

~~AGREEMENT FOR PROVISION OF~~

AMENDMENT NO. 1

TO

CONTRACT NO. MA-042-17011275

FOR

**ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
SPECIAL TREATMENT PROGRAM SERVICES**

**BETWEEN**

**COUNTY OF ORANGE**

**AND**

**EXTENDED CARE HOSPITAL OF WESTMINSTER**

**JULY 1, 2019 THROUGH JUNE 30, 2020**

~~— THIS AGREEMENT entered into this 1st day of July 2019, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and EXTENDED CARE HOSPITAL OF WESTMINSTER, a California general partnership (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).~~

**WITNESSETH:**

~~— WHEREAS, COUNTY wishes Amendment (“Amendment No. 1”) to contract with CONTRACTOR for the provision of Contract No. MA-042-17011275 for Adult Mental Health Skilled Nursing Facility with Special Treatment Program Services described herein to the residents of Orange County; and~~

~~— WHEREAS, CONTRACTOR is agreeable to the rendering of such services is made and entered into on the terms and conditions hereinafter set forth:~~

~~— NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:~~

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**REFERENCED CONTRACT PROVISIONS**

~~**Term:** July 1, 2019 through June 30, 2020~~

~~Period One means the period from July 1, 2019 through June 30, 2020~~

~~**Maximum Obligation:**~~

~~— Period One Maximum Obligation: — \$ 4,419,129~~

~~— TOTAL MAXIMUM OBLIGATION: — \$ 4,419,129~~

~~**Basis for Reimbursement:** Net Negotiated Amount~~

~~**Payment Method:** Monthly in Advance~~

~~**CONTRACTOR DUNS Number:** 33-069-0220~~

~~**CONTRACTOR TAX ID Number:** 13-9605794~~

1  
2 **Notices to COUNTY and CONTRACTOR:**

3 ~~COUNTY: County of Orange~~  
4 ~~Health Care Agency~~  
5 ~~Contract Services~~  
6 ~~405 West 5th Street, Suite 600~~  
7 ~~Santa Ana, CA 92701-4637~~

8 ~~CONTRACTOR: (“Effective Date”) between~~ Extended Care Hospital of Westminster  
9  ~~(“Contractor”), with a place of business at 206 Hospital Circle~~  
10  ~~, Westminster, CA 92683, and the County of Orange, a political subdivision of the State of~~  
11  ~~California (“County”), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600,~~  
12  ~~Santa Ana, CA 92701. Contractor and County may sometimes be referred to individually as “Party” or~~  
13  ~~collectively as “Parties”.~~

14  ~~Donna Meyer, Director of Operations~~  
15  ~~donna@westanaheimcc.com~~

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~~ACRONYMS~~

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

- ~~A. ARRA American Recovery and Reinvestment Act of 2009~~
- ~~B. CCC California Civil Code~~
- ~~C. CCR California Code of Regulations~~

RECITALS

~~WHEREAS, on May 21, 2019, the Parties executed Contract No. MA-042-17011275 for Adult Mental~~

~~Health ~~D. CEO~~ County Executive Office~~

~~E. CFR Code of Federal Regulations~~

~~F. CHPP COUNTY HIPAA Policies and Procedures~~

~~G. COI Certificate of Insurance~~

~~H. DHCS California Department of Health Care Services~~

~~I. DRS Designated Record Set~~

~~J. EPSDT Early and Periodic Screening, Diagnosis, and Treatment~~

~~K. FTE Full Time Equivalents~~

~~L. GAAP Generally Accepted Accounting Principles~~

~~M. HCA County of Orange Health Care Agency~~

~~N. HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104-191~~

~~O. HITECH ACT Health Information Technology for Economic and Clinical Health Act, Public Law 111-005~~

~~P. HSC California Health and Safety Code~~

~~Q. ISO Insurance Services Office~~

~~R. LPS Lanterman/Petris/Short (Act)~~

~~S. MHP Mental Health Plan~~

~~T. MHIS Mental Health Inpatient Services~~

~~U. NPI National Provider Identifier~~

~~V. NPP Notice of Privacy Practices~~

~~W. OMB Federal Office of Management and Budget~~

~~X. OPM Federal Office of Personnel Management~~

~~Y. PC California Penal Code~~

~~Z. PHI Protected Health Information~~

~~AA. PI Personally Identifiable Information~~

- ~~1 AB. PRA California Public Records Act~~
- ~~2 AC. SIR Self Insured Retention~~
- ~~3 AD. SNF Skilled Nursing Facility~~
- ~~4 AE. STP with Special Treatment Program Services, effective July 1, 2019 through June 30, 2020, in an amount not to exceed \$4,419,129, renewable for one additional one-year period ("Contract"); and~~
- ~~5 AF. TBS Therapeutic Behavioral Services~~
- ~~6 AG. TRC Therapeutic Residential Center~~
- ~~7 AH. UMDAP Uniform Method of Determining Ability to Pay~~
- ~~8 AI. UOS Unit of Service~~
- ~~9 AJ. USC United States Code~~
- ~~AK. WIC State of California Welfare and Institutions Code~~

WHEREAS, the Parties now desire to enter into this Amendment No. 1 to renew the Contract for one year, for County to continue receiving and Contractor to continue providing the services set forth in the Contract and to amend Standard language paragraphs and Exhibit A of the Contract due to required regulatory language and changes needed for the term of the Contract; and

NOW THEREFORE, Contractor and County agree to amend the Contract as follows:

1. The Contract is renewed for a period of 1 year, effective July 1, 2020 through June 30, 2021, in an amount not to exceed \$4,419,129 for this renewal period, on the amended terms and conditions.
2. Paragraphs II through XXXIII of the Contract are deleted in their entirety and replaced with the following Paragraphs II through XXXIV:

**I. ALTERATION OF TERMS**

A. This ~~AgreementContract~~, together with Exhibit(s) 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 ~~AgreementContract~~.

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

**II. ASSIGNMENT OF DEBTS**

Unless this ~~AgreementContract~~ is followed without interruption by another ~~AgreementContract~~ between the ~~partiesParties~~ hereto for the same services and substantially the same scope, at the



1 termination of this ~~AgreementContract~~, CONTRACTOR shall assign to COUNTY any debts owing to  
 2 CONTRACTOR by or on behalf of persons receiving services pursuant to this ~~AgreementContract~~.  
 3 CONTRACTOR shall immediately notify by mail each of ~~these persons~~the respective Parties, specifying  
 4 the date of assignment, the County of Orange as assignee, and the address to which payments are to  
 5 be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately  
 6 given to COUNTY.

### 5 III. COMPLIANCE

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

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

12 2. CONTRACTOR has the option to ~~adhere to HCA's Compliance Program and Code of~~  
 13 ~~Conduct or establish provide~~ ADMINISTRATOR with proof of its own, provided compliance program,  
 14 code of conduct and any compliance related policies and procedures. CONTRACTOR's ~~Compliance~~  
 15 ~~Program and Code of Conduct have been~~ compliance program, code of conduct and any related policies  
 16 and procedures shall be verified ~~to~~ by ADMINISTRATOR's Compliance Department to ensure they  
 17 include all required elements by ADMINISTRATOR's Compliance Officer as described in ~~subparagraphs~~  
 18 ~~below~~ this Compliance Paragraph to this Contract. These elements include:

19 a. Designation of a Compliance Officer and/or compliance staff.

20 b. Written standards, policies and/or procedures.

21 c. Compliance related training and/or education program and proof of completion.

