

TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
Title Page.....	1
Table of Contents	2
Referenced Contract Provisions	4
I. Acronyms	5
II. Alteration of Terms	7
III. Assignment of Debts	7
IV. Compliance	7
V. Confidentiality.....	11
VI. Conflict of Interest.....	12
VII. Delegation, Assignment and Subcontracts.....	12
VIII. Dispute Resolution.....	14
IX. Employee Eligibility Verification	15
X. Expenditure and Revenue Report.....	15
XI. Facilities, Payments and Services.....	15
XII. Indemnification and Insurance	15
XIII. Inspections and Audits	20
XIV. Licenses and Laws	21
XV. Literature, Advertisements, and Social Media.....	22
XVI. Maximum Obligation.....	23
XVII. Minimum Wage Law	23
XVIII. Nondiscrimination.....	23
XIX. Notices.....	26
XX. Notification of Death	26
XXI. Notification of Public Events and Meetings	27
XXII. Patients' Rights.....	27
XXIII. Records Management and Maintenance	28
XXIV. Research and Publication.....	30
XXV. Revenue	30
XXVI. Severability.....	30
XXVII. Special Provisions	31
XXVIII. Status of Contractor	31
XXIX. Term	32
XXX. Termination	32
XXXI. Third Party Beneficiary	34

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

XXXII. Waiver of Default or Breach.....	34
Signature Page	35

EXHIBIT A

PAGE

I. Definitions	1
II. Interruptions In Service.....	2
III. Payments	3
IV. On-Site Psychiatry Services	4
V. Telepsychiatry Services	5
VI. On-Call Psychiatry Services	7
VII. Records.....	7
VIII. Reports.....	9
IX. Rules and Regulations.....	9
X. Staffing	10
XI. Utilization Review/Quality Assurance	11

EXHIBIT B

I. Business Associate Contract.....	1
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EXHIBIT C

I. Personal Information Privacy and Security Contract.....	1
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REFERENCED CONTRACT PROVISIONS

MASTER AGREEMENT Term: April 1, 2023 through March 31, 2026

Period One means the period from April 1, 2023 through March 31, 2024

Period Two means the period from April 1, 2024 through March 31, 2025

Period Three means the period from April 1, 2025 through March 31, 2026

Aggregate Maximum Obligation:

Period One Aggregate Maximum Obligation: \$ 7,557,820

Period Two Aggregate Maximum Obligation: \$ 7,557,820

Period Three Aggregate Maximum Obligation: \$ 7,557,820

TOTAL AGGREGATE MAXIMUM OBLIGATION: \$ 22,673,460

Basis for Reimbursement: Fee-for-Service

Payment Method: Monthly in Arrears

CONTRACTOR UEI Number:

CONTRACTOR TAX ID Number: 47-4469736

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Procurement and Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: Orbit Health
12031 Ventura Blvd., Suite 3
Studio City, CA 91604
Edward Kaftarian, CEO
edward@orbithealth.com>>

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I. ACRONYMS

1		
2	A. AB 109	Assembly Bill 109, 2011 Public Safety Realignment
3	B. AIDS	Acquired Immune Deficiency Syndrome
4	C. ARRA	American Recovery and Reinvestment Act of 2009
5	D. ASAM PPC	American Society of Addiction Medicine Patient Placement Criteria
6	E. ASI	Addiction Severity Index
7	F. ASRS	Alcohol and Drug Programs Reporting System
8	G. BHS	Behavioral Health Services
9	H. CalOMS	California Outcomes Measurement System
10	I. CalWORKs	California Work Opportunity and Responsibility for Kids
11	J. CAP	Corrective Action Plan
12	K. CCC	California Civil Code
13	L. CCR	California Code of Regulations
14	M. CESI	Client Evaluation of Self at Intake
15	N. CEST	Client Evaluation of Self and Treatment
16	O. CFDA	Catalog of Federal Domestic Assistance
17	P. CFR	Code of Federal Regulations
18	Q. CHPP	COUNTY HIPAA Policies and Procedures
19	R. CHS	Correctional Health Services
20	S. COI	Certificate of Insurance
21	T. CPA	Certified Public Accountant
22	U. CSW	Clinical Social Worker
23	V. DHCS	California Department of Health Care Services
24	W. D/MC	Drug/Medi-Cal
25	X. DPFS	Drug Program Fiscal Systems
26	Y. DRS	Designated Record Set
27	Z. EEOC	Equal Employment Opportunity Commission
28	AA. EHR	Electronic Health Records
29	AB. EOC	Equal Opportunity Clause
30	AC. ePHI	Electronic Protected Health Information
31	AD. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
32	AE. FFS	Fee For Service
33	AF. FSP	Full Service Partnership
34	AG. FTE	Full Time Equivalent
35	AH. GAAP	Generally Accepted Accounting Principles
36	AI. HCA	County of Orange Health Care Agency
37	AJ. HHS	Federal Health and Human Services Agency

1	AK. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
2		Law 104-191
3	AL. HITECH Act	Health Information Technology for Economic and Clinical Health
4		Act, Public Law 111-005
5	AM. HIV	Human Immunodeficiency Virus
6	AN. HSC	California Health and Safety Code
7	AO. IRIS	Integrated Records and Information System
8	AP. ITC	Indigent Trauma Care
9	AQ. LCSW	Licensed Clinical Social Worker
10	AR. MAT	Medication Assisted Treatment
11	AS. MFT	Marriage and Family Therapist
12	AT. MH	Mental Health
13	AU. MHP	Mental Health Plan
14	AV. MHS	Mental Health Specialist
15	AW. MHSA	Mental Health Services Act
16	AX. MSN	Medical Safety Net
17	AY. NIH	National Institutes of Health
18	AZ. NPI	National Provider Identifier
19	BA. NPPES	National Plan and Provider Enumeration System
20	BB. OCR	Federal Office for Civil Rights
21	BC. OIG	Federal Office of Inspector General
22	BD. OMB	Federal Office of Management and Budget
23	BE. OPM	Federal Office of Personnel Management
24	BF. P&P	Policy and Procedure
25	BG. PA DSS	Payment Application Data Security Standard
26	BH. PATH	Projects for Assistance in Transition from Homelessness
27	BI. PC	California Penal Code
28	BJ. PCI DSS	Payment Card Industry Data Security Standards
29	BK. PCS	Post-Release Community Supervision
30	BL. PHI	Protected Health Information
31	BM. PII	Personally Identifiable Information
32	BN. PRA	California Public Records Act
33	BO. PSC	Professional Services Contract System
34	BP. SAPTBG	Substance Abuse Prevention and Treatment Block Grant
35	BQ. SIR	Self-Insured Retention
36	BR. SMA	Statewide Maximum Allowable (rate)
37	BS. SOW	Scope of Work

1	BT. SUD	Substance Use Disorder
2	BU. UMDAP	Uniform Method of Determining Ability to Pay
3	BV. UOS	Units of Service
4	BW. USC	United States Code
5	BX. WIC	Women, Infants and Children

6

7 **II. ALTERATION OF TERMS**

8 A. This Agreement, together with Exhibits A, B, and C attached hereto and incorporated herein,
9 fully expresses all understanding of COUNTY and CONTRACTOR with respect to the subject matter of
10 this Agreement.

11 B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of
12 this Agreement or any Exhibits, whether written or verbal, made by the Parties, their officers, employees
13 or agents shall be valid unless made in the form of a written amendment to this Agreement, which has
14 been formally approved and executed by both Parties.

15

16 **III. ASSIGNMENT OF DEBTS**

17 Unless this Agreement is followed without interruption by another agreement between the Parties
18 hereto for the same services and substantially the same scope, at the termination of this Agreement,
19 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
20 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
21 mail each of the respective Parties, specifying the date of assignment, the County of Orange as assignee,
22 and the address to which payments are to be sent. Payments received by CONTRACTOR from or on
23 behalf of said persons, shall be immediately given to COUNTY.

24

25 **IV. COMPLIANCE**

26 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for
27 the purpose of ensuring adherence to all rules and regulations related to federal and state health care
28 programs.

29 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
30 procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to
31 General Compliance and Annual Provider Trainings.

32 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
33 compliance program, code of conduct and any compliance related policies and procedures.
34 CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall
35 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required
36 elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to
37 this Agreement. These elements include:

- 1 a. Designation of a Compliance Officer and/or compliance staff.
- 2 b. Written standards, policies and/or procedures.
- 3 c. Compliance related training and/or education program and proof of completion.
- 4 d. Communication methods for reporting concerns to the Compliance Officer.
- 5 e. Methodology for conducting internal monitoring and auditing.
- 6 f. Methodology for detecting and correcting offenses.
- 7 g. Methodology/Procedure for enforcing disciplinary standards.

8 3. If CONTRACTOR does not provide proof of its own compliance program to
9 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
10 Program and Code of Conduct, CONTRACTOR shall submit to ADMINISTRATOR within thirty (30)
11 calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR shall
12 internally comply with ADMINISTRATOR's Compliance Program and Code of Conduct.
13 CONTRACTOR shall have as many Covered Individuals it determines necessary complete
14 ADMINISTRATOR's annual compliance training to ensure proper compliance.

15 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any
16 Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR
17 shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures
18 to ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
19 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
20 reasonable time, which shall not exceed forty-five (45) calendar days, and determine if
21 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to
22 ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
23 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
24 CONTRACTOR shall revise its compliance program and code of conduct to meet
25 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
26 Compliance Officer's determination and resubmit the same for review by ADMINISTRATOR.

27 5. Upon written confirmation from ADMINISTRATOR's compliance officer that
28 CONTRACTOR's compliance program, code of conduct and any compliance related policies and
29 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals
30 relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct,
31 related policies and procedures and contact information for ADMINISTRATOR's Compliance Program.

32 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
33 retained to provide services related to this Agreement monthly to ensure that they are not designated as
34 Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General
35 Services Administration's Excluded Parties List System or System for Award Management, the Health
36 and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the
37 California Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration's Death

1 Master File at date of employment, and/or any other list or system as identified by ADMINISTRATOR.

2 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees,
3 interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items
4 or services or who perform billing or coding functions on behalf of ADMINISTRATOR.
5 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
6 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or
7 CONTRACTOR's own compliance program, code of conduct and related policies and procedures if
8 CONTRACTOR has elected to use its own).

9 2. An Ineligible Person shall be any individual or entity who:

10 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
11 federal and state health care programs; or

12 b. has been convicted of a criminal offense related to the provision of health care items or
13 services and has not been reinstated in the federal and state health care programs after a period of
14 exclusion, suspension, debarment, or ineligibility.

15 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
16 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
17 Agreement.

18 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors monthly to
19 ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its
20 subcontractors use their best efforts to verify that they are eligible to participate in all federal and State
21 of California health programs and have not been excluded or debarred from participation in any federal
22 or state health care programs, and to further represent to CONTRACTOR that they do not have any
23 Ineligible Person in their employ or under contract.

24 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
25 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
26 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing
27 services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an
28 Ineligible Person.

29 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
30 federal and state funded health care services by contract with COUNTY in the event that they are
31 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.
32 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
33 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
34 business operations related to this Agreement.

35 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
36 entity is currently excluded, suspended or debarred, or is identified as such after being sanction
37 screened. Such individual or entity shall be immediately removed from participating in any activity

1 associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or
2 sanction(s) to CONTRACTOR for services provided by ineligible person or individual.
3 CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the
4 overpayment is verified by ADMINISTRATOR.

5 C. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General
6 Compliance Training available to Covered Individuals.

7 1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR's
8 Compliance Program shall use its best efforts to encourage completion by all Covered Individuals;
9 provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated
10 representative to complete the General Compliance Training when offered.

