

AMENDMENT No. 5

TO AGREEMENT FOR PROVISION OF DRUG MEDI-CAL
NARCOTIC REPLACEMENT

THERAPY TREATMENT SERVICES

BETWEEN

COUNTY OF ORANGE

WESTERN PACIFIC MED-CORP

JULY 1, 2018 THROUGH JUNE 30, 2020

THIS AGREEMENT _____ This Amendment ("Amendment No. 5") to Contract No. MA-042-19010230 for Drug Medi-Cal Narcotic Replacement Therapy Treatment Services is made and entered into ~~this 1st day of on July, 2018 (effective date), is by and~~ 1, 2021 ("Effective Date") between ~~the COUNTY OF ORANGE~~ Western Pacific Med-Corp, Inc. ("Contractor"), with a place of business at 4544 San Fernando Road, Suite 202, Glendale, CA 91204, and the County of Orange, a political subdivision of the State of California (~~COUNTY~~), and ~~WESTERN PACIFIC MED CORP~~, a For-profit (~~CONTRACTOR~~). ~~COUNTY~~ ("County"), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600, Santa Ana, CA 92701. Contractor and ~~CONTRACTOR~~ County may sometimes be referred to ~~herein~~ individually as "Party" or collectively as "Parties." ~~This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).~~ _____

W I T N E S S E T H:

— WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of DRUG MEDICAL NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES described herein to the residents of Orange County; and

WHEREAS, the Parties executed Contract No. MA-042-19010230 for Drug Medi-Cal Narcotic Replacement Therapy Treatment Services, effective July 1, 2018 through June 30, 2020, in an amount not to exceed \$10,430,060, renewable for three additional one-year periods ("Contract"); and

WHEREAS, ~~CONTRACTOR is agreeable to~~ the Parties executed Amendment No. 1 to amend the Contract, effective July 1, 2019, to incorporate the ~~rendering of such services on~~ Fiscal Year 2019-20 State-Mandated Narcotic Treatment Program (NTP) Drug Medi-Cal(DMC) Organized Delivery System (ODS) rates of reimbursement; and

WHEREAS, the Parties executed Amendment No. 2 to amend the Contract to amend specific terms and conditions ~~hereinafter~~ in the Contract and to renew the Contract, effective July 1, 2020 through June 30, 2021, in an amount not to exceed \$5,215,030, for a new amount not to exceed \$15,645,090; and

WHEREAS, the Parties executed Amendment No. 3 to amend the Contract, effective July 1, 2020, to amend the State Mandated NTP DMC ODS rates of reimbursement; and

WHEREAS, the Parties executed Amendment No. 4 to amend the State Mandated NTP DMC ODS rates for reimbursement as indicated in the Behavioral Health Information Notice No: 20-054 from the Department of Health Care Services Fiscal Year 2020-21; and

WHEREAS, the Parties now desire to enter into this Amendment No. 5 to renew the Contract for one year for County to continue receiving and Contractor to continue providing the services set forth in the Contract.

~~—NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, COUNTY and CONTRACTOR do hereby~~ Contractor and County agree to amend the Contract as follows:

1. Title The Contract is renewed for a term of one (1) year, effective July 1, 2021 through June 30, 2022, renewable for one additional one-year term, in an amount not to exceed \$5,215,030 for this renewal term, for a revised cumulative total amount not to exceed \$20,860,120; on the amended terms and conditions.
2. 4. Referenced Contract Provisions 4, lines 3 through 10 of the Contract are deleted in their entirety and replaced with the following:

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2018 through June 30, ~~2020~~2022

Period One means the period from July 1, 2018 through June 30, 2019
Period Two means the period from July 1, 2019 through June 30, 2020
Period Three means the period from July 1, 2020 through June 30, 2021
 Period Four means the period from July 1, 2021 through June 30, 2022

~~Maximum Obligation: —~~

Amount Not To Exceed:

<u>Period One</u>	Maximum Obligation: —	<u>Amount Not To Exceed:</u>	\$ 5,215,030
Period Two	Maximum Obligation: \$	Amount Not To Exceed:	5,215,030
Period Three	Maximum Obligation: —	\$ Amount Not To Exceed:	5,215,030
<u>Period Four</u>		<u>Amount Not To Exceed:</u>	5,215,030
<u>TOTAL AMOUNT NOT TO EXCEED:</u>			<u>\$20,860,120"</u>

~~TOTAL MAXIMUM OBLIGATION: —~~ **\$15,645,090**

Basis for Reimbursement: Negotiated Rate
Payment Method: Monthly in Arrears
CONTRACTOR DUNS Number: 04-690-7267
CONTRACTOR TAX ID Number: 95-3432680

**Notices to COUNTY
 and CONTRACTOR:**

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

CONTRACTOR: Western Pacific Med-Corp
4544 San Fernando Sr., Suite 202
Glendale, CA 91204-5015
Mark Hickman
mark@westpacmed.com

I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their is deleted in its entirety throughout this Agreement:

A. ARRA	American Recovery and Reinvestment Act
B. ASRS	Alcohol and Drug Programs Reporting System
C. CalOMS	California Outcomes Measurement System
D. CAP	Corrective Action Plan
E. CCC	California Civil Code
F. CCR	California Code of Regulations
G. CEO	County Executive Office
H. CFDA	Catalog of Federal Domestic Assistance
I. CFR	Code of Federal Regulations
J. CHPP	COUNTY HIPAA Policies and Procedures
K. CHS	Correctional Health Services
L. COI	Certificate of Insurance
M. DATAR	Drug Abuse Treatment Access Report
N. D/MC	Drug/Medi-Cal
O. DHCS	Department of Health Care Services
P. DPFS	Drug Program Fiscal Systems
Q. DRS	Designated Record Set
R. EHR	Electronic Health Record
S. ePHI	Electronic Protected Health Information
T. GAAP	Generally Accepted Accounting Principles
U. HCA	Health Care Agency
V. HITECH Act	Health Information Technology for Economic and Clinical Health Act, Public Law 111-005
W. HHS	Health and Human Services
X. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
Y. HSC	California Health and Safety Code
Z. IRIS	Integrated Record and Information System
AA. ISO	Insurance Services Office
AB. MAT	Medication Assisted Treatment
AC. MHP	Mental Health Plan
AD. NIATx	Network Improvement of Addiction Treatment

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AE. NIST	National Institute of Standards and Technology
AF. NTP	Narcotic Treatment Program
AG. OCJS	Orange County Jail System
AH. OCPD	Orange County Probation Department
AI. OCR	Office for Civil Rights
AJ. OCSD	Orange County Sheriff's Department
AK. OIG	Office of Inspector General
AL. OMB	Office of Management and Budget
AM. OPM	Federal Office of Personnel Management
AN. PA DSS	Payment Application Data Security Standard
AO. PC	State of California Penal Code
AP. PCI DSS	Payment Card Industry Data Security Standard
AQ. PHI	Protected Health Information
AR. PII	Personally Identifiable Information
AS. PRA	Public Record Act
AT. SIR	Self-Insured Retention
AU. UMDAP	Uniform method of Determining Ability to Pay
AV. USC	United States Code
AW. WIC	State of California Welfare and Institutions Code

II. ALTERATION OF TERMS

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

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

III. ASSIGNMENT OF DEBTS

Unless this Agreement is followed without interruption by another Agreement between the parties hereto for the same services and substantially the same scope, at the termination of this Agreement, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the address to

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which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. COMPLIANCE

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

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

2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own Compliance Program, Code of Conduct and any Compliance related policies and procedures. CONTRACTOR's Compliance Program, Code of Conduct and any related policies and procedures shall be verified by ADMINISTRATOR's Compliance Department to ensure they include all required elements by ADMINISTRATOR's Compliance Officer as described in in this Paragraph IV (COMPLIANCE). These elements include:

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

3. If CONTRACTOR does not provide proof of its own Compliance program to ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's Compliance Program and Code of Conduct, the

"A. CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement. ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty five (45) calendar days, and determine if CONTRACTOR's proposed compliance program and code of conduct contain all required elements to the ADMINISTRATOR's

satisfaction as consistent with the HCA's Compliance Program and Code of Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its compliance program and code of conduct to meet ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

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

"B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or retained to provide services related to this Agreement monthly to ensure that they are not designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General Services Administration's Excluded Parties List System or System for Award Management, the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the California Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration's Death Master File at date of employment, and/or any other list or system as identified by ADMINISTRATOR.

