the Contractor shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

- A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:
 - 1) Day treatment or day rehabilitation will be provided for more than five days a week;
 - 2) At least every three months for continuation of day treatment intensive;
 - 3) At least every six months for continuation of day rehabilitation;
 - 4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.
- B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day

treatment intensive or day rehabilitation services.

- C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § §1840.318, 1840.328, 1840.350 and 1840.352
- D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:
 - 1) *Community meetings.* These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:
 - 2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;
 - a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.
 - b) *Therapeutic milieu.* This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.
 - c) *Process groups.* These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.
 - d) *Skill-building groups.* In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

- e) *Adjunctive therapies.* These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

- 1) *Psychotherapy.* Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.
 - 2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.
 - 3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.
- F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal.Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.
- 1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

- 2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.
 - 3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.
- G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.
- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of the Department of Health Care Services Mental Health Plan, Exhibit A, Attachment 1, Documentation Standards. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* County shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically

necessary day treatment intensive and day rehabilitation.

- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:
- 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
 - 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
 - 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
 - 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. **Disclosures**

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2) Date of birth and Social Security Number (in the case of an individual);
- 3) Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4) Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
- 5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and
- 6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

- B. *Disclosures Related to Business Transactions.* Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

- 1) The following information must be disclosed:
 - a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,
 - b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. *Disclosures Related to Persons Convicted of Crimes.* Contractor shall submit the following disclosures to the County regarding the Contractor's management:

- 1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)
- 2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.
- 3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. **Beneficiary Liability for Payment**

Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. **Audits and Recovery of Overpayments**

Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. **Federal Equal Opportunity Requirements**

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212), The Drug Abuse Office and Treatment Act of 1972, as amended, The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616, as amended, and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. **Travel and Per Diem Reimbursement**

CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for non-represented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. **Procurement Rules**

A. *Equipment/Property definitions*

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.
- B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a) Avoid purchasing unnecessary or duplicate items;
 - b) Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c) Take positive steps to utilize small and veteran owned businesses.
 - 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRM Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
 - 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
 - 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**

- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
 - C. In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.
11. **Motor Vehicles**
The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.
12. **Income Restrictions**
Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.
13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
 - C. The Contractor and/or Subcontractor shall comply with the above

requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. **Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. **Federal Contract Funds**

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. **Intellectual Property Rights**

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner

of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. **Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. **Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. **Use of Small, Minority Owned and Women's Businesses**

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or

services). Contractors shall take all of the following steps to further this goal.

- 1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- 2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- 3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- 4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. **Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. **Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
As used herein, fringe benefits do not include:
 - 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - 2) Director's and executive committee member's fees.
 - 3) Incentive awards and/or bonus incentive pay.

- 4) Allowances for off-site pay.
- 5) Location allowances.
- 6) Hardship pay.
- 7) Cost-of-living differentials.

C. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted accounting principles;
 - c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
- 4) Earned/Accrued Compensation
 - a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a

one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

22. **Lobbying Prohibition**

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

23. **Patient Rights**

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that

they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.

- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

24. **Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. **Trafficking Victims Protection Act of 2000**

Contractor and its Subcontractors that provide services covered by this Agreement shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as amended by section 1702. The County is authorized to terminate a contract, without penalty, if the contractor: (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the award is in effect; or (c) Uses forced labor in the performance of the award and/or sub awards under the award.



PROVIDER AGREEMENT

BETWEEN

STANISLAUS COUNTY

BEHAVIORAL HEALTH AND RECOVERY SERVICES

AND

BAKERSFIELD BEHAVIORAL HEALTHCARE HOSPITAL, LLC

DECEMBER 1, 2017 – JUNE 30, 2019

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AGREEMENT

This Agreement is made and entered into in the City of Modesto, State of California, by and between the County of Stanislaus, through Behavioral Health and Recovery Services, hereinafter referred to as “County”, and Bakersfield Behavioral Healthcare Hospital, LLC, with its principal place of business identified in Section 24, hereinafter referred to as “Contractor”, effective December 1, 2017, for and in consideration of the premises, and the mutual promises, covenants, terms, and conditions hereinafter contained.

WHEREAS, County, through Behavioral Health and Recovery Services in partnership with the Local Mental Health Plan, hereinafter referred to as “PLAN”, is responsible to provide comprehensive acute psychiatric inpatient hospitalization services to Stanislaus County uninsured residents and Medi-Cal beneficiaries, as described in Title 9 of the California Code of Regulations, Chapter 11, Medi-Cal Specialty Mental Health Services, Subchapter 1, Article 1, beginning at Section 1810.100, (9 CCR Section 1810.100 et seq.), as it may be amended from time to time, and the Bronzan-McCorquodale Act contained in the California Welfare and Institutions Code, beginning at Section 5600, as it may be amended from time to time by the California Legislature.

WHEREAS, the California Welfare and Institutions Code (Section 5600 et seq.) provides a set of definitions, standards, procedures and regulations by and pursuant to which County and Contractor may lawfully contract for such services; and

WHEREAS, Contractor is specially trained, experienced and competent to perform and has agreed to provide acute inpatient hospitalization services.

NOW THEREFORE, the parties hereby agree as follows:

1. RECITALS

The recitals set forth above are a material part of this Agreement.

2. SERVICES

2.1 The Contractor shall ensure that covered services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for

which the services are furnished. The Contractor shall not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary except as specifically provided in the medical necessity criteria applicable to the situation as provided in Title 9, California Code of Regulations (CCR), Sections 1820.205, 1830.205, and 1830.210.