11 2. Such training will be made available to Covered Individuals within thirty (30) calendar
12 days of employment or engagement.

13 3. Such training will be made available to each Covered Individual annually.

14 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide
15 copies of training certification upon request.

16 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
17 compliance training. ADMINISTRATOR shall provide instruction on group training completion while
18 CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,
19 CONTRACTOR shall provide copies of the certifications.

20 D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized
21 Provider Training, where appropriate, available to Covered Individuals.

22 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
23 Individuals relative to this Agreement. This includes compliance with federal and state healthcare
24 program regulations and procedures or instructions otherwise communicated by regulatory agencies;
25 including the Centers for Medicare and Medicaid Services or their agents.

26 2. Such training will be made available to Covered Individuals within thirty (30) calendar
27 days of employment or engagement.

28 3. Such training will be made available to each Covered Individual annually.

29 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall
30 provide copies of the certifications upon request.

31 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
32 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a
33 group setting while CONTRACTOR shall retain the certifications. Upon written request by
34 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

35 E. MEDI-CAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

36 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
37 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner

1 and are consistent with federal, state and county laws and regulations. This includes compliance with
2 federal and state health care program regulations and procedures or instructions otherwise
3 communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or
4 their agents.

5 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims
6 for payment or reimbursement of any kind.

7 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
8 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which
9 accurately describes the services provided and must ensure compliance with all billing and
10 documentation requirements.

11 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
12 coding of claims and billing, if and when, any such problems or errors are identified.

13 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business
14 days after the overpayment is verified by ADMINISTRATOR.

15 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and
16 participate in the quality improvement activities developed in the implementation of the Quality
17 Management Program.

18 7. CONTRACTOR shall comply with the provisions of ADMINISTRATOR's Cultural
19 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural
20 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
21 §1810.410.subds.(c)-(d).

22 F. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a
23 breach of the Agreement on the part of CONTRACTOR and grounds for COUNTY to terminate the
24 Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR shall have thirty
25 (30) calendar days from the date of the written notice of default to cure any defaults grounded on this
26 Compliance Paragraph prior to ADMINISTRATOR's right to terminate this Agreement on the basis of
27 such default.

28 **V. CONFIDENTIALITY**

29 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any
30 audio and/or video recordings, in accordance with all applicable federal, state and county codes and
31 regulations, as they now exist or may hereafter be amended or changed.

32 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
33 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
34 interns of CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality
35 of any and all information and records which may be obtained in the course of providing such services.
36 This Agreement shall specify that it is effective irrespective of all subsequent

37 //

1 | resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or
2 | authorized agent, employees, consultants, subcontractors, volunteers and interns.

4 | **VI. CONFLICT OF INTEREST**

5 | CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions
6 | that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation
7 | applies to CONTRACTOR's employees, agents, and subcontractors associated with the provision of
8 | goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be
9 | limited to, establishing rules and procedures preventing its employees, agents, and subcontractors from
10 | providing or offering gifts, entertainment, payments, loans or other considerations which could be
11 | deemed to influence or appear to influence COUNTY staff or elected officers in the performance of
12 | their duties.

14 | **VII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

15 | A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
16 | prior written consent of COUNTY. CONTRACTOR shall provide written notification of
17 | CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to
18 | ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation.
19 | Any attempted assignment or delegation in derogation of this paragraph shall be void.

20 | B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's
21 | business prior to completion of this Agreement, and COUNTY agrees to an assignment of the
22 | Agreement, the new owners shall be required under the terms of sale or other instruments of transfer to
23 | assume CONTRACTOR's duties and obligations contained in this Agreement and complete them to the
24 | satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in
25 | part, without the prior written consent of COUNTY.

26 | 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to
27 | any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%)
28 | of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
29 | assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
30 | clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
31 | Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

32 | 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
33 | including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
34 | CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
35 | change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
36 | at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
37 | delegation in derogation of this subparagraph shall be void.

1 3. If CONTRACTOR is a governmental organization, any change to another structure,
2 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
3 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
4 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
5 this subparagraph shall be void.

6 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
7 CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations
8 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
9 the effective date of the assignment.

10 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
11 CONTRACTOR shall provide written notification within thirty (30) calendar days to
12 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
13 governing body of CONTRACTOR at one time.

14 6. COUNTY reserves the right to immediately terminate the Agreement in the event
15 COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise
16 unacceptable to COUNTY for the provision of services under the Agreement.

17 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
18 means of subcontracts, provided such subcontractors are approved in advance, in writing, by
19 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
20 under subcontract, include any provisions that ADMINISTRATOR may require, and are authorized in
21 writing by ADMINISTRATOR prior to the beginning of service delivery.

22 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the
23 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor
24 subsequently fails to meet the requirements of this Agreement or any provisions that
25 ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported
26 by CONTRACTOR.

27 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
28 pursuant to this Agreement.

29 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
30 amounts claimed for subcontracts not approved in accordance with this paragraph.

31 4. This provision shall not be applicable to service agreements usually and customarily
32 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional
33 services provided by consultants.

34 D. CONTRACTOR shall notify COUNTY in writing of any change in CONTRACTOR's status
35 with respect to name changes that do not require an assignment of the Agreement. CONTRACTOR is
36 also obligated to notify COUNTY in writing if CONTRACTOR becomes a party to any litigation
37 against COUNTY, or a party to litigation that may reasonably affect CONTRACTOR's performance

1 under the Agreement, as well as any potential conflicts of interest between CONTRACTOR and
 2 COUNTY that may arise prior to or during the period of Agreement performance. While
 3 CONTRACTOR must provide this information without prompting from COUNTY any time there is a
 4 change in CONTRACTOR’s name, conflict of interest or litigation status, CONTRACTOR must also
 5 provide an update to COUNTY of its status in these areas whenever requested by COUNTY.

6
 7 **VIII. DISPUTE RESOLUTION**

8 A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the
 9 dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a
 10 reasonable period of time by CONTRACTOR and ADMINISTRATOR, such matter shall be brought to
 11 the attention of the COUNTY Purchasing Agent by way of the following process:

12 1. CONTRACTOR shall submit to the COUNTY Purchasing Agent a written demand for a
 13 final decision regarding the disposition of any dispute between the Parties arising under, related to, or
 14 involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final
 15 decision.

16 2. CONTRACTOR’s written demand shall be fully supported by factual information, and, if
 17 such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the
 18 demand a written statement signed by an authorized representative indicating that the demand is made in
 19 good faith, that the supporting data are accurate and complete, and that the amount requested accurately
 20 reflects the Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

21 B. Pending the final resolution of any dispute arising under, related to, or involving this
 22 Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via
 23 this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR's failure
 24 to proceed diligently shall be considered a material breach of this Agreement.

25 C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and
 26 shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY does not render a
 27 decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed
 28 a final decision adverse to CONTRACTOR's contentions.

29 D. This Agreement has been negotiated and executed in the State of California and shall be
 30 governed by and construed under the laws of the State of California. In the event of any legal action to
 31 enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent
 32 jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit
 33 to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the
 34 Parties specifically agree to waive any and all rights to request that an action be transferred for
 35 adjudication to another county.

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1 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

2 CONTRACTOR attests that it shall fully comply with all federal and state statutes and regulations
3 regarding the employment of aliens and others and to ensure that employees, subcontractors, and
4 consultants performing work under this Agreement meet the citizenship or alien status requirements set
5 forth in federal statutes and regulations. CONTRACTOR shall obtain from all employees,
6 subcontractors, and consultants performing work hereunder, all verification and other documentation of
7 employment eligibility status required by federal or state statutes and regulations including, but not
8 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
9 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
10 covered employees, subcontractors, and consultants for the period prescribed by the law.

11
12 **X. EXPENDITURE AND REVENUE REPORT**

13 A. No later than sixty (60) calendar days following termination of each Period or fiscal year of this
14 Agreement, CONTRACTOR shall submit to ADMINISTRATOR, for informational purposes only, an
15 Expenditure Report for the preceding Period or fiscal year, or portion thereof. Such report shall be
16 prepared in accordance with the procedure that is provided by ADMINISTRATOR and GAAP.

17 B. CONTRACTOR may be required to submit periodic Expenditure Reports throughout the term
18 of this Agreement.

19
20 **XI. FACILITIES, PAYMENTS AND SERVICES**

21 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance
22 with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services.
23 CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the
24 minimum number and type of staff which meet applicable federal and state requirements, and which are
25 necessary for the provision of the services hereunder.

26 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
27 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation
28 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum
29 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount
30 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide
31 services, staffing, facilities or supplies.

32
33 **XII. INDEMNIFICATION AND INSURANCE**

34 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
35 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
36 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board
37 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,

1 including but not limited to personal injury or property damage, arising from or related to the services,
2 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
3 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
4 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
5 COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall
6 request a jury apportionment.

7 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
8 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary
9 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
10 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
11 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
12 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
13 subject to the same terms and conditions as set forth herein for CONTRACTOR.

14 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
15 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an
16 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
17 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
18 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
19 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
20 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
21 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
22 by COUNTY representative(s) at any reasonable time.

23 D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand
24 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of
25 CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved,
26 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this
27 Agreement, agrees to all of the following:

28 1. In addition to the duty to indemnify and hold COUNTY harmless against any and all
29 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
30 subcontractor's performance of this Agreement, CONTRACTOR shall defend COUNTY at its sole cost
31 and expense with counsel approved by Board of Supervisors against same; and

32 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any
33 duty to indemnify or hold harmless; and

34 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to
35 which the duty to defend stated above applies, and CONTRACTOR's SIR provision shall be interpreted
36 as though CONTRACTOR was an insurer and COUNTY was the insured.

37 //

1 E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this
2 Agreement, COUNTY may terminate this Agreement.

3 F. QUALIFIED INSURER

4 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
5 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
6 edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is
7 preferred, but not mandatory, that the insurer be licensed to do business in the state of California
8 (California Admitted Carrier).

9 2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of
10 Risk Management retains the right to approve or reject a carrier after a review of the company's
11 performance and financial ratings.

12 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
13 limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$5,000,000 per claims made \$5,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made

33 H. REQUIRED COVERAGE FORMS

34 1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a
35 substitute form providing liability coverage at least as broad.

36 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01,
37 CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

1 I. REQUIRED ENDORSEMENTS

2 1. The Commercial General Liability policy shall contain the following endorsements, which
3 shall accompany the COI:

4 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least
5 as broad naming the *County of Orange, its elected and appointed officials, officers, agents and*
6 *employees* as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY***
7 ***WRITTEN AGREEMENT.***

8 b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at
9 least as broad evidencing that CONTRACTOR's insurance is primary and any insurance or self-
10 insurance maintained by the County of Orange shall be excess and non-contributing.

11 2. The Network Security and Privacy Liability policy shall contain the following
12 endorsements which shall accompany the COI:

13 a. An Additional Insured endorsement naming the *County of Orange, its elected and*
14 *appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.

15 b. A primary and non-contributing endorsement evidencing that CONTRACTOR's
16 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be
17 excess and non-contributing.

18 J. All insurance policies required by this Agreement shall waive all rights of subrogation against
19 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
20 within the scope of their appointment or employment.

21 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
22 all rights of subrogation against the *County of Orange, its elected and appointed officials,*
23 *officers, agents and employees*, or provide blanket coverage, which will state ***AS REQUIRED BY***
24 ***WRITTEN AGREEMENT.***

25 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) calendar days of any policy
26 cancellation and within ten (10) calendar days for non-payment of premium and provide a copy of the
27 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
28 breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate
29 this Agreement.