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

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

- a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal and state health care programs; or
- b. has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal and state health care programs after a period of exclusion, suspension, debarment, or ineligibility.

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

4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-

annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its subcontractors use their best efforts to verify that they are eligible to participate in all federal and State of California health programs and have not been excluded or debarred from participation in any federal or state health care programs, and to further represent to CONTRACTOR that they do not have any Ineligible Person in their employ or under contract.

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

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

7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be immediately removed from participating in any activity associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.”

C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance Training available to Covered Individuals.

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

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

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

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

5. Each Covered Individual attending a group training shall certify, in writing, attendance at

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compliance training. ADMINISTRATOR shall provide instruction on group training completion while CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

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

1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered Individuals relative to this Agreement.

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

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

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

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

E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner and are consistent with federal, state and county laws and regulations. This includes compliance with federal and state health care program regulations and procedures or instructions otherwise communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or their agents.

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

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

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

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

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

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

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

V. CONFIDENTIALITY

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, including 42 USC §290dd-2 (Confidentiality of Records), as they now exist or may hereafter be amended or changed.

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

C. CONTRACTOR shall have in effect a system to protect patient records from inappropriate disclosure in connection with activity funded under this Agreement. This system shall include provisions for employee education on the confidentiality requirements, and the fact that disciplinary action may occur upon inappropriate disclosure. CONTRACTOR agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains or transmits. CONTRACTOR shall provide ADMINISTRATOR with information concerning such safeguards.

D. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR, or its subcontractors or agents in violation of the applicable state and federal regulations regarding confidentiality.

E. CONTRACTOR shall monitor compliance with the above provisions on confidentiality and security, and shall include them in all subcontracts.

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F. CONTRACTOR shall notify ADMINISTRATOR within twenty-four (24) hours during a work week, of any suspected or actual breach of its computer system.

“VI. CONFLICT OF INTEREST

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

VII~~VII~~. COST REPORT

A. CONTRACTOR shall submit separate Cost Reports for Period One, Period Two, Period Three, and Period Four, or for a portion thereof, to COUNTY no later than forty-five (45) calendar days following the period for which they are prepared or termination of this Agreement. -CONTRACTOR shall prepare the Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement. -CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.

1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the following:

a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each business day after the above specified due date that the accurate and complete Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by CONTRACTOR.

b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the accurate and complete Cost Report is delivered to ADMINISTRATOR.

2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the Cost Report setting forth good cause for justification of the request. Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

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3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report within one hundred and eighty (180) calendar days following the termination of this Agreement, and CONTRACTOR has not entered into a subsequent or new agreement for any other services with COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Agreement shall be immediately reimbursed to COUNTY.

B. The individual and/or consolidated Cost Report prepared for each period shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if any.

C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed the negotiated rate as specified in the Agreement. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by _____ for the cost report period beginning _____ and ending _____ and that, to the best of my knowledge and belief, costs reimbursed through this Agreement are reasonable and

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allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report.

Signed _____
Name _____
Title _____
Date _____"

VIII. **DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONTRACTOR certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.

2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

7. Shall not have a prohibited type of relationship by employing or contracting with providers

or other individuals and entities excluded from participation in federal health care programs (as defined in section 1128B(f) of the Social Security Act), under either Section 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act. (42 CFR §§438.214(d)(1), 438.610(b); 42USC §1320.c-5)).

B. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR 2.101, of a person described in this section, (42.CFR §438.610(a)(2)) .

C. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

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

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

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

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

“IX. DISPUTE RESOLUTION

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

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

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

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

C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a County Deputy Purchasing Agent or designee. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.

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

XX. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

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

B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.

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

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

delegation in derogation of this subparagraph shall be void.

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

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

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

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

1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract subsequently fails to meet the requirements of this Agreement or any provisions that ADMINISTRATOR has required.

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

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

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

XIX. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the

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Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

~~XII~~. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR's prior written approval to purchase any Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.

C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Agreement, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.

E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.

F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition, CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of Equipment are moved from one location to another or returned to COUNTY as surplus.

G. Unless this Agreement is followed without interruption by another agreement between the parties for substantially the same type and scope of services, at the termination of this Agreement for any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this

Agreement.

H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

I. The total cost of all Equipment purchases shall not exceed \$50,000 annually.

XIII. **FACILITIES, PAYMENTS AND SERVICES**

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

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

XIV. **INDEMNIFICATION AND INSURANCE**

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors

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performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

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

D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply, indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an amount in excess of \$50,000 (\$5,000 for automobile liability) shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

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

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

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

E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this Agreement.

F. QUALIFIED INSURER

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

Carrier).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 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
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a

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substitute form providing liability coverage at least as broad.

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

I. REQUIRED ENDORSEMENTS

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

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

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

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

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

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

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

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

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

M. If CONTRACTOR's Professional Liability and/or Network Security & Privacy Liability are "Claims Made" policy(ies), CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Agreement.

N. The Commercial General Liability policy shall contain a "severability of interests" clause also

known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

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

P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall constitute a breach of CONTRACTOR’s obligation hereunder and ground for termination of this Agreement by COUNTY.

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

R. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:

- a. Prior to the start date of this Agreement.
- b. No later than the expiration date for each policy.
- c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance types as set forth in Subparagraph G, above.

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

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

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

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

- c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR’s monthly invoice.

4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any

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insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

~~XV~~**XV. INSPECTIONS AND AUDITS**

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

B. ADMINISTRATOR shall inform providers and CONTRACTOR, at the time they enter into a contract, of the following:

1. Beneficiary grievance, appeal, and fair hearing procedures and timeframes as specified in 42 C.F.R. 438.400 through 42 C.F.R. 438.424.
2. The beneficiary's right to file grievances and appeals and the requirements and timeframes for filing.
3. The availability of assistance to the beneficiary with filling grievances and appeals.
4. The beneficiary's right to request continuation of benefits that the ADMINISTRATOR seeks to reduce or terminate during an appeal or state fair hearing filing, if filed within the allowable timeframes, although the beneficiary may be liable for the cost of any continued benefits while the appeal or state fair hearing is pending if the final decision is adverse to the beneficiary.
5. Random reviews to ensure beneficiaries are being notified in a timely manner.

C. CONTRACTOR shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal/Drug Medi-Cal enrollees, Medi-Cal/Drug Medi-Cal-related activities, services and activities furnished under the terms of the Agreement or determinations of amounts payable available at any time for inspection, examination or copying by the State, CMS, HHS Inspector General, the United States Comptroller General, their designees, and other authorized federal and state agencies. (42 CFR §438.3(h)) This audit right will exist for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. (42 CFR §438.230(c)(3)(iii).) The State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CONTRACTOR at any time if there is a reasonable possibility of fraud or

similar risk, then. (42 CFR §438.230(c)(3)(iv).)