22 d. Communication methods for reporting concerns to the Compliance Officer.

23 e. Methodology for conducting internal monitoring and auditing.

24 f. Methodology for detecting and correcting offenses.

25 g. Methodology/Procedure for enforcing disciplinary standards.

26 3. If CONTRACTOR ~~elects~~does not provide proof of its own compliance program to ~~adhere to~~  
 27 ~~HCA's~~ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance  
 28 Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty  
 29 (30) calendar days of award

30 ~~#~~  
 31 execution of this ~~AgreementContract~~ a signed acknowledgement that CONTRACTOR ~~shall~~will internally  
 32 comply with HCA'sADMINISTRATOR's Compliance Program and Code of Conduct. CONTRACTOR  
 33 shall have as many Covered Individuals it determines necessary complete ADMINISTRATOR's annual  
 34 compliance training to ensure proper compliance.

35 4. If CONTRACTOR elects to have its own ~~Compliance Program and Code of~~  
 36 ~~Conduct~~compliance program, code of conduct and any Compliance related policies and procedures  
 37 reviewed by ADMINISTRATOR, then ~~it~~CONTRACTOR shall submit a copy of its ~~Compliance Program,~~

1 ~~Code compliance program, code~~ of ~~Conduct~~conduct and all relevant policies and procedures to  
 2 ADMINISTRATOR within thirty (30) calendar days of award execution of this AgreementContract.  
 3 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable  
 4 time, which shall not exceed forty-five (45) calendar days, and determine if CONTRACTOR's contractor's  
 5 proposed compliance program and code of conduct contain all required elements to the  
 6 ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of  
 7 Conduct contains all required elements. ADMINISTRATOR shall inform CONTRACTOR shall take  
 8 necessary action of any missing required elements and CONTRACTOR shall revise its compliance  
 9 program and code of conduct to meet said standards or shall be asked to acknowledge and agree to HCA's  
 10 Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of  
 11 Conduct does not contain all required elements ADMINISTRATOR's required elements within thirty (30)  
 12 calendar days after ADMINISTRATOR's Compliance Officer's determination and resubmit the same for  
 13 review by the ADMINISTRATOR.

14 5. Upon written confirmation from ADMINISTRATOR's ~~Compliance Officer~~compliance officer  
 15 that the CONTRACTOR's ~~Compliance Program and Code of Conduct~~compliance program, code  
 16 of conduct and any compliance related policies and procedures contain all required elements,  
 17 CONTRACTOR shall ensure that all Covered Individuals relative to this AgreementContract are made  
 18 aware of CONTRACTOR's ~~Compliance Program, Code~~compliance program, code of ~~Conduct~~  
 19 and conduct, related policies and procedures:

20 ~~and contact information~~ ~~6. Failure of CONTRACTOR to submit its Compliance Program,~~  
 21 ~~Code of Conduct and relevant policies and procedures shall constitute a material breach of this Agreement.~~  
 22 ~~Failure to cure such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall~~  
 23 ~~constitute grounds for termination of this Agreement as to the non-complying party~~ ADMINISTRATOR's  
 24 Compliance Program.

25 B. SANCTION SCREENING – CONTRACTOR shall ~~adhere to all screening policies and procedures~~  
 26 ~~and~~ screen all Covered Individuals employed or retained to provide services related to this  
 27 AgreementContract monthly to ensure that they are not designated as Ineligible Persons, as pursuant to  
 28 this AgreementContract. Screening shall be conducted against the General Services Administration's  
 29 Excluded Parties List System or System for Award Management, the Health and Human Services/Office  
 30 of Inspector General List of Excluded Individuals/Entities, and the California Medi-Cal Suspended and  
 31 Ineligible Provider List, the Social Security Administration's Death Master File, and/or any other list or  
 32 system as identified by ~~the~~ ADMINISTRATOR.

33 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees,  
 34 interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items  
 35 or services or who perform billing or coding functions on behalf of ADMINISTRATOR. Notwithstanding  
 36 the above, this term does not include part-time or per diem employees, contractors, subcontractors, agents,  
 37 and other persons who are not reasonably expected to work more than one hundred sixty (160) hours per  
 38 year; except that any such individuals shall become Covered Individuals at the point when they work more  
 39 than one hundred sixty (160) hours during the calendar year. CONTRACTOR shall ensure that all  
 40 Covered Individuals relative to this AgreementContract are made aware of ADMINISTRATOR's  
 41 Compliance Program, Code of Conduct and related policies and procedures: (or CONTRACTOR's own  
 42 compliance program, code of conduct and related policies and procedures if CONTRACTOR has elected  
 43 to use its own).

1           2. An Ineligible Person shall be any individual or entity who:  
2           a. is currently excluded, suspended, debarred or otherwise ineligible to participate in  
federal and state health care programs; or

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

5           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  
6 AgreementContract.

7           4. CONTRACTOR shall screen all current Covered Individuals and subcontractors ~~semi-~~  
annually~~monthly~~ to ensure that they have not become Ineligible Persons. CONTRACTOR shall also  
8 request that its subcontractors use their best efforts to verify that they are eligible to participate in all  
9 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.

10          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.  
11 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing services  
12 directly relative to this AgreementContract becomes debarred, excluded or otherwise becomes an  
Ineligible Person.

13          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  
14 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,  
15 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY  
business operations related to this AgreementContract.

16          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.  
17 Such individual or entity shall be immediately removed from participating in any activity associated with  
18 this AgreementContract. ADMINISTRATOR will determine appropriate repayment from, or sanction(s)  
19 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.

20          C. GENERAL COMPLIANCE TRAINING -- ADMINISTRATOR shall make General Compliance  
21 Training ~~and Provider Compliance Training, where appropriate,~~ available to Covered Individuals.

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

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

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

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

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

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

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

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

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

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

11 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.

13 Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

14 E. MEDI-CAL ~~D. MEDICAL~~ BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

16 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.

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

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

23 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.

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

25 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



1 Management Program.

2 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural  
3 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural  
4 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,  
5 §1810.410.subds. (c)- (d).

6 F.

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

12 **IV. CONFIDENTIALITY**

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

16 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this  
17 AgreementContract are elientsClients of the Orange County Mental Health services system, and  
18 therefore it may be necessary for authorized staff of ADMINISTRATOR to audit elientClient files, or to  
19 exchange information regarding specific elientsClients with COUNTY or other providers of related  
20 services contracting with COUNTY.

21 2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written  
22 consents for the release of information from all persons served by CONTRACTOR pursuant to this  
23 AgreementContract. Such consents shall be obtained by CONTRACTOR in accordance with CCC,  
24 Division 1, Part 2.6, relating to confidentiality of medical information.

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27 3. In the event of a collaborative service agreementContract between Mental Health services  
providers, CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of  
information, from the collaborative agency, for elientsClients receiving services through the collaborative  
agreementContract.

B. Prior to providing any services pursuant to this AgreementContract, 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 AgreementContract 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.