30 M. If CONTRACTOR's Professional Liability and Network Security & Privacy Liability are
31 "Claims -Made" policies, CONTRACTOR shall agree to maintain coverage for two (2) years following
32 the completion of the Agreement.

33 N. The Commercial General Liability policy shall contain a "severability of interests" clause also
34 known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

35 O. Insurance certificates should be forwarded to the department address listed in the Referenced
36 Contract Provisions of this Agreement.

37 P. If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)

1 calendar days of notification by COUNTY, COUNTY may immediately terminate this Agreement for
2 cause.

3 Q. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
4 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
5 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
6 adequately protect COUNTY.

7 R. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
8 CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with
9 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice,
10 this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be
11 entitled to all legal remedies.

12 S. The procuring of such required policy or policies of insurance shall not be construed to limit
13 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
14 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

15 T. SUBMISSION OF INSURANCE DOCUMENTS

16 1. The COI and endorsements shall be provided to COUNTY as follows:
17 a. Prior to the start date of this Agreement.
18 b. No later than the expiration date for each policy.
19 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
20 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

21 2. The COI and endorsements shall be provided to COUNTY at the address as specified in the
22 Referenced Contract Provisions of this Agreement.

23 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
24 provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall
25 have sole discretion to impose one or both of the following:

26 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
27 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the
28 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
29 submitted to ADMINISTRATOR.

30 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late
31 COI or endorsement for each business day, pursuant to any and all agreements between COUNTY and
32 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance
33 provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

34 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
35 CONTRACTOR's monthly invoice.

36 //

37 //

1 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
 2 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
 3 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.
 4

5 **XIII. INSPECTIONS AND AUDITS**

6 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
 7 of the State of California, the Secretary of the United States Department of Health and Human Services,
 8 the Comptroller General of the United States, or any other of their authorized representatives, shall to
 9 the extent permissible under applicable law have access to any books, documents, and records, including
 10 but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client
 11 records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding
 12 to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making
 13 transcripts during the periods of retention set forth in the Records Management and Maintenance
 14 Paragraph of this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate
 15 the services provided pursuant to this Agreement, and the premises in which they are provided.

16 1. These audits, reviews, evaluations, or examinations may include, but are not limited to, the
 17 following:

- 18 a. Level and quality of care, including the necessity and appropriateness of the services
 19 provided.
- 20 b. Internal procedures for assuring efficiency, economy, and quality of care.
- 21 c. Compliance with COUNTY Client Grievance Procedures.
- 22 d. Financial records when determined necessary to protect public funds.

23 2. COUNTY shall provide CONTRACTOR with at least seventy-two (72) hours' notice of
 24 such inspections or evaluations. Unannounced inspections, evaluations, or requests for information may
 25 be made in those situations where arrangement of an appointment beforehand is not possible or is
 26 inappropriate due to the nature of the inspection or evaluation.

27 B. CONTRACTOR shall actively participate and cooperate with any person specified in
 28 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this
 29 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such
 30 evaluation or monitoring.

31 C. AUDIT RESPONSE

32 1. Following an audit report, in the event of non-compliance with applicable laws and
 33 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement
 34 as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
 35 appropriate corrective action. A CAP shall be submitted to ADMINISTRATOR in writing within thirty
 36 (30) calendar days after receiving notice from ADMINISTRATOR.

37 //

- 1 11. CFR, Title 42, Public Health.
- 2 12. CFR, Title 45, Public Welfare.
- 3 13. USC Title 42. Public Health and Welfare.
- 4 14. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 5 15. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 6 16. 42 USC §1857, et seq., Clean Air Act.
- 7 17. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 8 18. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 9 19. Policies and procedures set forth in Mental Health Services Act.
- 10 20. Policies and procedures set forth in DHCS Letters.
- 11 21. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 12 22. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
- 13 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 14 23. 42 CFR, Section 438, Managed Care Regulations.

15 C. CONTRACTOR shall at all times be capable and authorized by the State of California to
 16 provide treatment and bill for services provided to Medi-Cal eligible Clients while working under the
 17 terms of this Agreement.

18 **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

19 A. Any written information or literature, including educational or promotional materials,
 20 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related
 21 to this Agreement must be approved at least thirty (30) calendar days in advance and in writing by
 22 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written
 23 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,
 24 and electronic media such as the Internet.

25 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
 26 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this
 27 Agreement must be approved in advance at least thirty (30) calendar days and in writing by
 28 ADMINISTRATOR.

29 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
 30 available social media sites) in support of the services described within this Agreement,
 31 CONTRACTOR shall develop social media policies and procedures and have them available to
 32 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
 33 forms of social media used to either directly or indirectly support the services described within this
 34 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
 35 they pertain to any social media developed in support of the services described within this Agreement.
 36 CONTRACTOR shall also include any required funding statement information on social media when
 37

1 required by ADMINISTRATOR.

2 D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement
3 by COUNTY, unless ADMINISTRATOR consents thereto in writing.

4 5 **XVI. MAXIMUM OBLIGATION**

6 A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all
7 agreements for On-Site Psychiatry and Telepsychiatry Services during each Period are as specified in
8 the Referenced Contract Provisions of this Agreement. This specific Agreement with CONTRACTOR
9 is only one of several agreements to which this Aggregate Maximum Obligation applies. It therefore is
10 understood by the Parties that reimbursement to CONTRACTOR will be only a fraction of these
11 Aggregate Maximum Obligations.

12 B. ADMINISTRATOR may amend the Aggregate Maximum Obligation by an amount not to
13 exceed ten percent (10%) of the Period One funding for this Agreement.

14 15 **XVII. MINIMUM WAGE LAWS**

16 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
17 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
18 federal or California Minimum Wage to all its Covered Individuals (as defined within the “Compliance”
19 paragraph of this Agreement) that directly or indirectly provide services pursuant to this Agreement, in
20 any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals
21 providing services pursuant to this Agreement be paid no less than the greater of the federal or
22 California Minimum Wage.

23 B. CONTRACTOR shall comply and verify that its Covered Individuals comply with all other
24 federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor
25 standards pursuant to providing services pursuant to this Agreement.

26 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
27 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
28 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
29 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

30 31 **XVIII. NONDISCRIMINATION**

32 **A. EMPLOYMENT**

33 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals (as
34 defined in the “Compliance” paragraph of this Agreement) shall not unlawfully discriminate against any
35 employee or applicant for employment because of his/her race, religious creed, color, national origin,
36 ancestry, physical disability, mental disability, medical condition, genetic information, marital status,
37 sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

1 Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall
2 require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or
3 applicant for employment because of his/her race, religious creed, color, national origin, ancestry,
4 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,
5 gender identity, gender expression, age, sexual orientation, or military and veteran status.

6 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or
7 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
8 recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection
9 for training, including apprenticeship.

10 3. CONTRACTOR shall not discriminate between employees with spouses and employees
11 with domestic partners, or discriminate between domestic partners and spouses of those employees, in
12 the provision of benefits.

13 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
14 employment, notices from ADMINISTRATOR and/or the United States Equal Employment
15 Opportunity Commission setting forth the provisions of the EOC.

16 5. All solicitations or advertisements for employees placed by or on behalf of
17 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
18 for employment without regard to race, religious creed, color, national origin, ancestry, physical
19 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
20 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
21 shall be deemed fulfilled by use of the term EOE.

22 6. Each labor union or representative of workers with which CONTRACTOR and/or
23 subcontractor has a collective bargaining agreement or other contract or understanding must post a
24 notice advising the labor union or workers' representative of the commitments under this
25 Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places, available to
26 employees and applicants for employment.

27 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
28 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
29 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
30 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
31 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
32 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
33 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
34 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information
35 Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and
36 regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all
37 may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination

1 paragraph, discrimination includes, but is not limited to the following based on one or more of the
2 factors identified above:

- 3 1. Denying a Client or potential Client any service, benefit, or accommodation.
- 4 2. Providing any service or benefit to a Client which is different or is provided in a different
5 manner or at a different time from that provided to other Clients.
- 6 3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by
7 others receiving any service and/or benefit.
- 8 4. Treating a Client differently from others in satisfying any admission requirement or
9 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
10 any service and/or benefit.
- 11 5. Assignment of times or places for the provision of services.

12 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Clients
13 through a written statement that CONTRACTOR’s and/or subcontractor’s Clients may file all
14 complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and
15 ADMINISTRATOR.

16 1. Whenever possible, problems shall be resolved at the point of service. CONTRACTOR
17 shall establish an internal informal problem resolution process for Clients not able to resolve such
18 problems at the point of service. Clients may initiate a grievance or complaint directly with
19 CONTRACTOR either orally or in writing.

20 a. COUNTY shall establish a formal resolution and grievance process in the event
21 informal processes do not yield a resolution.

22 b. Throughout the problem resolution and grievance process, Client rights shall be
23 maintained, including access to COUNTY’s Patients’ Rights Office at any point in the process. Clients
24 shall be informed of their right to access COUNTY’s Patients’ Rights Office at any time.

25 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as
26 to the findings regarding the alleged complaint and, if not satisfied with the decision, has the right to
27 request a State Fair Hearing.

28 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply
29 with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as
30 implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42
31 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
32 discrimination against qualified persons with disabilities in all programs or activities, and if applicable,
33 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
34 with succeeding legislation.

35 E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall
36 intimidate, coerce or take adverse action against any person for the purpose of interfering with rights
37 secured by federal or state laws, or because such person has filed a complaint, certified, assisted or

1 otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to
2 enforce rights secured by federal or state law.

3 F. In the event of non-compliance with this paragraph or as otherwise provided by federal and
4 state law, this Agreement may be canceled, terminated or suspended in whole or in part and
5 CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal,
6 state or COUNTY funds.

7 8 **XIX. NOTICES**

9 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
10 authorized or required by this Agreement shall be effective:

11 1. When written and deposited in the United States mail, first class postage prepaid and
12 addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed
13 by ADMINISTRATOR;

14 2. When faxed, transmission confirmed;

15 3. When sent by Email; or

16 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel
17 Service, or any other expedited delivery service.

18 B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of
19 this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,
20 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
21 Parcel Service, or any other expedited delivery service.

22 C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of
23 becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such
24 occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or
25 damage to any COUNTY property in possession of CONTRACTOR.

26 D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by
27 ADMINISTRATOR.

28 29 **XX. NOTIFICATION OF DEATH**

30 A. Upon becoming aware of the death of any person served pursuant to this Agreement,
31 CONTRACTOR shall immediately notify ADMINISTRATOR.

32 B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain
33 the name of the deceased, the date and time of death, the nature and circumstances of the death, and the
34 name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

35 1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by
36 telephone immediately upon becoming aware of the death due to non-terminal illness of any person
37 served pursuant to this Agreement; notice need only be given during normal business hours.

1 2. WRITTEN NOTIFICATION

2 a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send
3 via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming
4 aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

5 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
6 report hand delivered, faxed, sent via encrypted email, within forty-eight (48) hours of becoming aware
7 of the death due to terminal illness of any person served pursuant to this Agreement.

8 c. When notification via encrypted email is not possible or practical, CONTRACTOR
9 may hand deliver or fax to a known number said notification.

10 C. If there are any questions regarding the cause of death of any person served pursuant to this
11 Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related
12 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
13 Notification of Death Paragraph.

14
15 **XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

16 A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in
17 whole or in part by COUNTY, except for those events or meetings that are intended solely to serve
18 Clients or occur in the normal course of business.