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

E. CONTRACTOR shall not be subject to disallowances as the result of audits of the cost of services.

~~XVIXVI~~. LICENSES AND LAWS

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Agreement. In addition, all treatment providers shall be licensed as an NTP provider and DMC certified by the State DHCS. Drug Medi-Cal providers must be certified as such, and must meet any additional requirements established by COUNTY as part of this certification.

B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days of the award of this Agreement:

a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;

b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;

c. A certification that CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees;

d. A certification that CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

2. Failure of CONTRACTOR to timely submit the data and/or certifications required by Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement; and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute

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grounds for termination of this Agreement.

3. It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, or as permitted by federal and/or state statute.

C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and requirements shall include, but not be limited to, the following:

1. 21 CFR, Chapter 2, Part 1300 through 1399, Drug Enforcement Administration.
2. 21 USC §§355, and 505, Manufacture of Drugs.
3. 21 USC §§812, 823, and 958, Controlled Substances.
4. 21 USC 300x-27(a) and 300y-11.
5. 42 CFR, Public Health, Part 8 – Certification of Opioid Treatment Programs.
6. ARRA of 2009.
7. California Welfare and Institutions Code, §14100.2, Medicaid Confidentiality.
8. CCR Title 9, Division 4, Chapter 4, Subchapters 1 through 6, Narcotic Treatment Programs.
9. California Bridge to Health Reform DMC-ODS Waiver, Standard Terms and Conditions, August 2015.
10. D/MC Certification Standards for Substance Abuse Clinics, July 2004.
11. Federal Medicare Cost reimbursement principles and cost reporting standards.
12. HSC, §§11758.40 through 11758.47, Medi-Cal Drug Treatment Program.
13. HSC, §§11839 through 11839.22, Narcotic Treatment Programs.
14. HSC, §11876, Narcotic Treatment Programs (inspections).
15. Orange County Medi-Cal Mental Health Managed Care Plan.
16. California Department of Health Care Services, Drug Medi-Cal Billing Manual, June 2017.
17. Title 22, CCR, §51009, Confidentiality of Records.
18. US Department of Justice, Drug Enforcement Administration.
19. Trafficking Victims Protection Act of 2000, specifically section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as amended by section 1702.
20. Title 21, CFR Part 1300, et seq., Title 42, CFR, Part 8.
21. Drug Medi-Cal Certification Standards for Substance Abuse Clinics (Document 2E).
22. Title 22, CCR, Sections 51341.1, 51490.1, and 51516.1, (Document 2C).
23. Standards for Drug Treatment Programs (October 21, 1981) (Document 2F).
24. Title 9, CCR, Division 4, Chapter 4, Subchapter 1, Sections 10000, et seq.
25. Title 22, CCR, Division 3, Chapter 3, sections 51000 et. seq.
26. Title 9, CCR, Section 1810.435.

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27. Title 9, CCR, Section 1840.105.

D. CONTRACTOR shall be required that the Agreement be governed by, and construed in accordance with, all laws and regulations, and all contractual obligations under this Agreement.

XVII~~XVII~~. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

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

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

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

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

E. CONTRACTOR shall also clearly explain through these materials that there shall be no unlawful use of drugs or alcohol associated with the services provided pursuant to this Agreement, as specified in HSC, §11999-11999.3.

XVIII~~XVIII~~. MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Agreement, and the separate Maximum Obligations for each period under this Agreement, are as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

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

XIX~~XIX~~. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all its contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum Wage.

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

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

XX~~XX~~. NONDISCRIMINATION**A. EMPLOYMENT**

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

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

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

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

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

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

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

1. Denying a Client or potential Client any service, benefit, or accommodation.
2. Providing any service or benefit to a Client which is different or is provided in a different manner or at a different time from that provided to other Clients.
3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
4. Treating a Client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service or benefit.

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5. Assignment of times or places for the provision of services.

C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Clients through a written statement that CONTRACTOR’s and/or subcontractor’s Clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR or the U.S. Department of Health and Human Services’ OCR.

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

2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

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

E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.

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

~~XXI~~ **XXII. NOTICES**

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

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

2. When faxed, transmission confirmed;

3. When sent by Email; or

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

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

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

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

~~XXII~~ **XXII. NOTIFICATION OF DEATH**

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

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

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

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

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

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

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Notification of Death Paragraph.

~~XXIII~~ **XXIII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

“XXIV. PATIENT’S RIGHTS

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

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

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

2. Title IX Rights Advocacy. This process may be initiated by a Client who registers a statutory rights violation or a denial or abuse complaint with the County Patients’ Rights Office. The Patients’ Rights office shall investigate the complaint, and Title IX grievance procedures shall apply, which involve ADMINISTRATOR’S Director of Behavioral Health Care and the State Patients’ Rights Office.

C. The Parties agree that Clients have recourse to initiate an expression of dissatisfaction to CONTRACTOR, appeal to the County Patients’ Rights Office, file a grievance, and file a Title IX complaint. The Patients’ Advocate shall advise and assist the Client, investigate the cause of the grievance, and attempt to resolve the matter

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

~~XXV~~ **XXV. RECORDS MANAGEMENT AND MAINTENANCE**

A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, prepare, maintain and manage records appropriate to the services provided and in

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accordance with this Agreement and all applicable requirements, which include but are not limited to:

1. California Code of Regulations Title 22, §§70751(c), 71551(c), 73543(a), 74731(d), 75055(a), 75343(a), and 77143(a).
2. State of California, Department of Health Care Services ASRS Manual.
3. State of California, Department of Health Care Services DPFS Manual.
4. California Health and Safety Code §123145.
5. Title 45 CFR, §164.501; §164.524; §164.526; §164.530(c) and (j).

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

C. CONTRACTOR's Client, and/or patient records shall be maintained in a secure manner. CONTRACTOR shall maintain Client, and/or patient records and must establish and implement written record management procedures.

D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the commencement of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.

E. CONTRACTOR shall make records pertaining to the costs of services, Client fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange.

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

1. The medical records and billing records about individuals maintained by or for a covered health care provider;
2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

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

1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit or site visit.
2. Provide auditor or other authorized individuals access to documents via a computer terminal.

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

H. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. CONTRACTOR shall notify COUNTY immediately by telephone call plus email or fax upon the discovery of a Breach of unsecured PHI and/or PII.

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

J. CONTRACTOR shall retain all Client and/or patient medical records for ten (10) years following discharge of the Client and/or patient, with the exception of non-emancipated minors for whom records must be kept for at least one (1) year after such minors have reached the age of eighteen (18) years, or for ten (10) years after the last date of service, whichever is longer.

K. CONTRACTOR shall obtain an NPI for each site identified as a location for providing contractual services. Provider's site NPIs must be submitted to the ADMINISTRATOR prior to rendering services to clients. Contractors providing direct or indirect services for State reporting must also submit rendering (individual) provider NPIs to ADMINISTRATOR for each staff member providing Medi-Cal billable services. Contractor reimbursement will not be processed unless NPIs are on file with ADMINISTRATOR in advance of providing services to clients. It is the responsibility of each contract provider site and individual staff member that bills Medi-Cal to obtain an NPI from the NPPES. Each contract site, as well as every staff member that provides billable services, is responsible for notifying the NPPES within thirty (30) calendar days of any updates to personal information, which may include, but is not limited to, worksite address, name changes, taxonomy code changes, etc.

~~XXVI~~ **XXVI. 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.

~~XXVII~~ **XXVII. REVENUE**

A. CLIENT FEES – CONTRACTOR shall not charge a fee to DMC beneficiaries to whom services are provided pursuant to this Agreement, their estates and/or responsible relatives, unless a Share of Cost is determined per Medi-Cal eligibility.

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.