28 **V. CONFLICT OF INTEREST**

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

6 **VI. COST REPORT**

7 A. CONTRACTOR shall submit ~~a~~separate individual and/or consolidated Cost Report to COUNTY  
8 no later than sixty (60) calendar days following the termination of this AgreementContract.  
9 CONTRACTOR shall prepare the individual and/or consolidated Cost Report in accordance with all  
10 applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of  
11 this AgreementContract. CONTRACTOR shall allocate direct and indirect costs to and between  
12 programs, cost centers, services, and funding sources in accordance with such requirements and  
13 consistent with prudent business practice, which costs and allocations shall be supported by source  
14 documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon  
15 reasonable notice. In the event CONTRACTOR has multiple AgreementsContracts for mental health  
16 services that are administered by HCA, consolidation of the individual Cost Reports into a single  
17 consolidated Cost Report may be required, as stipulated by ADMINISTRATOR. CONTRACTOR shall  
18 submit the consolidated Cost Report to COUNTY no later than five (5) business days following approval  
19 by ADMINISTRATOR of all individual Cost Reports to be incorporated into a consolidated Cost Report.

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

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

24 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
25 pursuant to any or all agreementsContracts between COUNTY and CONTRACTOR until such time that  
26 the accurate and complete individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

27 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the  
individual and/or consolidated 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.

3. In the event that CONTRACTOR does not submit an accurate and complete individual  
and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the  
termination of this AgreementContract, and CONTRACTOR has not entered into a subsequent or new  
agreementContract for any other services with COUNTY, then all amounts paid to CONTRACTOR by

COUNTY during the term of the AgreementContract shall be immediately reimbursed to COUNTY.

B. The individual and/or consolidated Cost Report shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The individual and/or consolidated 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 COUNTY's Maximum Obligation as set forth in the Referenced Contract Provisions of this AgreementContract. 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 individual and/or consolidated Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. #  
#

—Dif the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, 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 individual and/or consolidated Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the individual and/or consolidated 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 individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, 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. Unless approved by ADMINISTRATOR, costs that exceed the Statewide Maximum Allowance (SMA) rates per Medi-Cal Unit of Services, as determined by the DHCS, shall be unreimbursable to CONTRACTOR.

EG. In the event that CONTRACTOR is authorized to retain unanticipated revenues as described in the Budget Paragraph of Exhibit A to this AgreementContract, CONTRACTOR shall specify in the individual and/or consolidated Cost Report the services rendered with such revenues.

FH. 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 AgreementContract are reasonable and 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

1 records of (provider name) in accordance with applicable instructions, except as noted.  
2 I also hereby certify that I have the authority to execute the accompanying Cost Report.

3 Signed \_\_\_\_\_  
4 Name \_\_\_\_\_  
5 Title \_\_\_\_\_  
6 Date \_\_\_\_\_"

7 **-VII. DEBARMENT AND SUSPENSION CERTIFICATION**

8 A. CONTRACTOR certifies that it and its principals:

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

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

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

20 #  
21 4. Have not within a three-year period preceding this AgreementContract had one or more  
22 public transactions (federal, state, or local) terminated for cause or default.

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

27 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.

B. 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.

**VIII. 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



1 delegation in derogation of this paragraph shall be void.

2 ~~—B.—~~ B. CONTRACTOR agrees that if there is a change or transfer in ownership of  
 3 CONTRACTOR's business prior to completion of this Contract, and COUNTY agrees to an assignment  
 4 of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer  
 5 to assume CONTRACTOR's duties and obligations contained in this Contract and complete them to the  
 6 satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part,  
 7 without the prior written consent of COUNTY.

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

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

20 3. If CONTRACTOR is a governmental organization, any change to another structure, including  
 21 a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of  
 22 Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an  
 23 ~~#~~  
 24 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of  
 25 this subparagraph shall be void.

26 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,  
 27 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.

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

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

1. After approval of ~~a subcontract~~, ADMINISTRATOR the subcontractor, ADMINISTRATOR  
 may revoke the approval of ~~a subcontract~~the subcontractor upon five (5) calendar days' written notice to

1 CONTRACTOR if the subcontracts subcontractor subsequently fails to meet the requirements of this  
 2 AgreementContract or any provisions that ADMINISTRATOR has required. ADMINISTRATOR may  
 3 disallow subcontractor expenses reported by CONTRACTOR.

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

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

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

11 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's status  
 12 with respect to name changes that do not require an assignment of the Contract. CONTRACTOR is also  
 13 obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation against  
 14 COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR's performance under the  
 15 Contract, as well as any potential conflicts of interest between CONTRACTOR and County that may arise  
 16 prior to or during the period of Contract performance. While CONTRACTOR will be required to provide  
 17 this information without prompting from COUNTY any time there is a change in CONTRACTOR's name,  
 18 conflict of interest or litigation status, CONTRACTOR must also provide an update to COUNTY of its  
 19 status in these areas whenever requested by COUNTY.

## 20 IX. DISPUTE RESOLUTION

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

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

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

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

38 C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall  
 39 be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a decision

1 within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final  
2 decision adverse to CONTRACTOR's contentions.

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

10 **X. EMPLOYEE ELIGIBILITY VERIFICATION**

11 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations  
12 regarding the employment of aliens and others and to ensure that employees, subcontractors, and  
13 consultants performing work under this AgreementContract meet the citizenship or alien status  
14 requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all  
15 employees, subcontractors, and consultants performing work hereunder, all verification and other  
16 documentation of employment eligibility status required by federal or state statutes and regulations  
17 including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as  
18 they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such  
19 documentation for all covered employees, subcontractors, and consultants for the period prescribed by  
20 the law.

21 **XI. EQUIPMENT**

22 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property  
23 of a Relatively Permanent nature with significant value, purchased in whole or in part by  
24 ADMINISTRATOR to assist in performing the services described in this AgreementContract. "Relatively  
25 Permanent" is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000  
26 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as  
27 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 AgreementContract shall be  
depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR's ~~prior~~-written approval prior to purchase of any  
Equipment with funds paid pursuant to this AgreementContract. 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.

1 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with  
2 funds paid through this AgreementContract, including date of purchase, purchase price, serial number,  
3 if any.

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

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

11 G. Unless this AgreementContract is followed without interruption by another agreementContract  
12 between the partiesParties for substantially the same type and scope of services, at the termination of  
13 this AgreementContract for  
14 any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through  
15 this AgreementContract.

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

12 #  
13 #  
14 #  
15 #

16 **XII. FACILITIES, PAYMENTS AND SERVICES**

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

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

28 **XIII. INDEMNIFICATION AND INSURANCE**

29 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and  
30 hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts  
31 and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY  
32 INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not



1 limited to personal injury or property damage, arising from or related to the services, products or other  
 2 performance provided by CONTRACTOR pursuant to this ~~AgreementContract~~. If judgment is entered  
 3 against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent  
 4 active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that  
 5 liability will be apportioned as determined by the court. Neither ~~partyParty~~ shall request a jury  
 6 apportionment.

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

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

23 D. All SIRs ~~and deductibles~~ shall be clearly stated on the COI. ~~If no SIRs or deductibles apply,~~  
 24 ~~indicate this on the COI with a zero (0) by the appropriate line of coverage.~~ Any SIR ~~or deductible~~ in an  
 25 amount in excess of ~~\$25fifty thousand dollars (\$50,000 -(\$5,000 for automobile liability),)~~ shall specifically  
 26 be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited  
 27 financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without  
limitation of, any other indemnity provision(s) in this Contract, 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 Contract, 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 acceptable to the COUNTY for the full term of this  
~~AgreementContract~~, the COUNTY may terminate this ~~AgreementContract~~.

#### 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
<del>Workers</del> <u>Workers'</u> Compensation	Statutory
<del>Employers</del> <u>Employers'</u> Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
<del>Technology Errors &amp; Omissions</del>	<del>\$1,000,000 per claims made</del> <del>\$1,000,000 aggregate</del>
# 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 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 ~~2010 or CG-2033~~20 26 04 13 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, agents and employees**, ~~and agents~~ as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at

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

4 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.