19 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
20 of any applicable public event or meeting. The notification must include the date, time, duration,
21 location and purpose of the public event or meeting. Any promotional materials or event related flyers
22 must be approved by ADMINISTRATOR prior to distribution.

23
24 **XXII. PATIENTS RIGHTS**

25 A. CONTRACTOR shall post the current California Department of Mental Health Patients' Rights
26 poster as well as the Orange County HCA Mental Health Plan Grievance and Appeals poster in
27 locations readily available to Clients and staff and have Grievance and Appeal forms in the threshold
28 languages and envelopes readily accessible to Clients to take without having to request it on the unit.

29 B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an
30 internal grievance processes approved by ADMINISTRATOR, to which the beneficiary shall have
31 access.

32 1. CONTRACTOR's grievance processes shall incorporate COUNTY's grievance, patients'
33 rights, and/or utilization management guidelines and procedures. The patient has the right to utilize
34 either or both grievance process simultaneously in order to resolve their dissatisfaction.

35 2. Title IX Rights Advocacy. This process may be initiated by a Client who registers a
36 statutory rights violation or a denial or abuse complaint with COUNTY Patients' Rights Office. The
37 Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply,

1 | which involve ADMINISTRATOR'S Director of Behavioral Health Care and the State Patients' Rights
2 | Office.

3 | C. The parties agree that Clients have recourse to initiate an expression of dissatisfaction to
4 | CONTRACTOR, appeal to COUNTY Patients' Rights Office, file a grievance, and file a Title IX
5 | complaint. The Patients' Advocate shall advise and assist the Client, investigate the cause of the
6 | grievance, and attempt to resolve the matter.

7 | D. No provision of this Agreement shall be construed as to replacing or conflicting with the duties
8 | of COUNTY Patients' Rights Office pursuant to Welfare and Institutions Code Section 5500.

9 |
10 | **XXIII. RECORDS MANAGEMENT AND MAINTENANCE**

11 | A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
12 | of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
13 | accordance with this Agreement and all applicable requirements.

14 | 1. CONTRACTOR shall maintain records that are adequate to substantiate the services for
15 | which claims are submitted for reimbursement under this Agreement and the charges thereto. Such
16 | records shall include, but not be limited to, individual patient charts and utilization review records.

17 | 2. CONTRACTOR shall keep and maintain records of each service rendered to each MSN
18 | Patient, the identity of the MSN Patient to whom the service was rendered, the date the service was
19 | rendered, and such additional information as ADMINISTRATOR or DHCS may require.

20 | 3. CONTRACTOR shall maintain books, records, documents, accounting procedures and
21 | practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature
22 | claimed to have been incurred in the performance of this Agreement and in accordance with Medicare
23 | principles of reimbursement and GAAP.

24 | 4. CONTRACTOR shall ensure the maintenance of medical records required by §70747
25 | through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical
26 | necessity of the service, and the quality of care provided. Records shall be maintained in accordance
27 | with §51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.

28 | B. CONTRACTOR shall implement and maintain administrative, technical and physical
29 | safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of
30 | PHI in violation of the HIPAA, federal and state regulations. CONTRACTOR shall mitigate to the
31 | extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal
32 | or state regulations and/or COUNTY policies.

33 | C. CONTRACTOR's participant, client, and/or patient records shall be maintained in a secure
34 | manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish
35 | and implement written record management procedures.

36 | D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the
37 | termination of the Agreement, unless a longer period is required due to legal proceedings such as

1 | litigations and/or settlement of claims.

2 | E. CONTRACTOR shall retain all client and/or patient medical records for ten (10) years
3 | following discharge of the participant, client and/or patient.

4 | F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,
5 | billings, and revenues available at one (1) location within the limits of the County of Orange. If
6 | CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide
7 | written approval to CONTRACTOR to maintain records in a single location, identified by
8 | CONTRACTOR.

9 | G. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out
10 | of, this Agreement, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR
11 | all information that is requested by the PRA request.

12 | H. CONTRACTOR shall ensure all HIPAA DRS requirements are met. HIPAA requires that
13 | clients, participants and/or patients be provided the right to access or receive a copy of their DRS and/or
14 | request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records
15 | maintained by or for a covered entity that is:

16 | 1. The medical records and billing records about individuals maintained by or for a covered
17 | health care provider;

18 | 2. The enrollment, payment, claims adjudication, and case or medical management record
19 | systems maintained by or for a health plan; or

20 | 3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

21 | I. CONTRACTOR may retain client, and/or patient documentation electronically in accordance
22 | with the terms of this Agreement and common business practices. If documentation is retained
23 | electronically, CONTRACTOR shall, in the event of an audit or site visit:

24 | 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit
25 | or site visit.

26 | 2. Provide auditor or other authorized individuals access to documents via a computer
27 | terminal.

28 | 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
29 | requested.

30 | J. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and
31 | security of PII and/or PHI. CONTRACTOR shall, upon discovery of a Breach of privacy and/or
32 | security of PII and/or PHI by CONTRACTOR, notify federal and/or state authorities as required by law
33 | or regulation, and copy ADMINISTRATOR on such notifications.

34 | K. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or
35 | security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall
36 | pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.
37 |

XXIV. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Agreement for the purpose of personal or professional research, or for publication.

XXV. REVENUE

A. CLIENT FEES – CONTRACTOR shall charge, unless waived by ADMINISTRATOR, a fee to Clients to whom billable services, other than those amounts reimbursed by Medicare, Medi-Cal or other third party health plans, are provided pursuant to this Agreement, their estates and responsible relatives, according to their ability to pay as determined by the State Department of Health Care Services’ “Uniform Method of Determining Ability to Pay” procedure or by any other payment procedure as approved in advance, and in writing by ADMINISTRATOR; and in accordance with Title 9 of the CCR. Such fee shall not exceed the actual cost of services provided. No Client shall be denied services because of an inability to pay.

B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Agreement may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary charges.

C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR’s procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be uncollectible.

D. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by persons other than individuals or groups eligible for services pursuant to this Agreement.

XXVI. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

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XXVII. SPECIAL PROVISIONS

1
2 A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following
3 purposes:

- 4 1. Making cash payments to intended recipients of services through this Agreement.
- 5 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
6 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on
7 use of appropriated funds to influence certain federal contracting and financial transactions).
- 8 3. Fundraising.
- 9 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
10 CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of
11 Directors or governing body.
- 12 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing
13 body for expenses or services.
- 14 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,
15 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
16 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
- 17 7. Paying an individual salary or compensation for services at a rate in excess of the current
18 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
19 Schedule may be found at www.opm.gov.
- 20 8. Severance pay for separating employees.
- 21 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
22 codes and obtaining all necessary building permits for any associated construction.

23 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR
24 shall not use the funds provided by means of this Agreement for the following purposes:

- 25 1. Funding travel or training (excluding mileage or parking).
- 26 2. Making phone calls outside of the local area unless documented to be directly for the
27 purpose of Client care.
- 28 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 29 4. Purchase of artwork or other items that are for decorative purposes and do not directly
30 contribute to the quality of services to be provided pursuant to this Agreement.

XXVIII. STATUS OF CONTRACTOR

31
32
33 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
34 wholly responsible for the manner in which it performs the services required of it by the terms of this
35 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
36 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
37 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR

1 or any of CONTRACTOR's employees, agents, consultants, volunteers, interns, or subcontractors.
2 CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents,
3 consultants, volunteers, interns, or subcontractors as they relate to the services to be provided during the
4 course and scope of their employment. CONTRACTOR, its agents, employees, consultants, volunteers,
5 interns, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and
6 shall not be considered in any manner to be COUNTY's employees.

7 8 **XXIX. TERM**

9 A. This specific Agreement with CONTRACTOR is only one of several agreements to which the
10 term of this Agreement applies. This specific Agreement shall commence as specified in the Referenced
11 Contract Provisions of this Agreement or the execution date, whichever is later. This specific
12 Agreement shall terminate as specified in the Referenced Contract Provisions of this Agreement, unless
13 otherwise sooner terminated as provided in this Agreement. CONTRACTOR shall perform such duties
14 as would normally extend beyond this term, including but not limited to, obligations with respect to
15 confidentiality, indemnification, audits, reporting and accounting.

16 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a
17 weekend or holiday may be performed on the next regular business day.

18 19 **XXX. TERMINATION**

20 A. CONTRACTOR is responsible for meeting all programmatic and administrative contracted
21 objectives and requirements as indicated in this Agreement. CONTRACTOR shall be subject to the
22 issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet
23 goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe as
24 determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is resolved
25 and/or the Agreement could be terminated.

26 B. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
27 of any of the following events:

- 28 1. The loss by CONTRACTOR of legal capacity.
- 29 2. Cessation of services.
- 30 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
31 another entity without the prior written consent of COUNTY.
- 32 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
33 required pursuant to this Agreement.
- 34 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
35 this Agreement.
- 36 6. The continued incapacity of any physician or licensed person to perform duties required
37 pursuant to this Agreement.

1 7. Unethical conduct or malpractice by any physician or licensed person providing services
2 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
3 removes such physician or licensed person from serving persons treated or assisted pursuant to this
4 Agreement.

5 C. CONTINGENT FUNDING

6 1. Any obligation of COUNTY under this Agreement is contingent upon the following:

7 a. The continued availability of federal, state and county funds for reimbursement of
8 COUNTY's expenditures, and

9 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
10 approved by the Board of Supervisors.

11 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
12 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
13 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
14 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

15 D. In the event this Agreement is suspended or terminated prior to the completion of the term as
16 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its
17 sole discretion, reduce the Maximum Obligation of this Agreement to be consistent with the reduced
18 term of the Agreement.

19 E. In the event this Agreement is terminated CONTRACTOR shall do the following:

20 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
21 is consistent with recognized standards of quality care and prudent business practice.

22 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
23 performance during the remaining contract term.

24 3. Until the date of termination, continue to provide the same level of service required by this
25 Agreement.

26 4. If Clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
27 upon request, all Client information and records deemed necessary by ADMINISTRATOR to effect an
28 orderly transfer.

29 5. Assist ADMINISTRATOR in effecting the transfer of Clients in a manner consistent with
30 Client's best interests.

31 6. If records are to be transferred to COUNTY, pack and label such records in accordance
32 with directions provided by ADMINISTRATOR.

33 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
34 supplies purchased with funds provided by COUNTY.

35 8. To the extent services are terminated, cancel outstanding commitments covering the
36 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
37 commitments which relate to personal services. With respect to these canceled commitments,

1 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims
2 arising out of such cancellation of commitment which shall be subject to written approval of
3 ADMINISTRATOR.

4 9. Provide written notice of termination of services to each Client being served under this
5 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
6 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars
7 day period.

8 F. COUNTY may terminate this Agreement, without cause, upon thirty (30) calendar days' written
9 notice.

10 G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
11 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

12
13 **XXXI. THIRD PARTY BENEFICIARY**

14 Neither Party hereto intends that this Agreement shall create rights hereunder in third parties
15 including, but not limited to, any subcontractors or any Clients provided services pursuant to this
16 Agreement.

17
18 **XXXII. WAIVER OF DEFAULT OR BREACH**

19 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
20 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
21 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
22 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
23 Agreement.