- 2.2 The Contractor shall make covered services available in accordance with Title 9 CCR, Section 1810.345 and with Section 1810.405 with respect to timeliness of routine services.
- 2.3 The Contractor shall provide County's Medi-Cal beneficiaries with County's most current beneficiary brochure and provider list when a Medi-Cal beneficiary first receives a specialty mental health service from Contractor or upon request. Contractor may obtain copies of County's beneficiary brochure and provider list from County.
- 2.4 Contractor shall ensure that hours of operation are no less than the hours of operation offered to commercial enrollees, if enrollees of a commercial health plan receive services by Contractor.
- 2.5 Services required under this Agreement are described in the attached exhibits.

3. NONDISCRIMINATION

- 3.1 During the performance of this Agreement, Contractor and its officers, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment, unpaid intern, volunteer, independent contractor, or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age (over 40), political affiliation or belief, gender/sex, sexual orientation, gender identity, gender expression, or

military or veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Federal Regulations.

- 3.2 Consistent with the requirements of applicable Federal or State Law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of clients, assignment of accommodations, treatment, evaluation, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age (over 40), sexual preference, or mental or physical disability (including individuals with AIDS or those with a record of or who are regarded as having a substantially limiting impairment), or medical condition (cancer-related), pregnancy related condition, or political affiliation or belief. This policy shall be in writing, in English and Spanish. It shall be posted in all public areas.
- 3.3 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- 3.4 Contractor shall provide a system by which recipient of service shall have the opportunity to express and have considered their views, grievance, and complaints regarding Contractor's delivery of services.

4. ADMISSION POLICIES

- 4.1 All County referrals to Contractor's residential treatment facility shall be authorized by the Stanislaus County Interagency Resource Committee.
- 4.2 The final admission decision shall rest with Contractor.
- 4.3 If an admission is denied, County shall be notified of the reason(s) for

denial within 2 (two) business days. The denial shall include recommendations for alternative treatment.

- 4.4 Medi-Cal eligibility for County's clients shall remain with Stanislaus County.

5. BILLING AND PAYMENT

- 5.1 Payment information is identified in the attached exhibit(s).
- 5.2 Pursuant to CCR, Title 9, Chapter 11, Subchapter 4, a signed Claims Certification and Program Integrity form, as shown in the attached Claims Certification and Program Integrity Exhibit, must accompany each invoice. This certification must be signed by a duly authorized official.
- 5.3 County shall reimburse Contractor for only those services that were authorized and approved by local or State entities. County shall reconcile payments, which have been made for these services, periodically. The reconciliation will be based upon the total authorized and approved units of service captured in County's Electronic Health Record (EHR).
- 5.4 Upon request by County, Contractor shall repay County for audit exceptions as a function of BHRS, State, or Federal Medi-Cal audits which occur within the next five (5) fiscal years for the applicable fiscal year, within thirty (30) days from date of request, unless otherwise negotiated with County.
- 5.5 Payment by County to Contractor shall be payment in full for services provided.
- 5.6 Contractor shall hold harmless both the State and Medi-Cal beneficiaries in the event County cannot or will not pay for services performed by Contractor pursuant to this Agreement.
- 5.7 Both parties acknowledge that the State of California will continue to seek State or Federal revenue enhancements throughout the term of this Agreement. If a specific strategy adopted by the State affects the funding that County uses to support this Agreement, the parties agree to re-

negotiate the applicable terms.

- 5.8 Final payment for services provided under the terms of this Agreement may be withheld pending fiscal reconciliation.

6. CULTURAL COMPETENCY

Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community it serves.

7. COMPLIANCE

- 7.1 County has accepted as policy an Organizational Compliance Plan which addresses compliance with Federal, State, and local laws, regulations, rules and guidelines. It is expected that Contractor shall maintain a similar compliance plan for its organization, which is consistent with County's Plan.
- 7.2 Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the Centers for Medicare and Medicaid Services.
- 7.3 Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or non-procurement programs from having a relationship with Contractor.
- 7.4 Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Social Security Act. Federal financial participation is not available for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.
- 7.5 Contractor shall not allow services to be provided under the terms of this Agreement by any officer, employee, subcontractor, agent or any other

individual or entity that is on the List of Excluded Individuals/Entities maintained by the U. S. Department of Health and Human Services, Office of the Inspector General (OIG), the Excluded Parties List System/System Award Management (EPLS/SAM) databases and the California State Medi-Cal Suspended and Ineligible Provider List (S&I), maintained by the California Department of Health Care Services.

7.5.1 Contractor shall insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section at the time of hiring. If they are on either or all of the three lists, they will not be hired to perform any duties under this agreement. Contractor agrees to provide evidence of verification prior to entering into the Agreement and/or upon request of the County.

7.5.2 Contractor shall thereafter monthly insure that all officers, employees, subcontractors, agents or other individuals or entities are not on the two lists in this section or any exclusions databases that may be mandated by the Federal and/or State government within the duration of this Agreement. Contractor is to submit evidence of monthly reporting as part of the Monitoring process referenced in Section 11 (11.4).

7.5.3 Contractor shall immediately notify the County upon discovery of any officer, employee, subcontractor, agent or other individual or entity who are found on any of the three lists in this section. In the event of this discovery, Contractor also agrees to immediately cease the staff member from performing services, that the staff member will be restricted from submitting a claim for any Medi-Cal services and that the Contractor will internally address any corrective and/or disciplinary action in regards to this staff member.

7.5.4 County provides to Contractor the following references to the two

lists found in this section. County does not guarantee that these references will not change from time to time.

7.5.4.1 OIG list is currently found at the following web address: <http://exclusions.oig.hhs.gov/>

7.5.4.2 A link to the S&I list is currently found at the following web address: <http://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp> Near the bottom of the page click, on the "Suspended & Ineligible Provider List."

7.5.4.3 A link to the EPLS/SAM list is currently found at the following web address: <https://www.sam.gov/portal/SAM/#1>

7.6 Pursuant to Section 6032 of the Deficit Reduction Act of 2005, CONTRACTOR shall communicate to its employees, subcontractors, agents and other persons providing services on behalf of Contractor the policies and procedures related to the Federal and State False Claims Act.