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

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

9 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving  
10 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  
CONTRACT.

11 L. —LAll insurance policies required by this Contract 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.

12 M. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation  
13 and within ten (10) days for non-payment of premium and provide a copy of the cancellation notice to  
14 COUNTY. Failure to provide written notice of cancellation mayshall constitute a material breach of the  
Agreement, upon which the CONTRACTOR's obligation hereunder and ground for COUNTY mayto  
suspend or terminate this AgreementContract.

15 #  
16 M N. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network  
17 Security & Privacy Liability are "Claims—Made" policy(ies),policies, CONTRACTOR shall agree to  
maintain coverage for two (2) years following the completion of the AgreementContract.

18 NO. 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).

19 P. —OInsurance certificates should be forwarded to the agency/department address listed on the  
solicitation.

20 Q. If the Contractor fails to provide the insurance certificates and endorsements within seven (7)  
21 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be  
made to the next qualified vendor.

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

24 PS. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
25 CONTRACTOR does not deposit copies of acceptable COIsCertificate of Insurance and endorsements  
with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this

1 ~~AgreementContract~~ may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

2 ~~QT~~. 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 ~~AgreementContract~~, nor act in any way to reduce the policy coverage and limits available from the insurer.

4 ~~RU~~. SUBMISSION OF INSURANCE DOCUMENTS

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

6 a. Prior to the start date of this ~~AgreementContract~~.

7 b. No later than the expiration date for each policy.

8 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance ~~typesrequirements~~ as set forth in the Coverage Subparagraph ~~G. of this Agreementabove~~.

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

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

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

12 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 ~~AgreementsContracts~~ between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this ~~AgreementContract~~ are submitted to ADMINISTRATOR.

13 #

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

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

21 **XIV. INSPECTIONS AND AUDITS**

22 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 to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and ~~clientClient~~ records, of CONTRACTOR that are directly pertinent to this ~~AgreementContract~~, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or



1 examination, or making transcripts during the periods of retention set forth in the Records Management  
2 and Maintenance Paragraph of this AgreementContract. Such persons may at all reasonable times  
inspect or otherwise evaluate the services provided pursuant to this AgreementContract, and the  
premises in which they are provided.

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

6 C. AUDIT RESPONSE

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

10 2. If the audit reveals that money is payable from one partyParty to the other, that is,  
reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to  
CONTRACTOR, said funds shall be due and payable from one partyParty to the other within sixty (60)  
11 calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY,  
and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition  
12 to any other remedies  
provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the  
13 reimbursement due COUNTY.

14 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare ~~and file with~~  
ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as may be  
15 required during the term of this Agreementan annual Single Audit as required by 31 USC 7501 – 7507,  
as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements,  
16 Cost Principles, and Audit Requirements for Federal Awards. CONTRACTOR shall forward the Single  
Audit to ADMINISTRATOR within fourteen (14) calendar days of receipt.

17 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen  
18 (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial,  
programmatic or any other type of audit of CONTRACTOR's  
19 operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through  
20 this AgreementContract

21 **XV. LICENSES AND LAWS**

22 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout  
the term of this AgreementContract, maintain all necessary licenses, permits, approvals, certificates,  
23 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,  
24 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  
25 hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions.  
Said inability shall be cause for termination of this AgreementContract.

~~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 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. ARRA of 2009.

2. Trafficking Victims Protection Act of 2000.

3. Title 22, CCR, §51009, Confidentiality of Records.

4. California Welfare and Institutions Code, §14100.2, Medicaid Confidentiality.

5. Federal Medicare Cost reimbursement principles and cost reporting standards.

6. State of California-Health and Human Services Agency, Department of Health Care Services, MHSD, Medi-Cal Billing Manual, October 2013.

7. Orange County Medi-Cal Mental Health Managed Care Plan.

8. Short-Doyle/Medi-Cal Manual for the Rehabilitation Option and Targeted Case Management.

1 9. Short-Doyle/Medi-Cal Modifications/Revisions for the Rehabilitation Option and Targeted  
 2 Case Management Manual, including DMH Letter 94-14, dated July 7, 1994, DMH Letter No. 95-04,  
 3 dated July 27, 1995, DMH Letter 96-03, dated August 13, 1996.

4 10. WIC, Division 5, Community Mental Health Services.

5 11. ~~3.~~ WIC, Division 6, Admissions and Judicial Commitments.

6 12. ~~4.~~ WIC, Division 7, Mental Institutions.

7 ~~5~~13. HSC, §§1250 et seq., Health Facilities.

8 ~~6~~14. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.

9 ~~7.~~ 15. CCR, Title 9, Rehabilitative and Developmental Services.

10 16. ~~8.~~ CCR, Title 17, Public Health.

11 ~~9.~~ 17. CCR, Title 22, Social Security.

12 ~~10~~18. CFR, Title 42, Public Health.

13 19. ~~11.~~ CFR, Title 45, Public Welfare.

14 20. ~~12.~~ USC Title 42. Public Health and Welfare.

15 ~~13~~21. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.

16 ~~14~~22. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.

17 23. ~~15.~~ 42 USC §1857, et seq., Clean Air Act.

18 24. ~~16.~~ 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.

19 25. ~~17.~~ 31 USC 7501.70, Federal Single Audit Act of 1984.

20 ~~18~~26. Policies and procedures set forth in Mental Health Services Act.

21 27. ~~19.~~ Policies and procedures set forth in DHCS Letters.

22 ~~19~~28. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.

23 ~~20~~29. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,  
 24 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

25 ~~21~~ DC. CONTRACTOR shall at all times be capable and authorized by the State of California to provide  
 26 treatment and bill for services provided to Medi-Cal eligible ~~clients~~Clients while working under the terms  
 27 of this ~~Agreement~~Contract.

D. CONTRACTOR shall make every reasonable effort to obtain appropriate licenses and/or waivers  
 to provide Medi-Cal billable treatment services at school or other sites requested by ADMINISTRATOR.

## **XVI. 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~~Contract must be approved at least thirty (30) days in advance and in writing by  
 ADMINISTRATOR before distribution. For the purposes of this ~~Agreement~~Contract, distribution of written  
 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,

1 and electronic media such as the Internet.

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

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

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

17 **XVII. MAXIMUM OBLIGATION**

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

22 B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent  
23 (10%) of Period One funding for this AgreementContract.

24 **XVIII. MINIMUM WAGE LAWS**

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

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

35 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,  
36 where applicable, shall comply with the prevailing wage and related requirements, as provided for in  
37 #  
38 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State  
39 of California (§§1770, et seq.), as it now exists or may hereafter be amended.

**XIX. NONDISCRIMINATION**

**A. EMPLOYMENT**

1. During the term of this ~~Agreement~~Contract, CONTRACTOR and its Covered Individuals (as defined in the "Compliance" paragraph of this Contract) 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~~Contract, 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.

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~~EOC.

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~~Contract 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~~CCR; 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~~



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

- 2 1. Denying a ~~client~~Client or potential ~~client~~Client any service, benefit, or accommodation.
- 3 2. Providing any service or benefit to a ~~client~~Client which is different or is provided in a different manner or at a different time from that provided to other ~~clients~~Clients.
- 4 3. Restricting a ~~client~~Client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service ~~and~~or benefit.
- 5 4. Treating a ~~client~~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 ~~and~~or benefit.
- 6 5. Assignment of times or places for the provision of services.