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Charges to insurance carriers shall be on the basis of CONTRACTOR's usual and customary charges. An Assignment of Benefits must be present in a Participant's file when applicable.

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.

~~XXVIII~~ **XXVIII. 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.

~~XXIX~~ **XXIX. SPECIAL PROVISIONS**

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

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

codes and obtaining all necessary building permits for any associated construction.

10. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.

11. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).

12. Contracting or subcontracting with any entity other than an individual or nonprofit entity.

13. Producing any information that promotes responsible use, if the use is unlawful, of drugs or alcohol.

14. Promoting the legalization of any drug or other substance included in Schedule 1 of the Controlled Substance Act (21 USC 812).

15. Distributing or aiding in the distribution of sterile needles or syringes for the hypodermic injection of any illegal drug.

16. Assisting, promoting, or deterring union organizing.

17. Providing inpatient hospital services or purchasing major medical equipment.

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

1. Funding travel or training (excluding mileage or parking).

2. Making phone calls outside of the local area unless documented to be directly for the purpose of Client care.

3. Payment for grant writing, consultants, certified public accounting, or legal services.

4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.

5. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's Clients.

C. Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the affected party. Such acts shall include, but not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public related utility, or governmental statutes or regulations imposed after the fact.

XXX XXX. STATUS OF CONTRACTOR

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

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

~~XXXI~~ **XXXI. TERM**

A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

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

~~XXXII~~ **XXXII. TERMINATION**

A. Either party may terminate this Agreement, without cause, upon ninety (90) calendar days' written notice given the other party.

B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement upon five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty (30) calendar days for corrective action.

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

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

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

D. CONTINGENT FUNDING

1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - a. The continued availability of federal, state and county funds for reimbursement of COUNTY's expenditures, and
 - b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.
2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

E. In the event this Agreement is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced term of the Agreement.

F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D. above, CONTRACTOR shall do the following:

1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.
2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining contract term.
3. Until the date of termination, continue to provide the same level of service required by this Agreement.
4. If Clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all Client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.
5. Assist ADMINISTRATOR in effecting the transfer of Clients in a manner consistent with Client's best interests.
6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.
7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.

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8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.

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

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

~~XXXIII~~ **XXXIII. THIRD PARTY BENEFICIARY**

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

~~XXXIV~~ **XXXIV. WAIVER OF DEFAULT OR BREACH**

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

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

WESTERN PACIFIC MED-CORP

BY: _____

DATED: _____

TITLE: _____

COUNTY OF ORANGE

BY: _____

DATED: _____

HEALTH CARE AGENCY

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL

ORANGE COUNTY, CALIFORNIA

BY: _____

DATED: _____

DEPUTY

If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate 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.

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
DRUG MEDI-CAL NARCOTIC REPLACEMENT
THERAPY TREATMENT SERVICES
WITH
WESTERN PACIFIC MED-CORP
JULY 1, 2018 THROUGH JUNE 30, 2020

I. COMMON TERMS AND DEFINITIONS

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

1. AB109 Services are for those DMC covered Clients deemed eligible by California Department of Corrections and Rehabilitation and/or OCPD. Clients in AB 109 Services are those who have received sentencing for a felony or misdemeanor that is non-violent, non-sexual, and non-serious.

2. CalOMS is a statewide Client based data collection and outcomes measurement system as required by the state to effectively manage and improve the provision of alcohol and other drug services at the state, COUNTY, and provider levels.

3. Case Management means services which include, but are not limited to, referral and linkage to ancillary services not provided by the Contractor such as contacting outside agencies and making referrals for services, including academic education, vocational training, medical and dental treatment, pre-and-post counseling and testing for infectious diseases, legal assistance, job search assistance, financial assistance, childcare, and self-help programs such as 12-step programs. Additionally, Case Management includes helping Clients build support in the community and helping Clients deal with impairments in life skills due to their substance use problems. Case management service include periodic reassessment of the Client's need for continued case management services and assistance to successfully transition to lower or higher levels of care, as determined by review of the treatment plans.

4. Client means a male or female aged 18 and over residing in the COUNTY who has a primary problem of opiate addiction and/or other MAT allowable by the DMC-ODS formulary that also qualifies for admission as per Title 9 and contractual eligibility requirements.

5. Counselor means a staff member who is registered or certified by one of the state approved Counseling Certification programs or who is a registered intern or licensed by the Board of Behavioral Sciences. A Counselor must remain in good standing with the certification or licensing process.

6. Crisis Intervention means providing emergency assessment and counseling with the Client in a crisis situation. This shall include an actual relapse or an unforeseen event or circumstance which presents an imminent threat of relapse to stabilize the emergency situation. Crisis sessions shall be limited

to the stabilization of the Client's emergency situation.

7. Diagnosis means the identification of the nature of the Client's substance use disorder. When formulating the diagnosis of a Client, the CONTRACTOR shall use the diagnosis codes as specified in the most current edition of the DSM published by the American Psychiatric Association. The Contractor shall record all DSM diagnoses as the basis for services, on all IRIS documents and in the Client files as appropriate (i.e. treatment plan).

8. Discharge/Referral and Linkage means providing the needed resources upon discharge from program through Discharge Planning services via an Exit Plan for those completing their individualized course of maintenance services so that Client has the knowledge and resources to seek treatment again as needed or outside supportive services. As part of the Discharge/Referral and Linkage process, CONTRACTOR must perform a discharge summary for clients within thirty (30) days of discharge.

9. Dose means the administration of a specific amount of methadone and/or other MAT prescribed by a physician for the Maintenance Client's care along with medical care and individual and/or group counseling.

10. Drug/Alcohol Screening means providing drug/alcohol screening/testing once a month or as delineated by HCA.

11. Dual Diagnosed Client means a Client having co-occurring mental illness and substance abuse diagnosis, of which SUD is the primary diagnosis.

12. Family Counseling/Collateral Counseling means a face-to-face contact between a Counselor and members of a Client's family or significant other. The Client may or may not be present.

13. Follow-Up/After Care means protocol to be followed by CONTRACTOR to follow-up with Clients ninety (90) days post discharge from treatment to review progress and offer drop-in counseling or other services on an as needed basis.

14. Group Counseling means sessions based on Client need for ninety (90) minutes each with a minimum of two (2) Clients and a maximum of twelve (12) Clients with at least one DMC beneficiary per group billed in fifteen (15) minute increments. Group counseling sessions need to be set up in a developmentally appropriate environment (i.e., age, culture, etc.) and utilize Evidence-Based Practices.

15. Individual Counseling means counseling provided to an individual as needed and identified on the treatment plan as appropriate for Clients. Individual Counseling shall be performed at a minimum of one (1) fifty (50) minute session per month. Utilization of EBPs in these sessions is required by the County DMC-ODS implementation plan. Outpatient Drug Free individual counseling sessions are limited to intake, crisis intervention, collateral services, treatment planning and discharge planning billed in fifteen (15) minute increments up to fifty (50) minutes for each session.

16. Intake/Assessment means utilizing the Full County ASAM-based Assessment and Placement Tool, or any other tools as designated by County HCA, to provide a standardized, comprehensive risk and

needs assessment to each client to assess substance use history, family history, mental and emotional status, education needs, legal status and vocational background as well as daily living skills, stress management, literacy, employment, and money management. Assessment tools will be co-occurring capable, and meet best practice standards.

17. Intake/Screening means that CONTRACTOR will screen the individual for placement into outpatient treatment using Brief County ASAM Screening and Placement Tool or any other tools as designated by County HCA including an SBIRT, prior to admission. Individuals needing a higher level of care shall be provided appropriate services until linkage to a higher level of care is made. Information will be shared between programs in compliance with 42 CFR Part 2 requirements.