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1 IN WITNESS WHEREOF, the Parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 **ORBIT HEALTH**

5 DocuSigned by:
6 BY: Arshya Valabzadeh, CEO DATED: 2/8/2023
98040C7001E643A...

7
8 TITLE: CEO, Orbit Health Telepsychiatry

9
10
11 BY: _____ DATED: _____

12
13 TITLE: _____

14
15
16 **COUNTY OF ORANGE**

17
18
19 BY: _____ DATED: _____
20 **PURCHASING AGENT/DESIGNEE**

21
22
23
24 **APPROVED AS TO FORM**
25 **OFFICE OF THE COUNTY COUNSEL**
26 **ORANGE COUNTY, CALIFORNIA**

27 DocuSigned by:
28 BY: Brittany Mclean DATED: 2/9/2023
9713A4061D4343D...

29
30 **DEPUTY**

31
32
33
34 If CONTRACTOR is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
36 or any Assistant Treasurer. If the Agreement is signed by one (1) authorized individual only, a copy of the corporate
37 resolution or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or
her signature alone is required by ADMINISTRATOR.

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 ON-SITE PSYCHIATRY AND TELEPSYCHIATRY SERVICES
 4 FOR CORRECTIONAL HEALTH SERVICES PROGRAMS
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 ORBIT HEALTH
 9 APRIL 1, 2023 THROUGH MARCH 31, 2026

10
11 **I. DEFINITIONS**

12 The Parties agree to the following terms and definitions, and to those terms and definitions which,
13 for convenience, are set forth elsewhere in this Agreement.

14 A. “CHS” means the Health Care Agency’s Correctional Health Services program.

15 B. “CHS Liaison” means ADMINISTRATOR’s CHS designee assigned to act as liaison between
16 CONTRACTOR and the Orange County Sheriff’s Department as well as with other CHS staff as
17 necessary and appropriate.

18 C. “CHS Medical Director” means the Health Care Agency’s Correctional Health Services Medical
19 Director.

20 D. “Client” means Custody Patient.

21 E. “Contracting Hospital” means a hospital that has executed a Hospital Services for the
22 Correctional Health Services Programs Agreement with COUNTY.

23 F. “Contract Officers” means ADMINISTRATOR’s and CONTRACTOR’s designees, who shall
24 administer this Agreement for the respective parties.

25 G. “County Health Care Professional” means physicians, nurses, health officers or other persons or
26 classes of persons designated by ADMINISTRATOR’s Contract Officer to perform the treatment
27 authorization functions specified in this Agreement.

28 H. “Custody Patient” means any of the following:

29 1. An Orange County Jail inmate referred to CONTRACTOR by any CHS staff member or
30 Deputy.

31 2. A minor brought to CONTRACTOR, for treatment, who is under the care and custody of
32 the Orange County Probation Department pursuant to, or pending the filing of, a petition under the
33 Welfare and Institutions Code.

34 I. “Deputy” means a sworn officer of the Orange County Sheriff’s Department.

35 J. “Detention Facility” means a jail facility within the Orange County Jail system.

36 K. “Diagnosis” means the definition of the nature of the Custody Patient’s disorder. When
37 formulating the diagnosis of Custody Patient, CONTRACTOR shall use the diagnostic codes and axis as

1 specified in the International Classification of Diseases (ICD) 10.

2 L. “Fiscal Year” means the period from July 1 through the following June 30.

3 M. “HIPAA” means Health Insurance Portability and Accountability Act and refers to the federal
4 law that establishes standards for the privacy and security of health information, as well as standards for
5 electronic data interchange of health information. HIPAA law has two main goals, as its name implies:
6 making health insurance more portable when persons change employers, and making the health care
7 system more accountable for costs-trying especially to reduce waste and fraud.

8 N. “JHS” means the Health Care Agency’s Juvenile Health Services Program.

9 O. “Medical Services” means any diagnostic, treatment, or supportive services, excluding TB
10 screenings, which are determined by ADMINISTRATOR to be medically necessary to protect life or
11 prevent significant disability, and/or to diagnose and treat illness or injuries which require treatment to
12 prevent serious deterioration of health. Medical Services include any service or examination authorized
13 in accordance with this Agreement.

14 P. “Mental Health Services” means interventions designed to provide the maximum reduction of
15 mental disability and restoration or maintenance of functioning consistent with the requirements for
16 learning, development and enhanced self-sufficiency. Services shall include:

17 1. “Assessment” means a service activity, which may include a clinical analysis of the history
18 and current status of a beneficiary’s mental, emotional, or behavioral disorder, relevant cultural issues
19 and history, diagnosis and the use of testing procedures.

20 2. “Therapy” means a service activity which is a therapeutic intervention that focuses
21 primarily on symptom reduction as a means to improve functional impairments. Therapy may be
22 delivered to an individual or group of beneficiaries.

23 Q. “Professional Services” means those Medical Services and Mental Health Services provided by
24 physicians or medical technicians with current training and a valid license or certificate, as appropriate,
25 to act within the scope of their professional classification.

26 R. “Psychiatrist” means an individual who meets the minimum professional and licensure
27 requirements set forth in CCR, Title 9, Section 623.

28 S. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
29 Definitions Paragraph of this Exhibit A to the Agreement.

30 **II. INTERRUPTIONS IN SERVICE**

31
32 A. CONTRACTOR may be excused from providing services hereunder, or such portions thereof as
33 CONTRACTOR is incapable of performing, if CONTRACTOR is prevented from providing or
34 arranging for the provision of services by reason of war, fire, insurrection, COUNTY labor matters,
35 riots, lockdown of the CHS Facilities, earthquakes, other acts of God, or other grave cause beyond
36 CONTRACTOR’s reasonable control, as determined acceptable by COUNTY; provided
37 CONTRACTOR gives written notice of the cause of its inability to perform to COUNTY within thirty-

1 six (36) hours of the start of the cause of its inability to perform and CONTRACTOR avails itself of any
2 available remedies to resume performance and minimize the effects of its inability to perform.

3 1. To the extent CONTRACTOR is held harmless for damages suffered by COUNTY during
4 such interruption of services, any obligation by COUNTY to pay CONTRACTOR may be reduced in
5 COUNTY's sole discretion.

6 2. To the extent that any disruption of services in progress is the result of actions taken by
7 OCS D for security purposes, and CONTRACTOR is excused from providing services hereunder
8 pursuant to this Paragraph II.A., any obligation by COUNTY to pay CONTRACTOR shall not be
9 affected.

10 3. Any excused performance in no event excuses CONTRACTOR's other obligations under this
11 Agreement.

12 B. Notwithstanding the foregoing, in no event shall CONTRACTOR's performance be excused for
13 shutdowns, disruptions, or malfunctions of CONTRACTOR's network or any of CONTRACTOR's
14 telecommunication or internet services other than as a result of general and widespread internet or
15 telecommunication failures that are not limited to CONTRACTOR.

16 C. If CONTRACTOR is unable to provide or arrange for the provision of a substantial portion of
17 the services hereunder for twenty (20) consecutive calendar days or twenty (20) calendar days in a thirty
18 (30) calendar day period, COUNTY may terminate all or a portion of this Agreement upon ten (10)
19 calendar days prior written notice given at any time during or after such period to CONTRACTOR.

20 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
21 Interruptions in Service Paragraph of this Exhibit A to the Agreement.

22
23 **III. PAYMENTS**

24 A. For reimbursement of On-Site Psychiatry and Telepsychiatry services provided in accordance
25 with this Exhibit A to the Agreement, CONTRACTOR shall submit its invoices to ADMINISTRATOR
26 monthly in arrears. CONTRACTOR's invoice shall be on a form approved or supplied by
27 ADMINISTRATOR and provide such information as is required by ADMINISTRATOR. Payments to
28 CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of
29 the correctly completed invoice form.

30 B. COUNTY shall reimburse CONTRACTOR monthly in arrears as fee for service at the
31 following rates:

<u>Service Description</u>	<u>Rate</u>
On-Site Psychiatry – Board Eligible/Board Certified Psychiatrist	\$400 per hour
On-Site Psychiatry – Board Certified Nurse Practitioner	\$200 per hour
Telepsychiatry – Board Eligible/Board Certified Psychiatrist	\$340 per hour
On-Call Psychiatry Services -	\$340 block of time, plus

\$85/per call

1
2
3 1. Provided, however, the total of such payments does not exceed COUNTY's Aggregate
4 Maximum Obligation and provided further, CONTRACTOR's costs are reimbursable pursuant to
5 County, state, and federal regulations.

6 2. CONTRACTOR shall submit invoices along with employee timecards to be considered
7 acceptable for processing. Invoices will not be processed until considered acceptable by COUNTY.

8 C. CONTRACTOR shall maintain internal financial controls which adequately ensure proper
9 billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the
10 identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall
11 provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are
12 billed, collected or deemed by CONTRACTOR to be uncollectible.

13 D. All billings to COUNTY shall be supported, at CONTRACTOR's facility, by source
14 documentation including, but not limited to, ledgers, books, vouchers, payrolls, schedules for allocating
15 costs, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and
16 records of services provided.

17 E. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
18 with any provision of the Agreement.

19 F. COUNTY shall not reimburse CONTRACTOR for On-Site Psychiatry and Telepsychiatry
20 Services provided beyond the expiration and/or termination of the Agreement, except as may otherwise
21 be provided under the Agreement, or specifically agreed upon in a subsequent agreement.

22 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
23 Payments Paragraph of this Exhibit A to the Agreement.

24 25 **IV. ON-SITE PSYCHIATRY SERVICES**

26 A. Unless otherwise specified herein, the cost of all services provided in accordance with this
27 Paragraph IV shall be deemed included in COUNTY's Aggregate Maximum Obligation to
28 CONTRACTOR for each Period.

29 **B. On-Site Psychiatry Services**

30 1. CONTRACTOR shall provide on-site Psychiatric Services that include psychiatric
31 assessment, psychiatric treatment and psychiatric support services in accordance with all applicable laws
32 and regulations for adults only in COUNTY's Detention Facilities.

33 a. COUNTY facilities are operational twenty-four (24) hours a day, seven (7) days a
34 week. Scheduling needs will be addressed through a combination of on-site psychiatry, telepsychiatry,
35 an on-call psychiatric services at the discretion of ADMINISTRATOR. COUNTY will fill schedules
36 based on COUNTY's operational need. Facilities and work assignments may change based on
37 ADMINISTRATOR'S discretion. Lunch breaks are not included in covered costs.

1 CONTRACTOR for each Period.

2 B. Telepsychiatry Services

3 1. CONTRACTOR shall provide remote Telepsychiatric Services that include psychiatric
4 assessment, psychiatric treatment and psychiatric support services in accordance with all applicable laws
5 and regulations for adults only in COUNTY's Detention Facilities.

6 a. CONTRACTOR shall provide Telepsychiatry Services via the platform preferred by
7 ADMINISTRATOR.

8 2. CONTRACTOR shall meet minimum hours required for one-on-one telepsychiatry services
9 as determined by ADMINISTRATOR.

10 a. CONTRACTOR shall provide California licensed board eligible and board-certified
11 psychiatrists to meet COUNTY's needs within this Agreement. Board eligible psychiatrists shall obtain
12 certification within one (1) year of first providing services under this Agreement.

13 3. Telepsychiatric services shall include, but not be limited to, the following:

14 a. A psychiatric evaluation, which shall include a review of each Custody Patient's
15 medical and psychiatric history, diagnosis, and be completed in accordance with the current ICD.

16 1) A treatment plan individualized for each specific Custody Patient, including
17 initiating or continuing psychiatric medications.

18 2) All encounters must be appropriately documented within the CHS electronic health
19 record.

20 b. Medication management conducted on a daily basis utilizing the existing formulary
21 which includes timely review and renewal, if necessary, of medications pending expiration.

22 c. Recommendation of additional laboratory and diagnostic services, when necessary for
23 the initiation and monitoring of psychiatric medication treatments. Review laboratory and diagnostic
24 results, including EKG reports, to support treatment plan.