7  
8 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all ~~clients~~Clients through a written statement that CONTRACTOR's and/or subcontractor's ~~clients~~Clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR ~~or COUNTY's Patient Rights Office~~.

9  
10 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~~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.

11  
12 a. COUNTY shall establish a formal resolution and grievance process in the event informal processes do not yield a resolution.

13  
14 b. Throughout the problem resolution and grievance process, ~~client~~Client rights shall be maintained, including access to the ~~COUNTY's~~COUNTY's Patients' Rights Office at any point in the process. Clients shall be informed of their right to access the ~~COUNTY's~~COUNTY's Patients' Rights Office at any time.

15  
16 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~~has the right to request a State Fair Hearing.

17  
18 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.~~

19  
20  
21 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.

22  
23  
24 F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this ~~Agreement~~Contract 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~~COUNTY funds.

**XX. NOTICES**

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this AgreementContract 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 AgreementContract or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

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 AgreementContract 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 AgreementContract, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

**XXI. NOTIFICATION OF DEATH**

A. Upon becoming aware of the death of any person served pursuant to this AgreementContract, 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, Contract; 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 AgreementContract.

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-

1 eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to  
2 this AgreementContract.

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

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

9 **XXII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

17 **XXIII. PATIENT'S RIGHTS**

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

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

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

27 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 Contract shall be construed as to replacing or conflicting with the duties of  
County Patients' Rights Office pursuant to Welfare and Institutions Code Section 5500.



#### 1 XXIV. RECORDS MANAGEMENT AND MAINTENANCE

2 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term  
3 of this ~~AgreementContract~~, prepare, maintain and manage records appropriate to the services provided  
4 and in accordance with this ~~AgreementContract~~ and all applicable requirements.

5 1. CONTRACTOR shall maintain records that are adequate to substantiate the services for  
6 which claims are submitted for reimbursement under this Contract and the charges thereto. Such records  
7 shall include, but not be limited to, individual patient charts and utilization review records.

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

11 3. CONTRACTOR shall maintain books, records, documents, accounting procedures and  
12 practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature  
13 claimed to have been incurred in the performance of this Contract and in accordance with Medicare  
14 principles of reimbursement and GAAP.

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

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

24 C. CONTRACTOR's participant, ~~elientClient~~, and/or patient records shall be maintained in a secure  
25 manner. CONTRACTOR shall maintain participant, ~~elientClient~~, and/or patient records and must  
26 establish and implement written record management procedures.

27 D. CONTRACTOR shall retain all financial records for a minimum of ~~seven (7)~~ ten (10) years from  
the ~~commencement~~termination of the contract, unless a longer period is required due to legal  
proceedings such as litigations and/or settlement of claims.

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

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

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

H. CONTRACTOR shall ensure all HIPAA (DRS) requirements are met. HIPAA requires that  
elientsClients, participants 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

1 health care provider;

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

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

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

6 1. Have documents readily available within ~~forty-eight (48)~~twenty-four (24) hour notice of a  
7 scheduled audit or site visit.

7 2. Provide auditor or other authorized individuals access to documents via a computer terminal.

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

9 ~~H~~. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security  
10 of PII and/or PHI. CONTRACTOR shall ~~notify COUNTY immediately by telephone call plus email or fax,~~  
11 upon ~~the~~ discovery of a Breach of ~~unsecured PHI~~privacy and/or ~~security of PII and/or PHI by~~  
12 ~~CONTRACTOR, notify federal and/or state authorities as required by law or regulation, and copy~~  
13 ~~ADMINISTRATOR on such notifications.~~

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

14 ~~J. CONTRACTOR shall retain all client and/or patient medical records for seven (7) years~~  
15 ~~following discharge of the client and/or patient, with the exception of non-emancipated minors for whom~~  
16 ~~records must be kept for at least one (1) year after such minors have reached the age of eighteen (18)~~  
17 ~~years, or for seven (7) years after the last date of service, whichever is longer.~~

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

## 20 **XXV. RESEARCH AND PUBLICATION**

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

## 23 **XXVI. REVENUE**

24 A. CLIENT FEES – CONTRACTOR shall charge, unless waived by ADMINISTRATOR, a fee to  
25 ~~clients~~Clients to whom billable services, other than those amounts reimbursed by Medicare, Medi-Cal or  
26 other third party health plans, are provided pursuant to this ~~Agreement~~Contract, their estates and  
27 responsible relatives, according to their ability to pay as determined by the State Department of Health

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Extended Care Hospital of Westminster

Care Services' "Uniform Method of Determining Ability to Pay" (~~UMDAP~~) procedure or by any other payment procedure as approved in advance, and in writing by ADMINISTRATOR; and in accordance with Title 9 of the ~~California Code of Regulations, CCR~~. Such fee shall not exceed the actual cost of services provided. No ~~client~~Client shall be denied services because of an inability to pay.

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

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

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

**XXVII. SEVERABILITY**

If a court of competent jurisdiction declares any provision of this AgreementContract or application thereof to any person or circumstances to be invalid or if any provision of this AgreementContract contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this AgreementContract or

# the application thereof shall remain valid, and the remaining provisions of this AgreementContract shall remain in full force and effect, and to that extent the provisions of this AgreementContract are severable.

**XXVIII. SPECIAL PROVISIONS**

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

1. Making cash payments to intended recipients of services through this AgreementContract.
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~~interns, consultants, subcontractors, and 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

1 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.

2 7. Paying an individual salary or compensation for services at a rate in excess of the current  
3 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule  
4 may be found at www.opm.gov.

5 8. Severance pay for separating employees.

6 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building  
7 codes and obtaining all necessary building permits for any associated construction.

8 10. Supplanting current funding for existing services.

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

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

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

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

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

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

19 6. Providing inpatient hospital services or purchasing major medical equipment.

20 # 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds  
21 (matching).

22 8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for  
23 CONTRACTOR's clientsClients.

24 **XXIX. STATUS OF CONTRACTOR**

25 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be  
26 wholly responsible for the manner in which it performs the services required of it by the terms of this  
27 AgreementContract. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and  
consultants employed by CONTRACTOR. This AgreementContract 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, volunteers, interns, or  
subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees,  
agents, consultants, volunteers, interns, or subcontractors as they relate to the services to be provided  
during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants,  
volunteers, interns, 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.

28 **XXX. TERM**

29 A. The term of this AgreementContract shall commence as specified in the Referenced Contract  
30 36 of 35

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

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

### 9 **XXXI. TERMINATION**

10 A. Either party may terminate this AgreementContract, without cause, upon ~~thirty (30)~~ninety (90)  
 11 calendar days' written notice given the other party.

12 ~~B. — B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement~~  
 13 ~~upon five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this~~  
 14 ~~Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty (30)~~  
 15 ~~calendar days for corrective action~~CONTRACTOR shall be responsible for meeting all programmatic and  
 16 administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR  
 17 shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives,  
 18 continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed  
 19 within timeframe as determined by ADMINISTRATOR notice, payments may be reduced or withheld until  
 20 CAP is resolved and/or the Contract could be terminated.