18. IRIS means a collection of applications and data bases that serve the needs of programs within HCA and includes functionality such as registration and scheduling, laboratory information system, billing and reporting capabilities, compliance with regulatory requirements, electronic medical records and other relevant information.

19. Maintenance Therapy means the treatment modality whereby replacement narcotic therapy is used in sustained, stable, medically determined dosage levels for a period in excess of twenty-one (21) days, to reduce or eliminate chronic opiate addiction, while the patient is provided a comprehensive range of treatment services.

20. Medical Director means the physician licensed to practice medicine in California who is responsible for medical services provided by CONTRACTOR. The Medical Director shall be enrolled with DHCS under applicable state regulations. The Medical Director duties encompass signing of notes, placing clients in treatment, initiating, altering and terminating therapy medications and dosage amounts, supervising the administration and dispensing of medications, and planning and supervising provision of treatment including regular review and notes in the clients' records.

21. Medical Necessity means the decision by Contractor's Medical Director that a Client meets admission criteria and continuing care justification pursuant to CCR, Title 22 and Title 9, Section 10270. Medically Necessary services are provided in accordance with an individualized treatment plan determined by a licensed physician or licensed prescriber and approved and authorized according to State requirements.

22. Medication Psychotherapy means a type of counseling service consisting of a face-to-face discussion conducted by the Medical Director of the NTP on a one-on-one basis with the Client on issues identified in the treatment plan.

23. Medication Services means the physician prescribed medications related to a Client's SUD treatment services covered under the DMC-ODS formulary including methadone, buprenorphine, naloxone, and disulfiram. CONTRACTOR staff will regularly communicate with physicians unless the client refuses to consent to sign a 42 CFR Part 2 compliant Authorization to Disclose form.

24. Physician Extender means a registered nurse practitioner and physicians' assistants only.
25. Program Protocol means the written program description, goals, objectives, and policies established by CONTRACTOR for the methadone therapy program provided pursuant to the Agreement.
26. Token means the security device which allows an individual user to access the HCA computer based IRIS.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit A to the Agreement.

II. PAYMENTS

A. BASIS FOR REIMBURSEMENT – As compensation to CONTRACTOR for services provided pursuant to the Agreement, COUNTY shall pay CONTRACTOR monthly in arrears at the State Mandated NTP DMC ODS rates of reimbursement, as listed below, or as amended by State mandate:

<u>Service</u>	<u>Unit of Service</u>	<u>Fee Determination</u>	<u>Regular DMC Rate per unit</u>	<u>Perinatal DMC Rate per unit</u>
Physician Consultation	15 minute increments	County Determined	\$89.30	\$89.30
NTP – Buprenorphin e- Mono	Daily	State Mandated	\$29.27	\$34.58
NTP – Buprenorphin e- Naloxone Combination	Daily	State Mandated	\$31.03	\$36.33
NTP - Disulfiram	Daily	State Mandated	\$10.22	\$10.37
NTP – Naloxone: 2-pack	Dispensed according to need	State Mandated	\$144.66	\$144.66
NTP - Methadone	Daily	State Mandated	\$14.20	\$15.29
NTP – Individual	10 minute increments	State Mandated	\$16.65	\$23.84

Counseling				
NTP Individual Group	– 10 minute increments	State Mandated	\$3.80	\$6.09

MAT will be reimbursed for onsite administration and dispensing at NTP programs; additionally, physicians and licensed prescribers in DMC programs will be reimbursed for the ordering, prescribing, administering, and monitoring of MAT as per DMC-ODS Waiver STC's. However, the total of monthly payments to CONTRACTOR shall not exceed COUNTY's Maximum Obligation set forth in the Referenced Contract Provisions of the Agreement and provided further, that CONTRACTOR's costs are allowable pursuant to applicable COUNTY, federal and state regulations. Non-compliance will require the completion of a CAP by CONTRACTOR. If CAPs are not completed within timeframes approved by ADMINISTRATOR, payments may be reduced accordingly.

B. COUNTY shall pay CONTRACTOR monthly, in arrears. CONTRACTOR's invoice shall be on an approved invoice form, approved or supplied by ADMINISTRATOR, and provide such information as is required by ADMINISTRATOR.

C. Invoices are due by the twentieth (20th) calendar day of each month, and payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice form.

D. All billings to COUNTY shall be supported by supporting documentation that clearly show CONTRACTOR is entitled to compensation as a result of and in the performance of duties for COUNTY.

E. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Agreement or is not in compliance with federal, state or COUNTY regulations governing the provision of contracted services.

F. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Agreement, except as may otherwise be provided for under the Agreement.

G. In conjunction with Payments Paragraph, Subparagraph A, Units of Service shall not be entered in the IRIS system for services not rendered. If information has been entered, corrections will be made within ten (10) business days from notification of ADMINISTRATOR. Additionally, to assist in the protection of data integrity, CONTRACTOR shall create a procedure to ensure separation of duties between the individual performing direct services (LPHA, clinicians, counselors, etc.), and the clerical staff who enter information into the IRIS system. Clerical staff shall enter data into IRIS using the chart information provided by the direct service staff.

H. CONTRACTOR shall ensure compliance with all DMC billing and documentation requirements

when entering Units of Service into COUNTY IRIS system. ADMINISTRATOR shall withhold payment for non-compliant Units of Service, and may reduce, withhold or delay any payment associated with non-compliant billing practices.

I. CONTRACTOR may be required to have an audit conducted in accordance with federal OMB Circular A-133. CONTRACTOR shall be responsible for complying with any federal audit requirements within the reporting period specified by OMB Circular A-133.

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

III. RECORDS

A. CLIENT RECORDS – CONTRACTOR shall maintain adequate records in accordance with the ADMINISTRATOR’s ODS-DMC Waiver STC’s, Title 22, and Title 9 on each individual Client in sufficient detail to permit an evaluation of services, which shall include, but need not be limited to unless otherwise approved by ADMINISTRATOR:

1. SUD Diagnosis;
2. ASAM based screening tool (psycho/social);
3. Medical Questionnaire and Physical;
4. Tuberculosis clearance and other lab results as required by Title 9 and HCA Contract;
5. Emergency notification information and authorization to disclose to client’s emergency contact;
6. Treatment Plan;
7. Discharge Plan if applicable and Discharge Summary; and
8. Quality Review Check Sheet.

B. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete financial records of its costs and operating expenses. Such records shall reflect the actual costs of the type of service for which payment is claimed in accordance with generally accepted accounting principles, the ASRS Manual.

1. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and shall be made in accordance with generally accepted principles, the ASRS Manual, and the DPFS Manual.

2. CONTRACTOR shall account for funds provided through the Agreement separately from other funds, and maintain a clear audit trail for the expenditure of funds.

3. The Client eligibility determination and fee charged to and collected from Clients, together with a record of all billings rendered and revenues received from any source, on behalf of Clients treated pursuant to the Agreement, must be reflected in CONTRACTOR’s financial records.

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

IV. REPORTS

A. MONTHLY PROGRAMMATIC

1. CONTRACTOR shall submit a monthly programmatic report to ADMINISTRATOR, including information required and on a form approved or provided by ADMINISTRATOR, in conjunction with the billing described in the Payments paragraph of this Exhibit A of the Agreement. These monthly programmatic reports should be received by ADMINISTRATOR no later than the twentieth (20th) business day of the month following the report month.

2. CONTRACTOR shall be responsible to include in the monthly programmatic report any problems in implementing the provisions of the Agreement, pertinent facts or interim findings, staff changes, status of license(s) and/or certification(s), changes in population served, and reasons for any changes. Additionally, a statement that the CONTRACTOR is or is not progressing satisfactorily in achieving all the terms of the Agreement shall be included.