8. PATIENTS' RIGHTS AND PROBLEM RESOLUTION

8.1 Contractor shall comply with all relevant rules, regulations, statutes, and County policies and procedures related to individuals' rights to a grievance process, an appeal process, and an expedited appeal process.

8.2 Contractor shall comply with the PLAN's Medi-Cal beneficiary problem resolution process as stated in the PLAN's Beneficiary Handbook. This does not preclude Contractor's commitment to resolve problems or complaints by Medi-Cal beneficiaries at the informal level as simply and quickly as possible. Nothing in this Agreement shall prevent Medi-Cal beneficiaries from utilizing the PLAN's and other rights and processes regarding grievances and appeals, which are guaranteed by statute.

8.3 Contractor shall ensure that each beneficiary has adequate information about the Contractor's processes to include at a minimum:

8.3.1 Description of grievance and appeal process;

8.3.2 Posting notices explaining the process procedures;

8.3.3 Making grievance forms and appeal forms along with self-addressed envelopes available for beneficiaries at Contractor sites;

8.3.4 Making interpreter services and TDD/TTY available to beneficiaries during normal business hours.

8.4 No provision of this Agreement shall be construed to replace or conflict with the duties of County's Patients' Rights Advocates as described in Section 5520 of the Welfare and Institutions Code.

9. CONFIDENTIALITY AND INFORMATION SECURITY

9.1 Contractor and its officers, employees, agents representative, subcontractors and all others acting on behalf of Contractor shall comply with applicable laws and regulations, including but not limited to Section 14100.2 and 5328 et seq. of the California Welfare and Institutions (W&I) Code, and 45 CFR Parts 160, 162, and 164 regarding the confidentiality and security of individually identifiable health information as required by the attached Confidentiality and Information Security Exhibit of this Agreement.

9.2 Records shall be disclosed only in accordance with all applicable State and Federal laws and regulations, including those relating to the privacy of protected health information, confidentiality of medical records, patient consents to release information, and the therapist-patient privilege. Such information shall be used only for appropriate claims and quality management purposes, unless specifically authorized by the client. Confidentiality regulations shall apply to all electronic media.

10. MONITORING/REVIEW ASSISTANCE

10.1 Contractor agrees to maintain books, records, documents, and other evidence necessary to facilitate contract monitoring and audits pursuant to Section 640, Title 9, Division 1, Chapter 3, Article 9, of the California Code of Regulations and the policies of Behavioral Health and Recovery Services.

- 10.2 Contractor agrees that the County shall have access to facilities, program documents, records, staff, clients/patients, or other material or persons the County deems necessary to monitor and audit services rendered
- 10.3 Contractor shall provide any necessary assistance to County in its conduct of facility inspections, and operational reviews of the quality of care being provided to beneficiaries, including providing County with any requested documentation or reports in advance of a scheduled on-site review. Contractor shall also provide any necessary assistance to County and the External Quality Review Organization contracting with the California Department of Health Care Services (DHCS) in the annual external quality review of the quality of care, quality outcomes, timeliness of, and access to, the services being provided to beneficiaries under this Agreement. Contractor shall provide a corrective action plan when requested and correct deficiencies as identified by such inspections and reviews according to the time frames delineated in the resulting reports
- 10.4 Contractor shall participate in regularly scheduled contract monitoring designed to review various aspects of contract services, including providing evidence of required licenses, certificates and permits, evidence of monthly review of all exclusion databases mandated by Federal and/or State regulation, Medi-Cal eligibility, discussion of actual costs, cost per unit, number of units, amount of required match, and State rates. County shall document and file the contract monitoring review and evidence and distribute a copy to the Contractor.

11. MEDI-CAL CERTIFICATION

- 11.1 Contractor shall maintain certification as an organizational provider of Medi-Cal Specialty Mental Health Services during the term of this Agreement. This includes meeting all staffing and facility standards required for organizational providers of Medi-Cal Specialty Mental Health Services which are claimed and notifying County's Contract Services

Manager in writing of anticipated changes in service locations at least sixty (60) days prior to such change.

- 11.2 A Medi-Cal site certification review is required for all new locations. A review can only be conducted after a fire clearance on the new site is obtained. All Medi-Cal billing for services at locations not yet certified shall be suspended until a fire clearance is received and certification has been concluded. Contractor may not be reimbursed for services provided which are not Medi-Cal billable.
- 11.3 The storage and dispensing of medications on site shall be in compliance with all pertinent State and Federal standards.

12. RECORDS

- 12.1 Clinical records of each patient in placement at Contractor's facilities shall be the property of Contractor and shall be kept until all audit findings are resolved. For each patient who has received services, a legible record shall be kept in detail which permits effective quality management processes and external operational audit processes and which facilitates an adequate system for follow-up treatment.
- 12.2 The Contractor shall be subject to the examination and audit of the Department or California State Auditor for a period of three years after final payment under agreement (Government Code § 8546.7).
- 12.3 Contractor shall allow the Department, DHCS, HHS and the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Agreement, and to inspect and evaluate, and audit any and all books, records, and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance

under this Agreement including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the Department, DCHS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

- 12.4 These books and records shall be maintained for a term of at least five (5) years after final payment is made and all pending matters closed, or, in the event the Contractor has been duly notified that the County, State, HHS, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, whichever is later.

13. REPORTING

- 13.1 Contractor shall provide County with other reports which may be required by State, Federal or local agencies for compliance with this Agreement.
- 13.2 Contractor shall establish and maintain accounting and fiscal practices that comply with its obligations pursuant to Section 1804.105, Chapter 11, Medi-Cal Specialty Mental Health Services and Title 9, California Code of Regulations.