25 d. Collaboration with healthcare and custody staff to recommend appropriate custody
26 housing, including safety cell placement, mental health housing and hospitalization.

27 e. Psychiatrists shall be available for provider consult and act as a resource for Nurse
28 Practitioner personnel.

29 f. Participation in multi-discipline team meetings as necessary.

30 g. Respond to court orders and be available for court appearances/testimony when
31 required.

32 4. For network issues that prevent telepsychiatry services from occurring:

33 a. Psychiatrists shall be available to provide telephone orders for prescribing medications
34 that have been verified by CHS staff, as well as determining housing and other orders necessary to
35 provide appropriate services to Custody Patients with mental health needs.

36 b. Network issues that occur on three (3) consecutive days or three (3) times in any thirty
37 (30) calendar day period that prohibit performance of telepsychiatry services constitutes a material

1 breach of this Agreement.

2 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
3 Telepsychiatry Services Paragraph of this Exhibit A to the Agreement.

4 5 **VI. ON-CALL PSYCHIATRY SERVICES**

6 A. Unless otherwise specified herein, the cost of all services provided in accordance with this
7 Paragraph VI shall be deemed included in COUNTY'S Aggregate Maximum Obligation to
8 CONTRACTOR for each Period.

9 B. On-Call Psychiatry Services

10 1. CONTRACTOR shall provide on-call psychiatric services to Custody Patients at various
11 correctional sites in accordance with all applicable laws and regulations in COUNTY's Detention
12 Facilities.

13 a. CONTRACTOR shall meet the On-Call coverage schedule set by ADMINISTRATOR.

14 b. CONTRACTOR shall be available by phone or shall return a call within fifteen (15)
15 minutes of being contacted.

16 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the On-
17 Call Psychiatry Services Paragraph of this Exhibit A to the Agreement.

18 19 **VII. RECORDS**

20 A. CONTRACTOR shall maintain records that are adequate to substantiate the services for which
21 claims are submitted for reimbursement under this Agreement and the charges thereto. Such records
22 shall include, but not be limited to, individual patient charts and utilization review records.

23 B. CONTRACTOR shall keep and maintain records of each service rendered to each Custody
24 Patient, the Custody Patient to whom the service was rendered, the date the service was rendered, and
25 such additional information as COUNTY may require.

26 C. All records and clinical notes performed in accordance with the Agreement shall be, and shall
27 remain, the property of COUNTY and shall not be removed or transferred from COUNTY except as
28 permitted herein to be read by CONTRACTOR's Physician.

29 1. It is understood that the standard physician medical records shall be and remain the
30 property of CONTRACTOR and/or CONTRACTOR's physicians and shall not be removed or
31 transferred from CONTRACTOR and/or CONTRACTOR's physicians except in accordance with
32 applicable State and Federal statutes and regulations promulgated thereto. All written reports and
33 documentation submitted to COUNTY in accordance with this Agreement shall be and remain the
34 property of COUNTY and the Parties acknowledge and agree that the physician medical record may
35 contain duplicates of the reports and documentation submitted to COUNTY.

36 2. To the extent permitted by law, in accordance with procedures required by law, and upon
37 receipt of twenty-four (24) hours prior written notice from COUNTY, CONTRACTOR shall permit

1 COUNTY to inspect and make copies of said records. Unannounced inspections, evaluations, or
2 requests for information may be made in those exceptional situations where arrangement of an
3 appointment beforehand is clearly not possible or clearly inappropriate due to the nature of the
4 inspection or evaluation.

5 D. CONTRACTOR shall provide access by COUNTY to any medical records of Custody Patients
6 in accordance with all applicable laws and regulations as they now exist or may hereafter be changed.

7 E. CONTRACTOR shall maintain books, records, documents, and other evidence, accounting
8 procedures, and practices sufficient to reflect properly all direct and indirect cost of whatever nature
9 claimed to have been incurred in the performance of this Agreement and in accordance with Medicare
10 principles of reimbursement and generally accepted accounting principles.

11 F. Maintenance of Files and Contract Close-Out

12 1. CONTRACTOR shall store and maintain at the very least within the State of California all
13 medical and/or clinical records, both hardcopy and electronic, for a period of ten (10) years after the end
14 of the Agreement, and shall make these records available upon request. CONTRACTOR shall provide
15 ready access of all archived images, reports and examination results to authorized CHS medical staff via
16 internet, electronic health record interface or downloaded files onto appropriate media.

17 2. On completion or termination of Agreement, CONTRACTOR shall return all records to
18 CHS within sixty (60) calendar days. CONTRACTOR shall provide CHS with an orderly schedule of
19 transferring records and have that schedule approved prior to the return of such records.

20 3. Upon completion or termination of the Agreement, CONTRACTOR shall forthwith return
21 to CHS all material constituting or containing confidential information. CONTRACTOR shall not
22 thereafter use, copy, reproduce, sell, transfer or otherwise dispose of, give or disclose such information
23 to any third party.

24 G. Data and Documentation

25 1. All electronic data related to services outlined in Exhibit A of this Agreement shall remain
26 the property of COUNTY no matter where the data resides (i.e. cloud, internal network, etc.). If data is
27 stored in the cloud, COUNTY must be listed as a co-owner with CONTRACTOR on any contract with a
28 cloud services vendor (i.e. Amazon, Rackspace, etc.) for the sole purpose of data retrieval or service
29 continuance in the event of CONTRACTOR's failure to perform under this Agreement.
30 CONTRACTOR must maintain financial obligations of such contracts during the term of the
31 Agreement.

32 2. In the event of dissolution, COUNTY has the right to enter into an agreement with sub-
33 contracted contractors for the sole purpose of moving data or continuance of services so that COUNTY
34 business is not impaired, the determination of which is in the sole discretion of COUNTY.

35 H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
36 Records Paragraph of this Exhibit A to the Agreement.

37

VIII. REPORTS

1
2 A. CONTRACTOR shall provide the following reports appropriate to the services
3 CONTRACTOR provides:

4 1. Monthly utilization reports on On-Site Psychiatry and Telepsychiatry appointments,
5 consisting of patient and non-patient clinical encounters and analysis regarding volume trends.

6 2. Monthly availability reports on On-Site Psychiatry services that itemizes contract hours
7 prescribed by ADMINISTRATOR but not performed by CONTRACTOR, including dates and hours of
8 non-performance and whether the non-performance is due to an event described in Paragraph II above.

9 3. Monthly availability reports on Telepsychiatry services that sets out CONTRACTOR
10 network downtime resulting in contract hours prescribed by ADMINISTRATOR but unperformed by
11 CONTRACTOR. The reports should indicate the reason for the network downtime, whether the
12 network downtime is due to an event described in Paragraph II above, the date the downtime occurred,
13 the length of the downtime, and the actions taken to limit such cause of the network downtime in the
14 future. Further, the reports should indicate whether and to what extent Psychiatrists were available to
15 perform services pursuant to Paragraph V., subparagraph B(4).

16
17 4. Additional reports as clinical and utilization issues arise, and as requested by COUNTY.

18 B. ADMINISTRATOR may request reasonable reports of CONTRACTOR in order to determine
19 the quality and nature of services provided hereunder. ADMINISTRATOR will be specific as to the
20 nature of information requested, and may allow up to thirty (30) calendar days for CONTRACTOR to
21 respond.

22 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
23 Reports Paragraph of this Exhibit A to the Agreement.

IX. RULES AND REGULATIONS

24
25 In addition to the clauses contained in the Agreement, CONTRACTOR shall comply with the
26 following additional requirements.

27
28 A. Confidentiality of medical record information is essential and is required under the Health
29 Insurance Portability and Accounting Act of 1996, Public Law 104-191 HIPAA, Code of Federal
30 Regulations 42, Part 2; California Health and Safety Code Sections, 199.20, California Welfare and
31 Institution Code Section 5328.

32 B. CONTRACTOR shall ensure confidential information is only disclosed to the extent disclosure
33 is required for CONTRACTOR to perform the services under this Agreement, in confidence and with
34 the understanding that the confidential information constitutes valuable business information developed
35 by COUNTY at great expenditure of time, effort and money.

36 C. CONTRACTOR shall ensure all patient data is maintained within COUNTY infrastructure and
37 is not accessed via outside resources.

1 D. CONTRACTOR shall not copy, reproduce, sell, transfer, or otherwise dispose of, give or
 2 disclose, any confidential information to third parties other than employees, agents, or subcontractors
 3 who require the confidential information for performance of this Agreement and will not use such
 4 confidential information for any purpose other than for performance of this Agreement.
 5 CONTRACTOR shall immediately report to COUNTY any and all unauthorized disclosures or uses of
 6 confidential information or suspected or threatened unauthorized disclosures or uses of confidential
 7 information of which CONTRACTOR or CONTRACTOR's employees, agents and/or subcontractors is
 8 aware or has knowledge or reasonable belief. CONTRACTOR understands that this Agreement may be
 9 terminated for cause if unauthorized confidential information is released.

10 E. CONTRACTOR shall promptly notify COUNTY of any request or demand by any court,
 11 governmental agency or other person asserting a demand or request for any confidential information to
 12 which CONTRACTOR may have access, so that COUNTY may seek an appropriate protective order.

13 F. CONTRACTOR shall comply with the background clearance required by OCSD for
 14 subcontractors that require facility access.

15 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Rules
 16 and Regulations Paragraph of this Exhibit A to the Agreement.

17 18 **X. STAFFING**

19 A. CONTRACTOR shall provide all staffing and equipment necessary to provide On-Site
 20 Psychiatry and Telepsychiatry services at any COUNTY designated Detention Facilities.

21 1. On-Site Psychiatry Services shall be provided by staff specified in accordance with the On-
 22 Site Psychiatry Services Paragraph of this Exhibit A to the Agreement.

23 a. Facility and/or work assignment may change at ADMINISTRATOR's discretion.

24 2. Telepsychiatry Services shall be provided by staff specified in accordance with the
 25 Telepsychiatry Services Paragraph of this Exhibit A to the Agreement.

26 3. CONTRACTOR shall provide point of contact for administrative oversight, to include
 27 business hours and after-hours contacts. CONTRACTOR is required to respond within one (1) hour for
 28 urgent requests and four (4) hours for routine requests.

29 4. CONTRACTOR shall provide schedules to ADMINISTRATOR at a minimum of four (4)
 30 weeks in advance. CONTRACTOR is responsible for providing coverage for planned and unexpected
 31 employee absences. CONTRACTOR shall monitor attendance of employees and address inconsistent
 32 attendance.

33 B. CONTRACTOR, subcontractors, and all CONTRACTOR employees, including future
 34 employees hired during the term of this Agreement, who perform services at any designated Detention
 35 Facility must pass a thorough background investigation conducted by OCSD before the start of the
 36 Agreement or before the start of performance under this Agreement by any subcontractor or
 37 CONTRACTOR employee. Individuals who do not pass the background check are not allowed access

1 to any designated Detention Facilities or data with no exception.

2 C. CONTRACTOR shall require all support staff and subcontractors not assigned within a
3 designated Facility but with a business need to work within a designated Detention Facility to complete
4 and maintain an active security clearance conducted by OCSD. Security clearances allow staff to be
5 escorted within the designated Facility to conduct necessary business. Security clearances must be
6 renewed annually.

7 D. CONTRACTOR shall maintain required records for its employees and subcontractors,
8 including verification of credentials, current licensures, certificates, work schedules and make copies
9 available for display at workplace.