B. MONTHLY IRIS – CONTRACTOR shall input all CalOMS data for the preceding month no later than the fifth (5th) calendar day of the month following the report month. CONTRACTOR shall correct and submit all errors from the CalOMS Feedback and Error Report within seven (7) calendar days of receipt of the report. CalOMS discharges shall be entered no later than seven (7) calendar days after Client's discharge.

C. MONTHLY DATAR – CONTRACTOR shall provide reports under the DATAR and/or any other State Department of Alcohol and Drug Programs Reporting System no later than the fifth (5th) business day of the month following the report month.

D. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports, as required by ADMINISTRATOR, concerning CONTRACTOR's activities as they affect the services hereunder. ADMINISTRATOR will be specific as to the nature of information requested.

E. CONTRACTOR agrees to enter psychometrics into COUNTY's EHR system as requested by ADMINISTRATOR. Said psychometrics are for the COUNTY's analytical uses only, and shall not be relied upon by CONTRACTOR to make clinical decisions. CONTRACTOR agrees to hold COUNTY harmless, and indemnify pursuant to Section XI, from any claims that arise from non-COUNTY use of said psychometrics.

F. CONTRACTOR agrees to submit reports as required by the ADMINISTRATOR and/or the State.

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

V. SERVICES

“A. The CONTRACTOR shall order, prescribe, administer and monitor methadone as a substitute narcotic analgesic drug. Under the DMC-ODS demonstration project, NTPs will also prescribe, monitor and administer naloxone, buprenorphine and disulfiram. CONTRACTOR shall operate a licensed accredited and certified alcohol and drug abuse NRT program, in accordance with the standards established by COUNTY and under Title 9, Division 4, Chapter 4 of the CCR by the State of California, DHCS at the following location(s) or any other location as approved by ADMINISTRATOR.

218 E. Commonwealth Ave. Fullerton, CA 92832	10751 Dale Ave. Stanton, CA 90680-2604
275 Victoria Street, Suite 1H Costa Mesa, CA 92627	26921 Crown Valley, Suite 200 Mission Viejo, CA 92691”

B. PERSONS TO BE SERVED – CONTRACTOR shall provide NRT services for Drug Medi-Cal beneficiaries in the form on ongoing maintenance services which shall be provided to Orange County residents, aged 18 and over, who meet Medical Necessity for dependence on heroin or other morphine-like opioids and/or alcohol to provide methadone and other medication assisted treatment as described in the DMC-ODS Waiver and HCA Contract. Services shall be available 365 days per year.

1. CONTRACTOR shall provide individual case management, treatment planning, individual and/or group counseling, client education, crisis intervention, medication services, collateral services, medical psychotherapy and discharge services, as required by federal, state, and COUNTY rules and regulations. No persons eligible for DMC-ODS services, including Medi-Cal funded NTP treatment services, will be placed on waiting lists for such services due to budgetary constraints.

2. CONTRACTOR’s program must include an introduction to appropriate self-help structured support programs as approved by ADMINISTRATOR.

C. CONTENT OF CLIENT RECORDS – Each program shall document the following information in the individual Client record:

1. Date of Birth
2. Physical examination data, including laboratory results for required tests and analyses.
3. Evidence of current use of heroin, other opiates, and/or alcohol.
4. Date of admission, plan of treatment, and medication orders signed by the physician.
5. Program’s response to a test or analysis for illicit drug use which discloses the absence of both methadone and its primary metabolite, the presence of any illicit drugs, or abuse of other substances,

including alcohol.

6. Incidence of arrest and conviction or any other signs of retrogression.

7. Any other client information which the program finds useful in treating the client or as ADMINISTRATOR deems necessary.

D. INTAKE/ASSESSMENT – Before admitting an applicant to Maintenance Therapy, the Medical Director shall determine Medical Necessity by either conducting a medical evaluation or documenting the review in agreement with a medical evaluation conducted by the physician’s designee.

1. Within three (3) calendar days of admission, CONTRACTOR shall provide a standardized, comprehensive risk and needs assessment developed by COUNTY on each DMC funded Maintenance Client to assess alcohol and drug abuse history, family history, mental and emotional status, educational and vocational background, as well as daily living skills, stress management, literacy, employment, coping skills, educational needs and money management. The content of Client records shall follow Title 9, Section 10165, County of Orange DMC-ODS implementation plan and all requirements specified by this Agreement.

2. In the event of non-compliance with timely access to care requirements, ADMINISTRATOR shall provide the CONTRACTOR assistance to adhere to the requirements. ADMINISTRATOR shall also issue a written report documenting the non-compliance and require the CONTRACTOR to submit a CAP within thirty (30) days of the report. ADMINISTRATOR is responsible for approving the CAP and verifying that corrections have been made to resolve timely access.

E. PROGRAM ORIENTATION – CONTRACTOR shall, within seventy-two (72) hours of Client’s admission into the program, provide an overview of the program. The program orientation shall be documented in the Client’s file, and shall include, but not be limited to:

1. Overview of program structure and schedules;
2. Program rules and regulations;
3. Effects of medication used in Narcotic Replacement Therapy and adverse effects of abrupt withdrawal;
4. Policies regarding Client fees;
5. Client rights and responsibilities;
6. Assignment of a counselor;
7. Staff code of conduct;
8. Confidentiality Statement, and how release of information is permitted in accordance with 42 CFR Part 2 and 45 CFR (HIPAA);
9. Agreements needed to exchange appropriate information within the network of consultants and linkage agencies in accordance with HIPAA regulations and 42 CFR Part 2; and Title 9, Division 4, Chapter 4, Section 10290; and

10. Continuing care services.

F. TREATMENT PLAN

1. CONTRACTOR shall, within twenty-eight (28) calendar days of initiation of Narcotic Replacement Therapy for a Maintenance Client, have a registered, certified, and/or licensed Counselor/LPHA develop an individualized treatment plan with each Client per Title 9, Section 10305 which shall be based on the multi-dimensional assessment and health assessment and shall include:

a. Goals, based on identified needs, to be achieved by the Client with estimated target dates for attainment in accordance with the following:

1) Short-term goals which are estimated to require eighty-nine (89) calendar days or less for Client to achieve;

2) Long-term goals which are estimated to require a specified time exceeding ninety (90) calendar days for Client to achieve;

b. Specific behavioral tasks the Client must accomplish to complete each short-term and long-term goal;

c. A description of the type and frequency of counseling services to be provided to the Client;

d. An effective date based on the day the Counselor signed the initial treatment plan;

e. The SUD diagnosis shall appear on the treatment plan utilizing DSM-5 CPT 10 codes;

f. The Supervising Counselor shall review the initial maintenance services plan, along with the needs assessment, and all updated maintenance services plans within fourteen (14) calendar days from the effective dates and shall countersign these documents to signify concurrence with the findings; and

g. Medical Director or Designee will review the needs assessment, and sign the initial and all updated treatment plans within fourteen (14) days of Counselor's signature.

2. CONTRACTOR's registered, certified, and/or licensed Counselor/LPHA shall evaluate and update the Client's treatment plan whenever necessary, or at a minimum once every three (3) months from the date of admission. The updated treatment plan shall include:

a. A summary of the Client's progress or lack of progress toward each goal identified in the initial treatment plan;

b. New goals and behavioral tasks for any newly identified needs, and related changes in the type and frequency of counseling services.