14. PERSONNEL

- 14.1 Contractor shall adhere to the Statement of Compliance as specified in the attached Statement of Compliance Exhibit.
- 14.2 All Contractor staff providing services under the terms of this Agreement shall have successfully passed a criminal background check appropriate to their job classification and duties. Contractor shall not knowingly allow services to be provided under the terms of this Agreement by any person

convicted of financial fraud involving Federal or State funds.

- 14.3 Contractor assures County that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- 14.4 All personnel rendering services under this Agreement shall be employed by, or under contract to Contractor, and shall be appropriately supervised. Services shall be under the direction of Contractor's Clinical Director or employee who shall be a licensed mental health professional or other appropriate individual as described in Sections 622 through 630 of Title 9, of the California Code of Regulations.
- 14.5 All staff providing service under registration with the California State Board of Behavioral Health Science, or the Board of Psychology, shall be supervised by a licensed mental health professional, i.e., a Licensed Clinical Social Worker; Marriage Family Therapist; or Clinical Psychologist.
- 14.6 All staff providing services under this Agreement must obtain a National Provider Identifier (NPI).
- 14.7 Contractor shall ensure a process for credentialing of licensed staff is in place, which includes at a minimum, background checks and license verification.
- 14.8 All Contractor staff transporting clients under the terms of this Agreement shall have received and possess a valid California Driver's License and, if not covered by Contractor for automobile liability insurance, shall maintain at least the current California state minimum coverage.
- 14.9 Contractor's staff shall be linguistically and culturally qualified to meet the current and projected needs of the client community. Contractor shall ensure that staff providing bilingual services are fluent in their identified language.

15. WORKPLACE REQUIREMENTS

- 15.1 Contractor shall report all incidents of client suicides, homicides, or other unusual occurrences resulting in serious harm to clients or staff.
- 15.2 Contractor shall maintain a safe facility that is as free from safety hazards as is possible. Any reporting of unsafe working conditions by employees or others shall be immediately appraised and addressed.
- 15.3 Contractor hereby certifies that it complies with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and provides a drug-free workplace.
- 15.4 Contractor failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future Agreements if the County determines that any of the following has occurred: (1) Contractor has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

16. FINANCIAL RELATIONSHIPS

- 16.1 Contractor shall maintain program statistical records in the manner required by the County, California Department of Health Care Services, and applicable licensing agencies, and make such records available to County upon request.
- 16.2 Contractor shall maintain accurate accounting records of its costs and operating expenses. Such records shall be maintained until State audit findings are resolved. They shall be open to inspection by County, the Grand Jury, the State Controller, and the State Director of the Department of Health Care Services, or any of their deputies.
- 16.3 Contractor shall adhere to Title XIX of the Social Security Act, and conform to all other applicable Federal and State statutes and regulations.

17. REQUIRED LICENSES, CERTIFICATES, OR PERMITS

Any licenses, certificates, or permits required by the Federal, State, County, or

municipal governments for Contractor to provide the services and work described in this Agreement must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits shall be procured and maintained in force by Contractor at no expense to County.

18. INDEMNIFICATION

18.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend County and its agents, officers, and employees against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Contractor's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Contractor in contributing to such claim, damage, loss and expense.

18.2 Contractor's obligation to defend, indemnify and hold County and its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

18.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Contractor and its officers, employees, agents, representatives or subcontractors from and against all claims, damages,

losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

19. INSURANCE

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

20. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement, which either party shall be required or may desire to make, shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

County: County of Stanislaus
Behavioral Health and Recovery Services
Attention: Contract Services Manager
800 Scenic Drive
Modesto, CA 95350

Contractor: Bakersfield Behavioral Healthcare Hospital, LLC
Attention: Mark Nellis
5201 White Lane
Bakersfield, CA 93309

21. CONFLICTS

Contractor agrees that it has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

22. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it

is found in contravention of any Federal, State or County statute, ordinance, regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated there and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

23. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from by mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

24. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

25. RELATIONSHIP OF PARTIES

This is an Agreement by and between two (2) independent contractors and is not intended to, and shall not be construed to be, nor create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

26. REFERENCES TO LAWS AND RULES

In the event any statute, regulation, or policy referred to in this Agreement is amended during the term of this Agreement, the parties shall comply with the amended provision as of the effective date of such amendment.

27. ASSIGNMENT

27.1 County has relied upon the skills, knowledge, experience, and training

presented by Contractor, as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, either in whole or in part, without prior written consent of County, which shall not be unreasonably withheld.

27.2 Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

28. AVAILABILITY OF FUNDS

Payments for services provided in accordance with the provisions of this Agreement are contingent upon the availability of County, State, and Federal funds. If Federal, State, or local entities do not appropriate sufficient funds for this program, the County has the option to terminate this Agreement or amend the Agreement to reflect any reduction of funds.

29. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.

30. VENUE

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

31. TERM

31.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other time of termination is listed in Exhibit A. Either party may terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice to the other

party. County may suspend or terminate this Agreement for cause upon written notice to Contractor immediately, or upon such notice, as County deems reasonable. If the default is cured by Contractor to the satisfaction of County, or County determines that the default should be excused, County may reinstate the Agreement, or revoke the termination upon application by Contractor.

31.2 In the event of termination or expiration of this Agreement, Contractor shall assist County in the orderly transfer of clients. In doing this, Contractor shall make available any pertinent information necessary for efficient case management of clients as determined by County. In no case shall a client be billed for this service.

31.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

32. SURVIVAL

Notwithstanding any other provision of this Agreement, the following clauses shall remain in full force and effect and shall survive the expiration or termination of this Agreement: Paragraph 5, "Billing and Payment", Paragraph 10, "Confidentiality and Information Security", Paragraph 13, "Records", Paragraph 22, "Indemnification", Paragraph 31, "Assignment".