10 E. CONTRACTOR shall provide and maintain current listing of its designated Detention Facility
11 assigned staff and shall advise ADMINISTRATOR of any of CONTRACTOR's staff changes,
12 additions, and terminations/separations within a reasonable period of time from the date of such
13 changes, additions, and terminations/separations. Any identification cards/keys issued to
14 CONTRACTOR's staff to gain access to OCSD's Facilities shall be surrendered to CHS Administration
15 as soon as possible after the staff is no longer assigned to a designated Detention Facility.

16 F. CONTRACTOR shall prioritize using Psychiatrists and Mental Health Nurse Practitioners who
17 are available on consistent days and hours to promote continuity of care.

18 G. CONTRACTOR shall ensure availability of back up staff, all of whom must have a security
19 clearance, to minimize any unavailability of CONTRACTOR to perform services under the Agreement.

20 H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
21 Staffing Paragraph of this Exhibit A to the Agreement.

22 **XI. UTILIZATION REVIEW/QUALITY ASSURANCE**

23
24 A. Within forty-five (45) calendar days of the effective date of this Agreement, representatives of
25 ADMINISTRATOR and CONTRACTOR shall meet and develop written Operating Procedures
26 covering Services specified in this Exhibit A to the Agreement. Such Operating Procedures shall be
27 mutually agreed to by both Parties and shall address, but not be limited to, the supervision and
28 scheduling of Psychiatrists and Mental Health Nurse Practitioners, and other CONTRACTOR staff
29 operating within the Detention Facilities. Said Operating Procedures shall be reviewed by both Parties
30 at least annually, as well upon the addition of any other Services to be provided by CONTRACTOR.
31 Any subsequent changes to the Operating Procedures shall be mutually agreed upon, in writing, by both
32 Parties.

33 B. During Period One of this Agreement, representatives of CONTRACTOR and
34 ADMINISTRATOR, which shall include the Contract Officers, shall meet at least quarterly to discuss
35 CONTRACTOR's administrative and programmatic progress and performance.

36 C. CONTRACTOR shall participate in any CHS Utilization Review program and/or Quality
37 Assurance program for the review of all services provided pursuant to this Agreement.

1 D. CONTRACTOR shall be responsible for Peer Review/Chart Review for their providers
2 as part of their Quality Assurance program.

3 E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
4 Utilization Review/Quality Assurance Paragraph of this Exhibit A to the Agreement.

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1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 ON-SITE PSYCHIATRY AND TELEPSYCHIATRY SERVICES
 4 FOR CORRECTIONAL HEALTH SERVICES PROGRAMS
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 ORBIT HEALTH
 9 APRIL 1, 2023 THROUGH MARCH 31, 2026

10
11 **I. BUSINESS ASSOCIATE CONTRACT**

12 A. GENERAL PROVISIONS AND RECITALS

13 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
14 Definitions Paragraph of Exhibit A to the Agreement or in Subparagraph B. below, shall have the same
15 meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at 45
16 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

17 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,
18 and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
19 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
20 COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of
21 “Business Associate” in 45 CFR § 160.103.

22 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
23 terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10., to
24 be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the
25 Agreement.

26 4. The parties intend to protect the privacy and provide for the security of PHI that may be
27 created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance
28 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
29 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

30 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
31 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
32 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

33 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
34 Subparagraphs B.9. and B.14., apply to the CONTRACTOR in the same manner as they apply to the
35 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
36 terms of this Business Associate Contract and the applicable standards, implementation specifications,
37 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,

1 with respect to PHI and ePHI created, received, maintained, transmitted, used, or disclosed pursuant to
2 the Agreement.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and P&Ps, to manage the selection,
5 development, implementation, and maintenance of security measures to protect ePHI and to manage the
6 conduct of CONTRACTOR's workforce in relation to the protection of that information.

7 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
8 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

9 a. Breach excludes:

10 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
11 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
12 was made in good faith and within the scope of authority and does not result in further use or disclosure
13 in a manner not permitted under the Privacy Rule.

14 2) Any inadvertent disclosure by a person who is authorized to access PHI at
15 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
16 care arrangement in which COUNTY participates, and the information received as a result of such
17 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

18 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
19 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
20 retain such information.

21 b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or
22 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
23 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
24 based on a risk assessment of at least the following factors:

25 1) The nature and extent of the PHI involved, including the types of identifiers and the
26 likelihood of re-identification;

27 2) The unauthorized person who used the PHI or to whom the disclosure was made;

28 3) Whether the PHI was actually acquired or viewed; and

29 4) The extent to which the risk to the PHI has been mitigated.

30 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
31 Rule in 45 CFR § 164.501.

32 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in 45
33 CFR § 164.501.

34 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in
35 45 CFR § 160.103.

36 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA
37 Privacy Rule in 45 CFR § 164.501.

1 7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in
2 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
3 with 45 CFR § 164.502(g).

4 8. “Physical Safeguards” are physical measures, policies, and procedures to protect
5 CONTRACTOR’s electronic information systems and related buildings and equipment, from natural
6 and environmental hazards, and unauthorized intrusion.

7 9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually
8 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

9 10. “PHI” shall have the meaning given to such term under the HIPAA regulations in
10 45 CFR § 160.103.

11 11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy
12 Rule in 45 CFR § 164.103.

13 12. “Secretary” shall mean the Secretary of the Department of HHS or his or her designee.

14 13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
15 modification, or destruction of information or interference with system operations in an information
16 system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans,
17 “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by
18 CONTRACTOR.

19 14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of ePHI at
20 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

21 15. “SubCONTRACTOR” shall have the meaning given to such term under the HIPAA
22 regulations in 45 CFR § 160.103.

23 16. “Technical safeguards” means the technology and the P&Ps for its use that protect ePHI
24 and control access to it.

25 17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable,
26 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
27 methodology specified by the Secretary of HHS in the guidance issued on the
28 HHS Web site.

29 18. “Use” shall have the meaning given to such term under the HIPAA regulations in
30 45 CFR § 160.103.

31 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

32 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
33 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
34 by law.

35 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
36 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
37 //

1 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
2 other than as provided for by this Business Associate Contract.

3 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
4 Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates,
5 receives, maintains, or transmits on behalf of COUNTY.

6 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
7 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
8 requirements of this Business Associate Contract.

9 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
10 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
11 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E. below
12 and as required by 45 CFR § 164.410.

13 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
14 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply
15 through this Business Associate Contract to CONTRACTOR with respect to such information.

16 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
17 written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an
18 Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an
19 EHR with PHI, and an individual requests a copy of such information in an electronic format,
20 CONTRACTOR shall provide such information in an electronic format.

21 8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs
22 or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty
23 (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY
24 in writing no later than ten (10) calendar days after said amendment is completed.

25 9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps,
26 relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on
27 behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by
28 COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's
29 compliance with the HIPAA Privacy Rule.

30 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
31 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
32 and to make information related to such Disclosures available as would be required for COUNTY to
33 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with
34 45 CFR § 164.528.

35 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
36 a time and manner to be determined by COUNTY, that information collected in accordance with the
37 //

1 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
2 Disclosures of PHI in accordance with 45 CFR § 164.528.

3 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
4 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
5 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

6 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by
7 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all
8 employees, subcontractors, and agents who have access to the Social Security data, including
9 employees, agents, subcontractors, and agents of its subcontractors.

10 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a
11 criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if
12 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may
13 terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or
14 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made
15 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.
16 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to
17 terminate the Agreement.

18 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
19 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at
20 no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
21 proceedings being commenced against COUNTY, its directors, officers or employees based upon
22 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
23 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
24 subcontract, employee, or agent is a named adverse party.

25 16. The Parties acknowledge that federal and state laws relating to electronic data security and
26 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
27 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
28 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
29 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
30 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
31 concerning an amendment to this Business Associate Contract embodying written assurances consistent
32 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
33 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
34 event:

35 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
36 Associate Contract when requested by COUNTY pursuant to this Subparagraph C.; or

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1 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
2 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of
3 HIPAA, the HITECH Act, and the HIPAA regulations.

4 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
5 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
6 B.2.a. above.

7 D. SECURITY RULE

8 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
9 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with
10 45 CFR § 164.308, § 164.310, and § 164.312, with respect to ePHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
12 CONTRACTOR shall develop and maintain a written information privacy and security program that
13 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
14 CONTRACTOR's operations and the nature and scope of its activities.

15 2. CONTRACTOR shall implement reasonable and appropriate P&Ps to comply with the
16 standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in
17 compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and
18 updated policies upon request.

19 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
20 containing ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
21 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
22 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
23 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

24 a. Complying with all of the data system security precautions listed under Subparagraph
25 E., below;

26 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
27 conducting operations on behalf of COUNTY;

28 c. Providing a level and scope of security that is at least comparable to the level and scope
29 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal
30 Automated Information Systems, which sets forth guidelines for automated information systems in
31 Federal agencies;

32 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
33 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
34 restrictions and requirements contained in this Subparagraph D. of this Business Associate Contract.

35 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
36 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
37 Subparagraph E. below and as required by 45 CFR § 164.410.

1 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
2 shall be responsible for carrying out the requirements of this paragraph and for communicating on
3 security matters with COUNTY.

4 E. DATA SECURITY REQUIREMENTS

5 1. Personal Controls

6 a. Employee Training. All workforce members who assist in the performance of
7 functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI
8 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
9 behalf of COUNTY, must complete information privacy and security training, at least annually, at
10 CONTRACTOR's expense. Each workforce member who receives information privacy and security
11 training must sign a certification, indicating the member's name and the date on which the training was
12 completed. These certifications must be retained for a period of six (6) years following the termination
13 of Agreement.

14 b. Employee Discipline. Appropriate sanctions must be applied against workforce
15 members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including
16 termination of employment where appropriate.

17 c. Confidentiality Statement. All persons that will be working with PHI COUNTY
18 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
19 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and
20 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the
21 workforce member prior to access to such PHI. The statement must be renewed annually. The
22 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection
23 for a period of six (6) years following the termination of the Agreement.

24 d. Background Check. Before a member of the workforce may access PHI COUNTY
25 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
26 COUNTY, a background screening of that worker must be conducted. The screening should be
27 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
28 screening being done for those employees who are authorized to bypass significant technical and
29 operational security controls. CONTRACTOR shall retain each workforce member's background check
30 documentation for a period of three (3) years.

31 2. Technical Security Controls

32 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
33 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
34 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
35 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
36 COUNTY.

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1 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
3 must have sufficient administrative, physical, and technical controls in place to protect that data, based
4 upon a risk assessment/system security review.

5 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY
6 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
7 COUNTY required to perform necessary business functions may be copied, downloaded, or exported.

8 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
9 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
10 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
11 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified
12 algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the
13 premises” if it is only being transported from one of CONTRACTOR’s locations to another of
14 CONTRACTOR’s locations.

15 e. Antivirus software. All workstations, laptops and other systems that process and/or
16 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
17 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
18 solution with automatic updates scheduled at least daily.

19 f. Patch Management. All workstations, laptops and other systems that process and/or
20 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
21 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
22 necessary. There must be a documented patch management process which determines installation
23 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
24 patches must be installed within thirty (30) days of vendor release. Applications and systems that
25 cannot be patched due to operational reasons must have compensatory controls implemented to
26 minimize risk, where possible.

27 g. User IDs and Password Controls. All users must be issued a unique user name for
28 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
29 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
30 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
31 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
32 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
33 computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.
34 Passwords must be changed if revealed or compromised. Passwords must be composed of characters
35 from at least three (3) of the following four (4) groups from the standard keyboard:

- 36 1) Upper case letters (A-Z)
- 37 2) Lower case letters (a-z)

1 3) Arabic numerals (0-9)

2 4) Non-alphanumeric characters (punctuation symbols)

3 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
5 must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media
6 may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods
7 require prior written permission by COUNTY.