G. COUNSELING – Upon completion of the initial treatment plan, CONTRACTOR shall arrange for Client to receive a minimum of fifty (50) minutes to a maximum of two hundred (200) minutes of counseling services per calendar month for Maintenance, in accordance with the following requirements:

1. Program staff member conducting the session must be a Counselor or LPHA;

2. The session must be conducted in a private setting in accordance with all applicable federal,

state, and COUNTY regulations regarding confidentiality; and

3. The format of the counseling session shall be in an Individual or Group session, with face-to-face discussion with the Client on issues identified in the Client's treatment plan. Counselor shall document this session in Client's file.

H. ADDITIONAL REQUIREMENTS FOR PREGNANT CLIENTS

Within fourteen (14) calendar days from the date the primary counselor becomes aware the client may be pregnant, as documented in the client's file, the medical director shall review, sign, and date a confirmation of pregnancy, documents acceptance of medical responsibility of the Client's prenatal care or verify and document the client is under the care of a physician licensed by the State of California and trained in obstetrics and/or gynecology.

1. Within fourteen (14) calendar days from the date the medical director confirmed the pregnancy, the primary counselor shall update the client's treatment plan in accordance with Title 9, Section 10305. The nature of prenatal support reflected in subsequent updated treatment plans shall include at least the following services:

a. periodic face-to-face consultation at least monthly with the medical director or physician extender designated by the medical director;

b. drug/alcohol screens at least once each calendar week in accordance with collection procedures in Title 9, Section 10310.

c. prenatal instruction conducted by the medical director or licensed health personnel designated by the medical director, including topics as listed in Title 9, Section 10360.

2. Any refusals to access on-site prenatal care or referrals for such, shall be documented in the Client's file and have the client acknowledge in writing said refusals for these treatment services.

3. Within fourteen (14) calendar days after the date of birth and/or termination of the pregnancy, the medical director shall document in the Client's file the following:

a. the hospital's or attending physician's summary of the delivery and treatment outcome for the client and child; or

b. Evidence that a request for information was made, but no response was received.

4. Within fourteen (14) calendar days of the date of birth and/or termination of the pregnancy, the primary counselor shall update the Client's treatment plan. The nature of pediatric care and child immunization shall be reflected in subsequent updated treatment plans until the child is at least three (3) years of age, should the client remain enrolled.

I. CONTINUATION OF TREATMENT – CONTRACTOR shall provide justification for treatment to Clients who have been on methadone maintenance for a period of two (2) years, and annually thereafter as per Title 9, Section 10410. Justification shall be provided by the Medical Director or program physician and noted in Clients files. Without said justification the medical director or program physician shall

discontinue a Client's maintenance services.

J. DISCHARGE PLAN/EXIT PLANNING/TERMINATION – CONTRACTOR shall begin discharge planning immediately after enrollment. CONTRACTOR shall develop a formal exit plan within thirty (30) calendar days of the last face-to-face Client's successful completion of the program for a Maintenance Client. The transition/exit plan shall be completed and signed by CONTRACTOR and Client. CONTRACTOR shall establish a protocol for scheduled termination of services and document any discharge via a discharge summary.

1. The transition/exit plan shall include:
 - a. A strategy or strategies to assist the Client in maintaining an alcohol and drug free lifestyle;
 - b. A continuing treatment exit plan that includes linkage and referral of the Client to appropriate services, such as outpatient treatment, other support services such as self-help groups, social services, vocational rehabilitation, job training and other services, if needed, and document this in Client's chart. The continuing treatment exit plan shall also include the goals identified in the Client's treatment plan; and
 - c. Referrals to appropriate non-substance abuse resources such as continuing education and vocational rehabilitation.
2. Written criteria for the discharge summary shall include:
 - a. Reason for discharge;
 - b. Client's achievements while in the Treatment Program such as meeting or progressing towards educational or vocational goals;
 - c. Description of maintenance services and Client progress;
 - d. Current alcohol and/or drug usage at discharge;
 - e. Vocational and educational achievements;
 - f. Any outstanding legal concerns;
 - g. Linkages and referrals made;
 - h. Client's comments; and
 - i. Prognosis.

K. PERFORMANCE OBJECTIVES AND OUTCOMES – CONTRACTOR shall be required to meet the following performance Objectives and Outcomes:

1. Achieve a goal of twenty percent (20%) or fewer of all unduplicated Clients who test positive for illicit drugs after an enrollment of ninety (90) days.
2. Achieve a goal of seventy percent (70%) or above unduplicated Clients who after an enrollment of ninety (90) days self-report being able to lead a productive lifestyle. A productive lifestyle includes employment, being enrolled in school, becoming a caretaker, or community volunteer.

3. Submit monthly Performance Outcome Reports to evaluate the impact or contribution of contractor's services on the well-being of HCA client being served.

4. Implement a process improvement project as outlined in the NIATx model, targeting at least one (1) of the following four (4) NIATx aims:

- a. Reduce waiting times;
- b. Reduce no-shows;
- c. Increase admissions;
- d. Increase continuation in treatment.

5. Adhere to the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care and respond to each standard as directed by HCA.

L. ADDITIONAL REPORTING – CONTRACTOR shall submit written report to ADMINISTRATOR on a weekly basis, or as arranged by ADMINISTRATOR, for all Clients participating in treatment as part of the Agreement. Report will note all current Clients. ADMINISTRATOR will approve CONTRACTOR's form for report, and determine mode of transmission of said report from the CONTRACTOR to the ADMINISTRATOR.

M. CASE MANAGEMENT – CONTRACTOR shall provide Case Management services which include the process of identification, assessment of need, planning, coordination and linking, monitoring and continuous evaluation of Clients and of available resources, and advocacy through a process of casework activities in order to achieve the best possible resolution of individual needs in the most effective way possible.

N. REFERRAL AND LINKAGE – As a function of Case Management, CONTRACTOR shall provide effective linkage of a Client to other ancillary services to include literacy training, vocational counseling, and other Client services, with follow-up to be provided and documented in the Client file to ensure that the Client has contacted the referred service provider. Referrals shall also be made for individuals having special needs, such as persons living with chronic diseases. Referrals shall be sensitive to the Client's cultural needs.

O. ALCOHOL AND/OR DRUG SCREENING – CONTRACTOR shall have a written policy and procedure regarding alcohol and/or drug testing at a minimum of one (1) time per month for all Maintenance Clients approved by ADMINISTRATOR Urine specimen collection shall be observed by same sex staff and policy shall include procedures to ensure falsification of the sample does not occur. Results of these screenings shall be documented in the Client's file. If any Maintenance Client's drug screen results indicate a negative pattern of testing positive for non-opioid illegal substances, or methadone diversion, CONTRACTOR shall list on the Monthly Report, the corrective action taken to refocus the Client. The CONTRACTOR shall document this in the Client's file. All counseling session discussions and referrals/linkages shall be documented in the Client's file.

P. TOKENS – ADMINISTRATOR shall provide CONTRACTOR the necessary number of Tokens for appropriate individual staff to access the HCA IRIS at no cost to the CONTRACTOR.

1. CONTRACTOR recognizes Tokens are assigned to a specific individual staff member with a unique password. Tokens and passwords will not be shared with anyone.

2. CONTRACTOR shall maintain an inventory of the Tokens, by serial number and the staff member to whom each is assigned.

3. CONTRACTOR shall return to ADMINISTRATOR all Tokens under the following conditions:

- a. Token of each staff member who no longer supports the Agreement;
- b. Token of each staff member who no longer requires access to the IRIS;
- c. Token of each staff member who leaves employment of CONTRACTOR; or
- d. Token is malfunctioning.

4. ADMINISTRATOR shall issue Tokens for CONTRACTOR's staff members who require access to the IRIS upon initial training or as a replacement for malfunctioning Tokens.