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

(SIGNATURES SET FORTH ON FOLLOWING PAGE)

EXHIBIT A-DEFINITIONS AND SCOPE OF WORK

A. DEFINITIONS

1. "County Patients" shall mean all of the following: (i) Medi-Cal adult beneficiaries of Stanislaus County pursuant to a contract between County and the California Department of Health Care Services, or any successor state agency; (ii) adult indigent uninsured residents of Stanislaus County ("County Uninsured patients") to the extent funding is available.
2. "Covered Services" shall mean acute inpatient hospital psychiatric services for direct care and treatment of the acute crisis phase of a mental condition, including but not limited to routine services and all hospital-based ancillary services, at a licensed provider, as defined in Title 9, CCR §1810.247 (b) – Specialty Mental Health Services, with appropriate notification to County as defined in Title 9, CCR §1820.225.
3. "Excluded Services" shall mean those services that are not Covered Services and for which the Mental Health Plan and County are not responsible pursuant to Title 9, §1810.355.

B. SCOPE OF WORK

1. The Covered Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation to County Patients.
2. Services provided by Contractor pursuant to this Agreement shall be performed in a timely manner, pursuant to the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions, and pursuant to County's obligation.
3. Contractor shall be responsible for all physician services including medical-related consultations, treatment of non-psychiatric medical illnesses, specialized testing, and diagnostic work-ups which may be needed by a patient at the Contractor's facility.
4. Contractor shall not bill the County or any County Patient, pursuant to this Agreement, for any of those services set forth listed in Title 9, CCR § 1810.355 entitled "Excluded Services."

C. INFORMATION NOTICES FOR THERAPEUTIC BEHAVIORAL SERVICES (TBS) AND EARLY PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT)

At the time of an emergency psychiatric admission, Contractor shall provide notices to any Medi-Cal adult beneficiary who is under twenty-one (21) years of age, and to such beneficiary's representatives, regarding the availability of TBS and EPSDT services.

D. BILLING AND PAYMENT

1. County shall reimburse Contractor for services delivered under the terms of this Agreement from the following funding sources: 2011 Realignment and 1991 Realignment.

2. In consideration of Contractor's provision of services required under this Agreement, County shall reimburse Contractor an amount not to exceed the contract maximum of \$300,000.
3. The County and Contractor agree to the following rate schedule, unless adjusted by the Department of Health Care Services:

MEDI-CAL BENEFICIARIES	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$916/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$916/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$916/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$103.00/day
Professional Fees – Psychiatry – Subsequent Days	\$78.00/day

COUNTY FUNDED CLIENTS, NON-MEDI-CAL BENEFICIARIES, NO OTHER PAYOR SOURCE AVAILABLE	
ACTIVITY	RATE
Per Diem Acute Facility Psychiatric Day Rate (Adult)	\$916/day
Per Diem Acute Facility Psychiatric Day Rate (Older Adult)	\$916/day
Per Diem Acute Facility Psychiatric Day Rate (Adolescent)	\$916/day
Administrative Day Services	\$676/day
Professional Fees – Psychiatry - First Day	\$103.00/day
Professional Fees – Psychiatry – Subsequent Days	\$78.00/day

4. COUNTY shall make payment for services within thirty-(30) days after receipt of Contractor's undisputed invoice by County. Contractor shall submit invoices by mail to the following address:

Stanislaus County Behavioral Health & Recovery Services
 800 Scenic Drive, Building 4
 Modesto, CA 95350
 Attention: Managed Care Claims

F. TERM

These services shall commence on December 1, 2017, and continue through June 30, 2019.

G. FUNDING

If, during the time which this Agreement is in effect, funds are not allocated to County or Behavioral Health and Recovery Services, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement without penalty from or further obligation to Contractor. Contractor shall have no further obligation to County.

EXHIBIT B

Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and **Employer's Liability** Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits not less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL and the Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability and Auto Liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employee's, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

Waiver of Subrogation

Consultant hereby grants to County a waiver of any right to subrogation (except for Professional Liability) which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such Insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted Insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors. Consultant's obligation to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Consultant to procure and maintain a policy of insurance.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

X Exempt from Auto – I will not utilize a vehicle in the performance of my work with the County.

_____ Exempt from WC – I am exempt from providing workers' compensation coverage as required under section 1861 and 3700 of the California Labor Code.

I acknowledge the insurance requirements listed above.

Print Name: MARK NEWS, CFO Date: 11/1/2017

Signature: [Handwritten Signature] Date: _____

Vendor Name: Bakersfield Behavioral Healthcare Hospital, LLC

For CEO-Risk Management Division use only

Exception: _____

Approved by CEO-Risk Management Division: [Handwritten Signature] Date: 10/23/17

EXHIBIT C-CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS FOR DIRECT SERVICE PROVIDERS

1. As a covered entity, the Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code and with the privacy and security requirements of Title II of the Health Insurance Portability and Accountability Act of 1996, (Public Law 104-91), also known as “HIPAA”, and Title XIII of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5), “the ARRA/HITECH Act” or “the HITECH Act”, as these laws may be subsequently amended, and implementing regulations enacted by the Department of Health and Human Services at 45 CFR Parts 160-164, and, regulations enacted with regard to the HITECH Act. The foregoing laws and rules are sometimes collectively referred to hereafter as “HIPAA”.
2. Permitted Uses and Disclosures of IIHI by the Contractor.
 - A. *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
 - B. *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the Contractor may:
 - (1) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.
 - (2) Use IIHI to provide data aggregation services to County. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this Agreement with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of County.
3. Responsibilities of the Contractor.

The Contractor agrees:

- A. *Safeguards.* To prevent use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor’s operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time.

The Contractor shall restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network.

The Contractor shall protect all the hardware and electronic media that contain electronic protected health information (EPHI). This includes, but is not limited to, personal computers, PDAs, laptops, storage systems, back up tapes, CD-ROM disks, and removable disks. EPHI shall not be stored on laptops except as a temporary measure when capturing or creating information in the field. Such information shall be encrypted for protection and deleted after printing or transfer to a secure network server.