21 C. COUNTY may terminate this Contract.

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

- 24 1. The loss by CONTRACTOR of legal capacity.
- 25 2. Cessation of services.
- 26 3. The delegation or assignment of CONTRACTOR's services, operation or administration to  
 27 another entity without the prior written consent of COUNTY.
- 28 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty  
 29 required pursuant to this AgreementContract.
- 30 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of  
 31 this AgreementContract.
- 32 6. The continued incapacity of any physician or licensed person to perform duties required  
 33 pursuant to this AgreementContract.
- 34 7. Unethical conduct or malpractice by any physician or licensed person providing services  
 35 pursuant to this AgreementContract; provided, however, COUNTY may waive this option if  
 36 CONTRACTOR removes such physician or licensed person from serving persons treated or assisted  
 37 pursuant to this AgreementContract.

#### 38 **D. CONTINGENT FUNDING**

- 39 1. Any obligation of COUNTY under this AgreementContract is contingent upon the following:
  - 40 a. The continued availability of federal, state and county funds for reimbursement of



1 COUNTY's expenditures, and

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

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

8 E. In the event this AgreementContract is suspended or terminated prior to the completion of the  
9 term as specified in the Referenced Contract Provisions of this AgreementContract, ADMINISTRATOR  
10 may, at its sole discretion, reduce the Maximum Obligation Not To Exceed Amount of this Agreement in  
11 an amountContract to be consistent with the reduced term of the AgreementContract.

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

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

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

18 3. Until the date of termination, continue to provide the same level of service required by this  
19 AgreementContract.

20 #  
21 4. If clientsClients are to be transferred to another facility for services, furnish  
22 ADMINISTRATOR, upon request, all clientClient information and records deemed necessary by  
23 ADMINISTRATOR to effect an orderly transfer.

24 5. Assist ADMINISTRATOR in effecting the transfer of clientsClients in a manner consistent  
25 with client'sClient's best interests.

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

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

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 clientClient being served under this  
AgreementContract, 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~~calendars day period.

G. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days' written  
notice. ~~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  
AgreementContract.

**XXXII. THIRD PARTY BENEFICIARY**

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

**XXXIII. ~~WAIVER OF DEFAULT OR BREACH~~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~~Contract 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.~~Contract.”

//  
//  
//  
//

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

3 ~~EXTENDED CARE HOSPITAL OF WESTMINSTER~~

4  
5  
6 ~~BY: \_\_\_\_\_ DATED: \_\_\_\_\_~~

7  
8 ~~TITLE: \_\_\_\_\_~~

9  
10  
11 ~~BY: \_\_\_\_\_ DATED: \_\_\_\_\_~~

12  
13 ~~TITLE: \_\_\_\_\_~~

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15  
16 ~~COUNTY OF ORANGE~~

17  
18  
19 ~~BY: \_\_\_\_\_ DATED: \_\_\_\_\_~~

20 ~~HEALTH CARE AGENCY~~

21  
22  
23  
24 ~~APPROVED AS TO FORM~~  
25 ~~OFFICE OF THE COUNTY COUNSEL~~

26 ~~ORANGE COUNTY, CALIFORNIA~~



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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.~~

1 EXHIBIT A  
 2 TO AGREEMENT FOR PROVISION OF  
 3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
 4 SPECIAL TREATMENT PROGRAM SERVICES  
 5 BETWEEN  
 6 COUNTY OF ORANGE  
 7 AND  
 8 EXTENDED CARE HOSPITAL OF WESTMINSTER  
 9 JULY 1, 2019 THROUGH JUNE 30, 2020

10  
 11  
 12 1. Exhibit A to the Contract is deleted in its entirety and replaced with the following Exhibit A:

13 ~~1. COMMON TERMS AND DEFINITIONS~~

14 . COMMON TERMS AND DEFINITIONS

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

16 1. ADL means Activities of Daily Living and refers to diet, personal hygiene, clothing care, grooming, money and household management, personal safety, symptom monitoring, etc.

17 2. — A. ClientAdditional Income Source means all income other than SSI and includes such sources of income as retirement income, disability income, trust fund income, Social Security income, Veteran's Affairs disability income, etc.

18  
 19 3. Client or Consumer means an individual, referred by COUNTY or enrolled in CONTRACTOR's program for services under the Agreementthis Contract, who is dealing with a chronic mental illness.

20  
 21 4. Diagnosis means the definition of the nature of the client's disorder. When formulating the diagnosis of client, CONTRACTOR shall use the diagnostic codes and axis as specified in the most current edition of the DSM published by the American Psychiatric Association.

22  
 23 5. LPS means the Act that went into effect July 1, 1972 in California. The Act in effect ended all hospital commitments by the judiciary system, except in the case of criminal sentencing (e.g. convicted sexual offenders) and those who were "gravely disabled" defined as unable to obtain food, clothing, or shelter. It expanded the evaluative power of psychiatrists and created provisions and criteria for involuntary detentions.

24  
 25 6. Medical Necessity means the requirements as defined in the MHP Medical Necessity for Medi-Cal reimbursed Specialty Mental Health Services that includes Diagnosis, Impairment Criteria and

1 Intervention Related Criteria.

2 7. Mental Health Services means interventions designed to provide the maximum reduction of  
 3 mental disability and restoration or maintenance of functioning consistent with the requirements for  
 4 learning, development and enhanced self-sufficiency. Services shall include:

5 a. Assessment means a service activity, which may include a clinical analysis of the history  
 6 and current status of a beneficiary's mental, emotional, or behavioral disorder, relevant cultural issues  
 7 and history, diagnosis and the use of testing procedures.

8 b. Medication Support Services means those services provided by a licensed physician,  
 9 registered nurse, or other qualified medical staff, which includes prescribing, administering, dispensing  
 10 and monitoring of psychiatric medications or biologicals and which are necessary to alleviate the  
 11 symptoms of mental illness. These services also include evaluation and documentation of the clinical  
 12 justification and effectiveness for use of the medication, dosage, side effects, compliance and response  
 13 to medication, as well as obtaining informed consent, providing medication education and plan  
 14 development related to the delivery of the service and/or assessment of the beneficiary.

15 c. Rehabilitation Service means an activity which includes assistance in improving,  
 16 maintaining, or restoring a client's or group of clients' functional skills, daily living skills, social and leisure  
 17 skill, grooming and personal hygiene skills, meal preparation skills, support resources and/or medication  
 18 education.

19 d. —BTherapy means a service activity which is a therapeutic intervention that focuses  
 20 primarily on symptom reduction as a means to improve functional impairments. Therapy may be  
 21 delivered to an individual or group of beneficiaries which may include family therapy in which the  
 22 beneficiary is present.

23 8. MHSA means the law that provides funding for expanded community mental health services.  
 24 It is also known as "Proposition 63."

25 9. NPI means ~~National Provider Identifier and refers to~~ the standard unique health identifier  
 26 that was adopted by the Secretary of ~~Health and Human Services-HHS~~ under HIPAA. for health care  
 27 providers. All HIPAA covered healthcare providers, individuals and organizations must obtain an NPI  
 28 for use to identify themselves in HIPAA standard transactions. The NPI is assigned for life.

29 G. 10. NPP means a document that notifies individuals of uses and disclosures of PHI that may be  
 30 made by or on behalf of the health plan or health care provider as set forth in the HIPAA.

31 D. 11. PHI means ~~Protected Health Information and refers to~~ individually identifiable health  
 32 information usually transmitted by electronic media, maintained in any medium as defined in the  
 33 regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is  
 34 created or received by a covered entity and relates to the past, present, or future physical or mental  
 35 health or condition of an individual, provision of health care to an individual, or the past, present, or future  
 36 payment for health care provided to an individual.

37 E. ~~Rehabilitative Focus~~ 12. Psychiatrist means an individual who meets the minimum  
 38 professional and licensure requirements set forth in Title 9, CCR, Section 623.