5. CONTRACTOR shall reimburse the COUNTY for Tokens lost, stolen, or damaged through acts of negligence.

“Q. CONTRACTOR shall establish a good neighbor policy, which shall be reviewed and approved by ADMINISTRATOR on an annual basis. The policy shall include, but not limited to, staff training to deal with neighbor complaints and staff contact information available to neighboring residents.

R. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Services Paragraph of this Exhibit A to the Agreement.”

VI. STAFFING

A. CONTRACTOR shall ensure that all clinical staffing, including those providing direct Client services, meet the requirements of Title 22, Title 9 of the CCR and DMC 2020 Waiver as it exists now or may hereafter be amended or changed and all standards of the Department of Health Care Services.

B. CONTRACTOR shall include bilingual/bicultural services to meet the needs of the population to be served under the Agreement. Whenever possible, bilingual/bicultural staff should be retained.

C. CONTRACTOR shall make its best effort to provide services pursuant to the Agreement in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain documents of such efforts which may include; but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring policies and procedures; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, individuals who are physically challenged.

D. CONTRACTOR shall ensure that administrative staffing is sufficient to support the performance

of services pursuant to the Agreement.

E. CONTRACTOR shall ensure staffing includes a Compliance Officer and Quality Management personnel.

F. STAFF CONDUCT – CONTRACTOR shall establish a written policies and procedures for employees, volunteers, interns, and members of the Board of Directors which shall include, but not be limited to, standards related to the use of drugs and/or alcohol; staff-Client relationships; prohibition of sexual conduct with Clients; prohibition of forging or falsifying documents or drug tests; and real or perceived conflict of interest. Situations that may be perceived as a conflict of interest shall be brought to the ADMINISTRATOR’s attention prior to the occurrence. Prior to providing any services pursuant to the Agreement all employees, volunteers, and interns shall agree in writing to maintain the standards set forth in the said policies and procedures. A copy of said policies and procedures shall be provided to each Client upon admission and shall be posted in writing in a prominent place in the treatment facility.

G. CONTRACTOR shall provide pre-employment screening of any staff person providing any service pursuant to the Agreement. All new staff, volunteers, and interns shall pass a one-time “live scan” fingerprinting background check. ADMINISTRATOR may change this approval mechanism at their discretion.

1. All staff, prior to hiring, shall meet the following requirements:
 - a. No person shall have been convicted of a sex offense for which the person is required to register as a sex offender under California Penal Code section 290;
 - b. No person shall have been convicted of an arson offense – Violation of Penal Code sections 451, 451.1, 451.5, 452, 452.1, 453, 454, or 455;
 - c. No person shall have been convicted of any violent felony as defined in Penal Code section 667.5, which involve doing bodily harm to another person, for which the staff member was convicted within five years prior to employment;
 - d. No person shall be on parole or probation, unless approved in advance by ADMINISTRATOR; and
 - e. No prior employment history of improper conduct, including but not limited to, forging or falsifying documents or drug tests, sexual assault or sexual harassment, or inappropriate behavior with staff at another treatment facility.
 - f. No person shall participate in the criminal activities of a criminal street gang and/or prison gang.

2. Exceptions to staffing requirements set forth above, may be requested if CONTRACTOR deems the decision will benefit the program. Requests for exceptions shall be submitted in writing and approved in advance by ADMINISTRATOR.

H. CONTRACTOR shall provide or ensure staff obtain ongoing training in topics related to alcohol

and drug use on an annual basis including:

1. Analysis of illicit drug use, the meaning of the analysis results, and procedures to be followed by CONTRACTOR to alleviate continued use;
2. Confidentiality requirements;
3. Compliance training;
4. DMC NTP documentation training;
5. Law and ethics;
6. Evidence based practices (e.g. Motivational Interviewing, CBT, MRT or others);
7. Co-occurring Mental Health/SUD diagnoses;
8. Suicide prevention training; and
9. Any other training required to maintain staff certification/licensure.

I. All staff providing services shall be licensed and/or certified in accordance with the requirements and professional guidelines as applicable.

J. All personnel files shall be complete and made readily accessible to ADMINISTRATOR for purposes of audits and investigation or any other reason deemed necessary by ADMINISTRATOR.

K. CONTRACTOR’s Executive Director or designee shall participate, when requested, in meetings facilitated by ADMINISTRATOR related to the provision of services pursuant to the Agreement.

L. Any CONTRACTOR staff participating in the delivery of services to Clients shall complete the Annual Provider Training made available by ADMINISTRATOR. Completion certificates shall be placed in each personnel file as applicable.

M. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of the Agreement. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.

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

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EXHIBIT B
AMENDMENT No. 5 TO AGREEMENT FOR PROVISION OF
DRUG MEDI-CAL NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES

BETWEEN

COUNTY OF ORANGE

AND

WESTERN PACIFIC MED-CORP

JULY 1, 2018 THROUGH JUNE 30, 202~~0~~22

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

6. The parties understand that the HIPAA Privacy and Security rules, as defined below in

Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract, as it exists now or be hereafter updated with notice to CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the //

Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR’s workforce in relation to the protection of that information.

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

a. Breach excludes:

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

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

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

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

- 1) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- 2) The unauthorized person who used the PHI or to whom the disclosure was made;
- 3) Whether the PHI was actually acquired or viewed; and
- 4) The extent to which the risk to the PHI has been mitigated.

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

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

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

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

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

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

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

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

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

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

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

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

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

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect ePHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable,

unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of HHS in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

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

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2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.

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

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

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

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

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

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

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

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

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11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

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

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

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

15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves

inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee, or agent is a named adverse party.

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

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

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

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

D. SECURITY RULE

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

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

3. CONTRACTOR shall ensure the continuous security of all computerized data systems containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,

maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

- a. Complying with all of the data system security precautions listed under Subparagraphs E, below;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of COUNTY;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies;
4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.

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

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

E. DATA SECURITY REQUIREMENTS

1. Personal Controls

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

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

c. **Confidentiality Statement.** All persons that will be working with PHI COUNTY

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

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

2. Technical Security Controls

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

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

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

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

e. Antivirus software. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits

on behalf of COUNTY must have installed and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

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

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

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

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

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

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

agree with these requirements.

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

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

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

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

3. Audit Controls

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

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

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

confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Control

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

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

5. Paper Document Controls

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

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

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

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

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

recipient before sending the fax.

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

F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

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

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

b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

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

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

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

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

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

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

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

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

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

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

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

G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the

proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:

1) The Disclosure is required by law; or

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

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

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

3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of COUNTY.

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

H. PROHIBITED USES AND DISCLOSURES

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

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

I. OBLIGATIONS OF COUNTY

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

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

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

affect CONTRACTOR's Use or Disclosure of PHI.

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

J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

b. CONTRACTOR shall retain no copies of the PHI.

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

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

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EXHIBIT C

AMENDMENT No. 5 TO AGREEMENT FOR PROVISION OF
DRUG MEDI-CAL NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES

BETWEEN
COUNTY OF ORANGE

AND

WESTERN PACIFIC MED-CORP

JULY 1, 2018 THROUGH JUNE 30, 20212

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

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

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

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

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

B. TERMS OF AGREEMENT

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

2. Responsibilities of CONTRACTOR

CONTRACTOR agrees:

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

b. Safeguards. To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and Security Contract. CONTRACTOR shall develop and maintain a written information privacy and security program that include administrative, technical and physical

safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, which incorporate the requirements of Subparagraph (c), below. CONTRACTOR will provide COUNTY with its current policies upon request.

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

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

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

3) If the data obtained by CONTRACTOR from COUNTY includes PII, CONTRACTOR shall also comply with the substantive privacy and security requirements in the CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

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

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

f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR

receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.

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

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

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

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