Contractors that transmit EPHI outside the County wide area network (WAN) are responsible for ensuring the information is safeguarded by using encryption when using the public internet or a wireless device.

- B. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of IIHI by Contractor or its subcontractors in violation of the requirements of this Agreement.
- C. *Agents and Subcontractors of the Contractor.* To ensure that any agent, including a subcontractor to which the Contractor provides IIHI received from County, or created or received by the Contractor, for the purposes of this contract shall comply with the same restrictions and conditions that apply through this Agreement to the Contractor with respect to such information.
- D. *Notification of Electronic Breach or Improper Disclosure.* During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of IIHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the County BHRS Privacy Officer, within five (5) business days of discovery. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the results of the investigation, including any corrective actions taken, and copies of all Notifications made as a result of the breach, to the BHRS Officer, postmarked within thirty (30) calendar days of the discovery of the breach to the address below:

**BHRS Privacy Officer
Behavioral Health and Recovery Services
800 Scenic Drive
Modesto, CA 95320
(209) 525-6225**

- E. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose IIHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.

4. Termination.

- A. *Termination for Cause.* Upon County's knowledge of a material breach of this Agreement by Contractor, County shall either:

- (1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by County.
- (2) Immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not possible; or
- (3) If neither cure nor termination is feasible, the BHRS Privacy Officer shall report the violation to the DHCS Information Security Officer of the Department of Health Care Services.

- B. *Judicial or Administrative Proceedings.* County may terminate this Agreement, effective immediately, if (i) Contractor is found liable in a civil matter or guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation is made, in an administrative or civil proceeding in which the Contractor is a party, that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws.
- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all IIHI received from County that Contractor still maintains in any form, and shall retain no copies of such IIHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of subcontractors or agents of the Contractor.

5. Miscellaneous Provisions.

- A. *Disclaimer.* County makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IIHI.
- B. *Assistance in Litigation or Administrative Proceedings.* Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against County, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
- C. *No Third-Party Beneficiaries.* Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than County or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
- D. *Interpretation.* The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and

conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws.

- E. *Regulatory References.* A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
- F. *Survival.* The respective rights and obligations of Contractor under Section 5.B of this Exhibit shall survive the termination or expiration of this Agreement.
- G. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

EXHIBIT D-STATEMENT OF COMPLIANCE

- A. Contractor agrees, unless specifically exempted, to comply with Government Code Section 12900 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Employment of personnel shall be made solely on the basis of merit.
1. Action shall be taken to ensure applicants are employed, and employees are treated during employment, without regard to their race, religion, color, sex, national origin, age, physical or mental handicap. Such action shall include, but not be limited to, the following: Employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff; or apprenticeship. However, recruitment and employment of applicants shall reflect the ethnic and racial composition of the County, particularly those groups not previously, nor currently, having adequate representation in recruitment or hiring. There shall be posted, in conspicuous places, notices available to employees and applicants for employment provided by the County Officer responsible for contracts setting forth the provisions of the Equal Opportunity clause.
 2. All solicitations or advertisements for employees placed by or on behalf of Contractor and/or the subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, or physical or mental handicap.
 3. Each labor union or representative of workers with which the County and/or the subcontractor has a collective bargaining agreement, or other contract or understanding, must post a notice provided by the County Officer responsible for contracts, advising the labor union or workers representative of Contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. In the event of noncompliance with the discrimination clause of this contract or as otherwise provided by State and Federal law, this contract may be canceled, terminated or suspended, in whole or in part, and Contractor and/or the subcontractor may be declared ineligible for further State contracts in accordance with the procedures authorized in the Behavioral Health and Recovery Service's Complaint Process.
 5. All provisions of Paragraph 1 through this paragraph 5 will be included in every subcontract unless exempted by rules, regulations or orders of the Director of the Behavioral Health and Recovery Services so such provisions will be binding upon each subcontractor. Contractor will take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction by the State, Contractor may request in writing to the State, who, in turn, may request the United States to enter into such litigation to protect the interest of the State and the United States.
- B. Services, benefits and facilities shall be provided to patients without regard to their race, color, creed, national origin, sex, age or physical or mental handicap, and no one will be refused service because of inability to pay for such services.
1. Nondiscrimination in Services, Benefits and Facilities: There shall be no discrimination in the provision of services because of color, race, creed, national origin, sex, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by State and Federal law. For the purpose of the contract, distinctions on the grounds of color, race, creed, national origin, sex, or age include, but are not limited to, the following: denying a participant any service or benefit to the participant which is different, or is provided in a different manner or at a different time, from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to this receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he/she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of the race, color, creed, or national origin of the participants to be served. The County and all subcontractors will take action to ensure intended beneficiaries are provided services without regard to color, race, creed, national origin, sex, age, or physical or mental handicap.
 2. Procedure for Complaint Process: All complaints alleging discrimination in the delivery of services by the County and/or the subcontractor because of race, color, creed, national origin, sex, age, or physical or mental handicap, may be resolved by the State through the State Department of Health Care Services' Action Complaint Process.
 3. Notice of Complaint Process: The County and all subcontractors shall, subject to the approval of the Behavioral Health and Recovery Services, establish procedures under which recipients of the service are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the State Department of Health Care Services.
- C. The County and any subcontractor will furnish all information and reports required by the Behavioral Health and Recovery Services and will permit access to books, records and accounts for purposes of investigation to ascertain compliance with above paragraphs.
- D. The County and all subcontractors assure all recipients of service are provided information in accordance with provisions of Welfare and Institutions Code, Sections 5325 and 5325.1, and Sections 5520 through 5550, Cal. Code Regs., tit. 9 §§ 860 through 868, and 42 CFR § 438.100 pertaining to their rights as patients, that the County has established a system whereby recipients of service may file a complaint for alleged violations of their rights.
- E. Contractor agrees to the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all Federally-assisted programs or activities, as detailed in regulations signed by the Secretary of Health, Education and Welfare, effective June 3, 1977, and found in the Federal Register, Volume 42, Number 86, dated May 4, 1977.