39 13. Psychologist means an individual who meets the minimum professional and licensure  
 40 requirements set forth in Title 9, CCR, Section 624.

41 14. ~~central point upon which activity~~ Recovery means a "deeply personal, unique process of  
 42 changing one's attitudes, values, feelings, goals, skills and/or roles. It is ~~directed~~ a way of living a

1 satisfying, hopeful and contributing life even with limitations caused by the illness. Recovery involves the  
 2 development of new meaning and purpose in one's life as one grows beyond the catastrophic effects of  
 3 mental illness. Ultimately, because recovery is a personal and unique process, everyone with a  
 4 psychiatric illness develops his or her own definition of recovery. However, certain concepts or factors  
 5 are common to ~~restore a condition of good health, the ability~~ recovery." (William Anthony, 1993).

6 15. Referral means providing the effective linkage of a client to work, and the ability another  
 7 service, when indicated; with follow-up to perform daily living skills be provided within five (5) working  
 8 days to assure that the client has made contact with the referred service.

9 16. SNF/STP means a facility that provides twenty-four (24)-hour/day skilled nursing care and  
 10 supervision and at least twenty-seven (27) hours of therapeutic programming to clients with a primary  
 11 psychiatric diagnosis, who may also have co-existing medical conditions. In most cases, clients are  
 12 conserved under LPS.

13 17. SSI means income from a United States government program that provides stipends to low-  
 14 income people who are either aged (65 or older), blind, or disabled.

15 18. SSP ~~F. SNF-STP~~ means Skilled Nursing Facility ~~Special Treatment Program~~ and  
 16 refers to refers to programs that serve Clients who have a chronic psychiatric impairment and whose  
 17 adaptive functioning is moderately impaired.

18 ~~G. Therapeutic Community Model~~ means a drug-free environment in which persons with addictive  
 19 and other mental health problems live together in an organized and structured manner that will promote  
 20 change and a possible return to life within society.

21 ~~H. Therapeutic Milieu~~ means an environment that promotes additional cash benefits to supplement  
 22 the ~~healing of disease~~ federal SSI payment.

23 #

24 ~~I. UOS means unit~~ 19. Unit of Service and refers to means one (1) calendar day during  
 25 which CONTRACTOR provides all of the SNF-STP described hereunder, which day shall begin at twelve  
 26 o'clock midnight. The number of billable UOS Units of Service shall include the day of admission and  
 27 exclude the day of discharge unless admission and discharge occur on the same day.

28 20. HIPAA means the federal law that establishes standards for the privacy and security of  
 29 health information, as well as standards for electronic data interchange of health information. HIPAA law  
 30 has two main goals, as its name implies: making health insurance more portable when persons change  
 31 employers, and making the health care system more accountable for costs-trying, especially to reduce  
 32 waste and fraud.

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

## 35 II. BUDGET

36 The following budget is set forth for informational purposes only and may be adjusted by mutual  
 37 written agreementContract of CONTRACTOR and ADMINISTRATOR. CONTRACTOR and  
 38 ADMINISTRATOR may mutually agree, in writing to modify the Budget Paragraph of this Exhibit A to the

1 AgreementContract.

	<del>PERIOD ONE</del>	<del>TOTAL</del>
<u>COUNTY FUNDED PROGRAM</u>		
<u>COSTS</u>		
Westminster	<del>\$-2,624,612,513</del>	<del>\$-2,621,513</del>
West Anaheim	<del>— 1,797,616</del>	<del>—1,797,616</del>
TOTAL PROGRAM <del>COSTS</del> <u>COST</u>	<del>\$-4,419,129</del>	<del>\$-4,419,129</del>
 <u>PROVIDER REVENUE</u>		
Projected Medi-Cal <del>Revenue</del>	<del>\$-7,206,310</del> <u>830,793</u>	<del>\$-7,206,310</del>
Prior Years <del>Excess</del>	<del>—217,078</del>	<del>—217,078</del>
<del>Revenue</del> <u>Medi-Cal</u>	<u>287,276</u>	<u>287,276</u>
	\$	\$
TOTAL REVENUE	<del>11,842,517</del> <u>8,117,069</u>	<del>\$ 11,842,517</del>
 <del>TOTAL</del> MAXIMUM OBLIGATION	 <del>\$-4,419,129</del>	 <del>\$-4,419,129</del>

### III. ISSUE RESOLUTION

15 A. For resolution of issues between CONTRACTOR and COUNTY with respect to the  
16 implementation and operation of the AgreementContract or ADMINISTRATOR's policies and procedures  
regarding services described herein, the following sequential steps shall apply:

17 1. CONTRACTOR shall routinely utilize all informal communication processes and methods  
with ADMINSTRATOR including, but not limited to, telephone contact, facsimile machine (FAX), e-mail,  
18 written correspondence and meetings, to resolve any issues or problems regarding the implementation  
and operation of the AgreementContract or ADMINISTRATOR's policies and procedures regarding  
19 services described herein.

20 2. If the parties are unable to resolve an issue(s), CONTRACTOR shall give written notice to  
ADMINISTRATOR setting forth in specific terms the existence and nature of any unresolved matter or  
21 concern related to the obligations under the AgreementContract. ADMINISTRATOR shall have fifteen  
(15)  
22 calendar days following such notice to resolve of any issue(s) identified in this manner. However, by  
mutual consent this period of time may be extended to thirty (30) calendar days.

23 3. If the parties are unable to resolve the issue, they shall submit a joint written statement  
describing the facts of the issue, within thirty (30) calendar days after the written notice described above  
24 to COUNTY's Director of Behavioral Health Services for final resolution.

25 4. The rights and remedies provided by this paragraph are in addition to those provided by law  
to either party.



1 B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Issue  
2 Resolution Paragraph of this Exhibit A to the ~~Agreement~~Contract.

3 ~~i~~IV. PATIENT'S RIGHTS

4 ~~A. CONTRACTOR shall post the current DHCS Patients' Rights poster as well as  
5 ADMINISTRATOR's MHP Complaint and Grievance poster in locations readily available to Clients and  
6 staff and have complaint forms and complaint envelopes readily accessible to Clients.~~

7 ~~B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have  
8 complaint resolution and grievance processes approved by ADMINISTRATOR, to which the Client shall  
9 have access.~~

10 ~~1. CONTRACTOR's complaint resolution processes shall emphasize informal, easily  
11 understood steps designed to resolve disputes as quickly and simply as possible.~~

12 ~~2. CONTRACTOR's complaint resolution and grievance processes shall incorporate  
13 ADMINISTRATOR's grievance, patients' rights, and utilization management guidelines and procedures.~~

14 ~~C. Complaint Resolution and Grievance Process ADMINISTRATOR shall implement complaint  
15 and grievance procedures that shall include the following components:~~

16 ~~1. Complaint Resolution. This process will specifically address and attempt to resolve Client  
17 complaints and concerns at CONTRACTOR's facility. Examples of such complaints may include  
18 dissatisfaction with services or with the quality of care, or dissatisfaction with the condition of the physical  
19 plant.~~

20 ~~2. Formal Grievance. When the Client's complaint is not resolved at CONTRACTOR's facility  
21 and the Client or Client representative requests it, the complaint becomes a formal grievance. The  
22 request is made to COUNTY MHIS and represents the first step in the formal grievance process.~~