8 i. System Timeout. The system providing access to PHI COUNTY discloses to
9 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
10 must provide an automatic timeout, requiring re-authentication of the user session after no more than
11 twenty (20) minutes of inactivity.

12 j. Warning Banners. All systems providing access to PHI COUNTY discloses to
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
14 must display a warning banner stating that data is confidential, systems are logged, and system use is for
15 business purposes only by authorized users. User must be directed to log off the system if they do not
16 agree with these requirements.

17 k. System Logging. The system must maintain an automated audit trail which can
18 identify the user or system process which initiates a request for PHI COUNTY discloses to
19 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
20 or which alters such PHI. The audit trail must be date and time stamped, must log both successful and
21 failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a
22 database, database logging functionality must be enabled. Audit trail data must be archived for at least
23 three (3) years after occurrence.

24 l. Access Controls. The system providing access to PHI COUNTY discloses to
25 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
26 must use role based access controls for all user authentications, enforcing the principle of least privilege.

27 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
28 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
29 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
30 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
31 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
32 website access, file transfer, and E-Mail.

33 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and
34 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
35 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
36 comprehensive intrusion detection and prevention solution.

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1 3. Audit Controls

2 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that
3 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY
4 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
5 COUNTY must have at least an annual system risk assessment/security review which provides
6 assurance that administrative, physical, and technical controls are functioning effectively and providing
7 adequate levels of protection. Reviews should include vulnerability scanning tools.

8 b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to
9 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
10 must have a routine procedure in place to review system logs for unauthorized access.

11 c. Change Control. All systems processing and/or storing PHI COUNTY discloses to
12 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
13 must have a documented change control procedure that ensures separation of duties and protects the
14 confidentiality, integrity and availability of data.

15 4. Business Continuity/Disaster Recovery Control

16 a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan
17 to enable continuation of critical business processes and protection of the security of PHI COUNTY
18 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
19 COUNTY kept in an electronic format in the event of an emergency. Emergency means any
20 circumstance or situation that causes normal computer operations to become unavailable for use in
21 performing the work required under this Agreement for more than twenty-four (24) hours.

22 b. Data Backup Plan. CONTRACTOR must have established documented procedures to
23 backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular
24 schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of
25 the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule
26 must be a weekly full backup and monthly offsite storage of DHCS data. BCP for CONTRACTOR and
27 COUNTY (e.g. the application owner) must merge with the DRP.

28 5. Paper Document Controls

29 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
30 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
31 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
32 that information is not being observed by an employee authorized to access the information. Such PHI
33 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
34 baggage on commercial airplanes.

35 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to
36 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is
37 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

1 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
2 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
3 through confidential means, such as cross cut shredding and pulverizing.

4 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
5 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
6 of the CONTRACTOR except with express written permission of COUNTY.

7 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
8 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
9 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
10 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
11 intended recipient before sending the fax.

12 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
13 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
14 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
15 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to
16 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in
17 a single package shall be sent using a tracked mailing method which includes verification of delivery
18 and receipt, unless the prior written permission of COUNTY to use another method is obtained.

19 F. BREACH DISCOVERY AND NOTIFICATION

20 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify
21 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a
22 law enforcement official pursuant to 45 CFR § 164.412.

23 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which
24 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been
25 known to CONTRACTOR.

26 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is
27 known, or by exercising reasonable diligence would have known, to any person who is an employee,
28 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

29 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
30 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
31 notification within twenty-four (24) hours of the oral notification.

32 3. CONTRACTOR's notification shall include, to the extent possible:

33 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
34 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

35 b. Any other information that COUNTY is required to include in the notification to
36 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
37 //

1 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
2 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

3 1) A brief description of what happened, including the date of the Breach and the date
4 of the discovery of the Breach, if known;

5 2) A description of the types of Unsecured PHI that were involved in the Breach (such
6 as whether full name, social security number, date of birth, home address, account number, diagnosis,
7 disability code, or other types of information were involved);

8 3) Any steps Individuals should take to protect themselves from potential harm
9 resulting from the Breach;

10 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
11 mitigate harm to Individuals, and to protect against any future Breaches; and

12 5) Contact procedures for Individuals to ask questions or learn additional information,
13 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

14 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
15 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
16 COUNTY.

17 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
18 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
19 CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F. and as
20 required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or
21 disclosure of PHI did not constitute a Breach.

22 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
23 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

24 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
25 Breach, including the information listed in Section E.3.b. (1)-(5) above, if not yet provided, to permit
26 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
27 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
28 the Breach to COUNTY pursuant to Subparagraph F.2. above.

29 8. CONTRACTOR shall continue to provide all additional pertinent information about the
30 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
31 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
32 requests for further information, or follow-up information after report to COUNTY, when such request
33 is made by COUNTY.

34 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
35 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs
36 in addressing the Breach and consequences thereof, including costs of investigation, notification,
37 remediation, documentation or other costs associated with addressing the Breach.

1 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

2 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
3 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
4 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
5 by COUNTY except for the specific Uses and Disclosures set forth below.

6 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
7 for the proper management and administration of CONTRACTOR.

8 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
9 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
10 CONTRACTOR, if:

11 1) The Disclosure is required by law; or

12 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI
13 is disclosed that it will be held confidentially and used or further disclosed only as required by law or for
14 the purposes for which it was disclosed to the person and the person immediately notifies
15 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
16 been breached.

17 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
18 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
19 CONTRACTOR.

20 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
21 carry out legal responsibilities of CONTRACTOR.

22 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
23 consistent with the minimum necessary P&Ps of COUNTY.

24 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
25 required by law.

26 H. PROHIBITED USES AND DISCLOSURES

27 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or
28 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to
29 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care
30 item or service for which the health care provider involved has been paid out of pocket in full and the
31 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

32 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
33 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
34 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by
35 42 USC § 17935(d)(2).

36 I. OBLIGATIONS OF COUNTY

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1 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY’s notice of
2 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
3 CONTRACTOR’s Use or Disclosure of PHI.

4 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
5 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
6 CONTRACTOR’s Use or Disclosure of PHI.

7 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
8 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
9 may affect CONTRACTOR’s Use or Disclosure of PHI.

10 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that
11 would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

12 J. BUSINESS ASSOCIATE TERMINATION

13 1. Upon COUNTY’s knowledge of a material Breach or violation by CONTRACTOR of the
14 requirements of this Business Associate Contract, COUNTY shall:

15 a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the
16 violation within thirty (30) business days; or

17 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to
18 cure the material Breach or end the violation within thirty (30) days, provided termination of the
19 Agreement is feasible.

20 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
21 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained,
22 or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

23 a. This provision shall apply to all PHI that is in the possession of Subcontractors or
24 agents of CONTRACTOR.

25 b. CONTRACTOR shall retain no copies of the PHI.

26 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
27 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
28 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
29 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
30 further Uses and Disclosures of such PHI to those purposes that make the return or destruction
31 infeasible, for as long as CONTRACTOR maintains such PHI.

32 3. The obligations of this Business Associate Contract shall survive the termination of the
33 Agreement.

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1 EXHIBIT C
 2 TO AGREEMENT FOR PROVISION OF
 3 ON-SITE PSYCHIATRY AND TELEPSYCHIATRY SERVICES
 4 FOR CORRECTIONAL HEALTH SERVICES PROGRAMS
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 ORBIT HEALTH
 9 APRIL 1, 2023 THROUGH MARCH 31, 2026

10
11 **I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT**

12 Any reference to statutory, regulatory, or contractual language herein shall be to such language as in
13 effect or as amended.

14 A. DEFINITIONS

15 1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall
16 include a "PII loss" as that term is defined in the CMPPA.

17 2. "Breach of the security of the system" shall have the meaning given to such term under the
18 CIPA, CCC § 1798.29(d).

19 3. "CMPPA Agreement" means the CMPPA Agreement between the SSA and CHHS.

20 4. "DHCS PI" shall mean PI, as defined below, accessed in a database maintained by the
21 COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created
22 by CONTRACTOR in connection with performing the functions, activities and services specified in the
23 Agreement on behalf of the COUNTY.

24 5. "IEA" shall mean the IEA currently in effect between the SSA and DHCS.

25 6. "Notice-triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose
26 unauthorized access may trigger notification requirements under CCC § 1709.29. For purposes of this
27 provision, identity shall include, but not be limited to, name, identifying number, symbol, or other
28 identifying particular assigned to the individual, such as a finger or voice print, a photograph or a
29 biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

30 7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

31 8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).

32 9. "Required by law" means a mandate contained in law that compels an entity to make a use
33 or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court
34 orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental
35 or tribal inspector general, or an administrative body authorized to require the production of
36 information, and a civil or an authorized investigative demand. It also includes Medicare conditions of
37 participation with respect to health care providers participating in the program, and statutes or

1 regulations that require the production of information, including statutes or regulations that require such
2 information if payment is sought under a government program providing public benefits.

3 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
4 modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or
5 interference with system operations in an information system that processes, maintains or stores PI.

6 B. TERMS OF AGREEMENT

7 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
8 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
9 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the
10 Agreement provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

13 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
14 required by this Personal Information Privacy and Security Contract or as required by applicable state
15 and federal law.

16 b. Safeguards. To implement appropriate and reasonable administrative, technical, and
17 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
18 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
19 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
20 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
21 security program that include administrative, technical and physical safeguards appropriate to the size
22 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
23 incorporate the requirements of Subparagraph c., below. CONTRACTOR will provide COUNTY with
24 its current policies upon request.

25 c. Security. CONTRACTOR shall ensure the continuous security of all computerized
26 data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing
27 DHCS PI and PII. These steps shall include, at a minimum:

28 1) Complying with all of the data system security precautions listed in Subparagraph
29 E. of the Business Associate Contract, Exhibit B to the Agreement; and

30 2) Providing a level and scope of security that is at least comparable to the level and
31 scope of security established by the OMB in OMB Circular No. A-130, Appendix III-Security of
32 Federal Automated Information Systems, which sets forth guidelines for automated information systems
33 in Federal agencies.

34 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
35 CONTRACTOR shall also comply with the substantive privacy and security requirements in the
36 CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and
37 DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security

1 requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic
2 Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local
3 Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that
4 any of CONTRACTOR’s agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree
5 to the same requirements for privacy and security safeguards for confidential data that apply to
6 CONTRACTOR with respect to such information.

7 d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful
8 effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or
9 its subcontractors in violation of this Personal Information Privacy and Security Contract.

10 e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and
11 conditions set forth in this Personal Information and Security Contract on any subcontractors or other
12 agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the
13 disclosure of DHCS PI or PII to such subcontractors or other agents.

14 f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or
15 COUNTY for purposes of oversight, inspection, amendment, and response to requests for records,
16 injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives
17 DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or
18 DHCS with a list of all employees, CONTRACTORs and agents who have access to DHCS PII,
19 including employees, CONTRACTORs and agents of its subcontractors and agents.

20 g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist
21 the COUNTY to the extent necessary to ensure the DHCS’s compliance with the applicable terms of the
22 CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS
23 PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such
24 Breach to the affected individual(s).

25 h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR
26 agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII
27 or security incident. CONTRACTOR agrees to give notification of any Breach of unsecured DHCS PI
28 and PII or security incident in accordance with Subparagraph F. of the Business Associate Contract,
29 Exhibit B to the Agreement.

30 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate
31 an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for
32 carrying out the requirements of this Personal Information Privacy and Security Contract and for
33 communicating on security matters with the COUNTY.

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