EXHIBIT E-MHP CLAIMS CERTIFICATION AND PROGRAM INTEGRITY

TO: Stanislaus County, Behavioral Health and Recovery Services

I HEREBY CERTIFY based on best knowledge, information, and belief to the following: An assessment of all Medi-Cal beneficiaries were conducted in compliance with the requirements established by the Stanislaus County Mental Health Plan (MHP). The beneficiaries were eligible to receive Medi-Cal services at the time the services were provided to the beneficiaries. Medical necessity was established for each beneficiary for the services provided, for the timeframe in which the services were provided. A client plan was developed and maintained for each beneficiary that met all client plan requirements established by the MHP. For each beneficiary receiving day rehabilitation, day treatment intensive, or EPSDT supplemental specialty mental health services included in the claim, all requirements for MHP payment authorization have been met and reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established by the MHP. All documentation for services meets the standards established by the MHP and is in the clinical record.

I also certify based on best knowledge, information, and belief that all claims for services provided to Medi-Cal beneficiaries were, in fact, provided to those beneficiaries.

I understand that payment of these claims will be from Federal and/or State funds, and any falsification or concealment of a material fact may be prosecuted under Federal and/or State laws.

Name

Date

Title

Agency

EXHIBIT F-DEPARTMENT OF HEALTH CARE SERVICES MENTAL HEALTH PLAN ADDITIONAL TERMS AND CONDITIONS

To the extent the funds provided by the Department of Health Care Services (DHCS) are used under the Mental Health Plan, to provide Specialty Mental Health Services to beneficiaries of Stanislaus County, the following terms of this Exhibit are used and apply:

1. Service, Administrative and Operational Requirements

Contractor shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the Contractor offers services to non-Medi-Cal beneficiaries. If the Contractor only serves Medi-Cal beneficiaries, the Contractor shall offer hours of operation that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered.

2. Provider Selection and Certification

- A. Contractor shall comply with provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.
- B. Contractor shall comply with provisions of 42 C.F.R. § 438.214, which relates to the implementing of written policies and procedures for selection and retention of providers.
- C. Contractor will comply with provisions of 42 C.F.R. Part 2, which relates to facilitating health integration and information exchange with new health care models, while continuing to protect the privacy and confidentiality of patients seeking treatment for substance abuse disorders.

3. Requirements for Day Treatment and Day Rehabilitation

If the services to be delivered under the terms of this agreement include day treatment intensive or day rehabilitation, the Contractor shall have a written description of the day treatment intensive and/or day rehabilitation program that complies with the following:

- A. Contractor shall request payment authorization for day treatment intensive and day rehabilitation services in advance of service delivery under the following conditions:
 - 1) Day treatment or day rehabilitation will be provided for more than five days a week;
 - 2) At least every three months for continuation of day treatment intensive;
 - 3) At least every six months for continuation of day rehabilitation;
 - 4) Request authorization for mental health services, as defined in Cal. Code Regs. Tit. 9, §1810.227, provided concurrently with day treatment or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal.Code Regs., Tit.9, §1810.216 and §1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.
- B. Contractor shall assure that the advance payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day

treatment intensive or day rehabilitation services.

- C. Contractor shall meet the requirements of Cal.Code Regs. Tit. 9, § §1840.318, 1840.328, 1840.350 and 1840.352
- D. Contractor shall include, at a minimum, the following day treatment intensive and day rehabilitation service components:
 - 1) *Community meetings.* These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussions items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:
 - 2) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy;
 - a) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, and a registered nurse, psychiatric technician, licensed vocational nurse or mental health rehabilitation specialist.
 - b) *Therapeutic milieu.* This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model and reinforce constructive interactions involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.
 - c) *Process groups.* These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.
 - d) *Skill-building groups.* In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

- e) *Adjunctive therapies.* These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able to utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan,

E. Day treatment intensive shall additionally include:

- 1) *Psychotherapy.* Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.
 - 2) *Mental Health Crisis Protocol.* Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.
 - 3) *Written Weekly Schedule.* Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.
- F. *Staffing requirements.* Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9 §1840.350, for day treatment intensive, and Cal.Code Regs., tit. 9 §1840.352 for day rehabilitation. For day treatment intensive, staff shall include one staff person whose scope of practice includes psychotherapy.
- 1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

- 2) At least one staff person shall be present and available to the group in the therapeutic milieu for all scheduled hours of operation.
 - 3) Day treatment intensive and day rehabilitation programs shall maintain documentation that enables the County and DHCS to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as a staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific time in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.
- G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, Contractor will only receive Medi-Cal reimbursement if beneficiary is present for at least 50% of scheduled hours of operation for that day. A separate entry is required and shall be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, Contractor is responsible for re-evaluating the beneficiary's need for the day rehabilitation or day treatment intensive program, and for taking appropriate action.
- H. *Documentation Standards.* Day treatment intensive and day rehabilitation shall meet the documentation standards described in Section 11 of the Department of Health Care Services Mental Health Plan, Exhibit A, Attachment 1, Documentation Standards. The documentation shall include the date of service, signature of person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. *Written Program Description.* Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this section.
- K. *Additional higher or more specific standards.* County shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the County's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically

necessary day treatment intensive and day rehabilitation.

- L. *Continuous Hours of Operation.* Contractor shall apply the following when claiming for day treatment intensive and day rehabilitation services:
 - 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
 - 2) A full day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
 - 3) Although the beneficiary must receive face to face services on a full day or half day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
 - 4) The requirement for continuous hours of operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. Contractor shall not count these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

4. **Disclosures**

Contractor shall submit the disclosures below to the County BHRS Contracts Manager regarding the network providers' (disclosing entities') ownership and control. Contractor must submit updated disclosures to the BHRS Contracts Manager upon submitting the provider application, before entering into or renewing a contract with the County, and within 35 days after any change in the subcontract/network provider's ownership or upon request by the County.

A. Disclosures to be provided:

- 1) The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- 2) Date of birth and Social Security Number (in the case of an individual);
- 3) Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- 4) Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
- 5) The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and
- 6) The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

- B. *Disclosures Related to Business Transactions.* Contractor must submit disclosures and updated disclosures to the County including information regarding certain business transactions within 35 days, upon request.

- 1) The following information must be disclosed:
 - a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,
 - b) Any significant business transactions between the Contractor and any subcontractor, during the 5 year period ending on the date of the request.

C. *Disclosures Related to Persons Convicted of Crimes.* Contractor shall submit the following disclosures to the County regarding the Contractor's management:

- 1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a) (1), (2).)
- 2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. §455.106(a) (1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. §455.101.
- 3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the County's request.

5. **Beneficiary Liability for Payment**

Pursuant to Cal. Code Regs., tit.9, § 1810.365, the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

6. **Audits and Recovery of Overpayments**

Contractor shall be subject to audits and/or reviews, including client record reviews, by the Department Health Care Services.

7. **Federal Equal Opportunity Requirements**

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

- B. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, drug abuse, alcohol abuse or alcoholism, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212), The Drug Abuse Office and Treatment Act of 1972, as amended, The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616, as amended, and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- F. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

8. **Travel and Per Diem Reimbursement**

CONTRACTOR reimbursement for travel and per diem expenses under this agreement shall be no higher than the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for non-represented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary.

9. **Procurement Rules**

A. *Equipment/Property definitions*

Wherever the term equipment and/or property is used, the following definitions shall apply:

- 1) Major equipment/property: A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

- 2) Minor equipment/property: A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this agreement.
- B. Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
- 1) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - 2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - 3) Procurements shall be conducted in a manner that provides for all of the following:
 - a) Avoid purchasing unnecessary or duplicate items;
 - b) Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured;
 - c) Take positive steps to utilize small and veteran owned businesses.
 - 4) Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager and the BHRM Contracts Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
 - 5) In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or submission of paid vendor receipts for any purchase, regardless of dollar amount, DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determined to be unnecessary in carrying out performance under this agreement.
 - 6) For all purchases, the Contractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor for inspection or audit.

10. **Equipment/Property Ownership/Inventory/Disposition**

- A. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
 - B. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
 - C. In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor shall immediately file a theft report with the appropriate police agency and Contractor shall promptly submit one copy of the theft report to the BHRS Contracts Manager.
11. **Motor Vehicles**
The purchase of a vehicle with DHCS funds under this agreement requires that a written request be submitted to the BHRS Contracts Manager and prior written BHRS department approval and authorization must be given prior to the purchase of vehicle.
12. **Income Restrictions**
Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to BHRS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by BHRS under this Agreement.
13. **Audit and Record Retention**
(Applicable to agreements in excess of \$10,000)
- A. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
 - B. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
 - C. The Contractor and/or Subcontractor shall comply with the above

requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

- D. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

14. **Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premise of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

15. **Federal Contract Funds**

(Applicable only to that portion of an agreement funded in part or whole with federal funds)

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

16. **Intellectual Property Rights**

- A. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner

of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

- B. Contractor agrees to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor, or DHCS and which result directly or indirectly from this Agreement or any subcontract.

17. **Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/sub awards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- A. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- B. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- C. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

18. **Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

19. **Use of Small, Minority Owned and Women's Businesses**

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or

services). Contractors shall take all of the following steps to further this goal.

- 1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- 2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- 3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- 4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

20. **Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

21. **Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations)

- A. Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.
- B. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
As used herein, fringe benefits do not include:
 - 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - 2) Director's and executive committee member's fees.
 - 3) Incentive awards and/or bonus incentive pay.

- 4) Allowances for off-site pay.
- 5) Location allowances.
- 6) Hardship pay.
- 7) Cost-of-living differentials.

C. Specific allowable fringe benefits include:

- 1) Fringe benefits in the form of employer contribution for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI) employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- 2) To be an allowable fringe benefit, the cost must meet the following criteria:
 - a) Be necessary and reasonable for the performance of the Agreement;
 - b) Be determined in accordance with generally accepted accounting principles;
 - c) Be consistent with policies that apply uniformly to all activities of the Contractor.
- 3) Contractor agrees that all fringe benefits shall be at actual cost.
- 4) Earned/Accrued Compensation
 - a) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Example No. 1.
 - b) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Example No. 2.
 - c) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Example No. 3.

Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a

one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks)

Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

22. **Lobbying Prohibition**

(Applicable to all sub awards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more)

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan or cooperative agreement.

23. **Patient Rights**

Pursuant to 42 C.F.R. § 438.100, Contractor shall take beneficiaries rights into account when providing services, including the right to:

- A. Receive information in accordance with 42 C.F.R. § 438.10.
- B. Be treated with respect and with due consideration for his or her dignity and privacy.
- C. Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.
- D. Participate in decisions regarding his or her health care, including the right to refuse treatment.
- E. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- F. Request and receive a copy of his or her medical records, and to request that

they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.

- G. To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- H. To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

24. **Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. **Trafficking Victims Protection Act of 2000**

Contractor and its Subcontractors that provide services covered by this Agreement shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as amended by section 1702. The County is authorized to terminate a contract, without penalty, if the contractor: (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the award is in effect; or (c) Uses forced labor in the performance of the award and/or sub awards under the award.