23 ~~3. Title IX Rights Advocacy. This process may be initiated by a Client who registers a statutory  
24 rights violation or a denial or abuse complaint with the COUNTY Patients' Rights Office. The Patients'  
25 Rights office shall investigate the complaint, and Title IX grievance procedures shall apply, which involve  
26 the COUNTY's Director of Behavioral Health Services and the State's Patients' Rights Office.~~

27 ~~D. The parties agree that Clients have recourse to initiate a complaint to CONTRACTOR, appeal to  
the COUNTY Patients' Rights Office, file a formal grievance, and file a Title IX complaint. The patients'  
advocate shall advise and assist the Clients, investigate the cause of the complaint or grievance, and  
attempt to resolve the matter.~~

~~E. No provision of the Agreement shall be construed as replacing or conflicting with the duties of  
COUNTY Patients' Rights Office pursuant to WIC Section 5500.~~

~~F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Patient's  
Rights Paragraph of this Exhibit A to the Agreement.~~

**-V. PAYMENTS**

A. For provision of the services described herein, COUNTY shall pay CONTRACTOR in advance, for each month during which CONTRACTOR provides the services herein, at the following rates, provided such payments do not exceed COUNTY's Maximum Obligation specified in the Referenced Contract Provisions of the AgreementContract:

1. ~~Period One: FY 2020-21:~~ three hundred sixty-eight thousand and two hundred sixty-one dollars (\$368,~~260~~261) per month for the period July 1, ~~2019~~2020 through June 30, ~~2020~~2021.

B. If the AgreementContract terminates at a time other than at the end of a full calendar month, COUNTY shall continue to pay CONTRACTOR in the manner specified in this Payments Paragraph at the following rates per day for any portion of a month during which services are provided.

	Westminster	West Anaheim
1. <del>Period</del> <u>One</u> <del>FY</del>	<u>\$5,7014,925</u>	<u>\$4,9697,157</u>
<u>2020-21</u>		

C. CONTRACTOR's invoices shall be on a form approved or supplied by ADMINISTRATOR and provide such information as is required by ADMINISTRATOR. CONTRACTOR shall submit a monthly invoice no earlier than the 20th day of the month prior to the month for which services are billed. Payments should be made by COUNTY approximately ~~twenty-one (21)~~thirty (30) days after receipt of a correctly completed invoice. Failure to comply with any of the provisions of the AgreementContract may result in ADMINISTRATOR delaying or withholding any payment to CONTRACTOR.

**D. REVENUE**

1. "Revenue" means Medi-Cal and any third party or private reimbursement actually received by CONTRACTOR for Mental Health Inpatient Services provided to patients served pursuant to this Contract.

2. "Period One Revenue" means revenue actually received during period of July 1 through June 30, 2021, which revenue is anticipated by the parties to be \$7,830,793.

3. "Prior Years' Excess Revenue" means the amount of revenue generated above \$7,423,388 for the period July 1, 2019 through June 30, 2020. It is anticipated this amount will be \$287,276.

5. If the Total Revenue received by CONTRACTOR is greater than \$8,117,069, for FY July 1, 2020 through June 30, 2021, then the excess shall be either paid to COUNTY or included in whole or in part in a subsequent Contract between COUNTY and CONTRACTOR and deemed as Prior Years' Excess Revenue and separately identified as such.

6. Prior Years' Excess Revenue

a. CONTRACTOR has agreed to utilize the amount of \$287,276, representing prior years' excess revenue, to offset proposed program costs for the period July 1, 2020 through June 30, 2021.

b. CONTRACTOR shall submit in writing to ADMINISTRATOR, prior to utilizing Medi-Cal Revenue, a request to utilize funds for program costs. The request shall be submitted on a report that will include a complete breakdown of funds that will be utilized for the program. Prior to any requests, ADMINISTRATOR will approve a form developed by CONTRACTOR.

1 c. ADMINISTRATOR shall review the request and respond to CONTRACTOR within two  
2 (2) weeks after receiving the request, or three (3) days if deemed an emergency. ADMINISTRATOR  
3 shall approve the request after proper documentation has been submitted by CONTRACTOR.

4 d. CONTRACTOR shall submit to ADMINISTRATOR no later than August 31st a final  
5 report of the total amount of revenue generated at the end of each Period as specified in the Referenced  
6 Contract Provisions of this Contract.

7 7. In the event that this Contract terminates before June 30, 2021, the Revenues and Total  
8 Revenue stipulated in Payment subparagraph above shall be proportionately modified by  
9 ADMINISTRATOR, based upon the number of days this Contract was in effect.

10 E. It is understood by the parties that the State Department of Mental Health and Department of  
11 Health Services are in the process of modifying Treatment Authorization Request processes and Medi-  
12 Cal billing procedures to include the direct involvement of, or control by, County which may impact the  
13 way CONTRACTOR bills and collects the Revenues specified herein. CONTRACTOR agrees to comply  
14 with any and all state requirements related to Medi-Cal billing, as well as the Orange County Medi-Cal  
15 Mental Health Managed Care Plan and related policies and procedures.

16 F. For provision of the services described herein, COUNTY shall pay CONTRACTOR in advance,  
17 for each month during which CONTRACTOR provides the services herein, at the following rates,  
18 provided such payments of this Exhibit A and Exhibit B to the Contract do not exceed COUNTY's  
19 Maximum Obligations for each period as specified in the Referenced Contract Provisions of this Contract.

20 G. CONTRACTOR shall collect SSI/SSP revenue, additional income sources and all other revenues  
21 due the Client, conservator/guardian, or legally responsible person to determine a client share of cost.

22 H. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with  
23 any provision of this Contract.

24 I. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments  
25 Paragraph of this Exhibit A to the ~~Agreement~~Contract.

26 **V. QUALITY IMPROVEMENT**

27 A. CONTRACTOR shall maintain a written Quality Improvement Plan, which shall meet the SSD  
28 guidelines for inpatient services. These shall include the definition of specific levels of care for SNF/STP  
29 utilization review and monitoring processes to evaluate the appropriateness of Client admission,  
30 treatment, and the length of stay based on specified behavioral criteria. The plan will also include  
31 procedures addressing the quality of clinical records, peer review, medication monitoring, and medical  
32 care evaluation studies.

33 B. CONTRACTOR shall maintain on file at its facility documentation of minutes and the  
34 implementation of the Quality Improvement Plan in the form of minutes and records of all quality  
35 improvement, utilization review, and medication monitoring processes. Such records and minutes will  
36 be subject to review by ADMINISTRATOR.

37 C. CONTRACTOR shall allow ADMINISTRATOR to participate in utilization review and quality  
38 improvement activities.

39 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Quality  
40 Improvement Paragraph of this Exhibit A to the Contract.

**VI. RECORDS**

A. CLIENT RECORDS - CONTRACTOR shall maintain adequate medical records on each individual Client which shall include legal status; diagnosis; psychiatric evaluation; medical history; individual treatment plan; records of Client interviews; progress notes; recommended continuing care plan; discharge summary and records of service provided by various professional and paraprofessional personnel in sufficient detail to permit an evaluation of services.

B. FINANCIAL RECORDS - CONTRACTOR shall prepare and maintain accurate and complete financial records of its cost and operating expenses. Such records shall reflect the actual cost of the type of service for which payment is claimed. 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 of accounting, the CRDC Manual, and Medicare regulations. 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 Contract, must be reflected in CONTRACTOR's financial records.

C. RECORDS LOCATION - All CONTRACTOR'S books of accounts and records related to the costs of services, Client fees, charges, billings, and revenues received shall be made available at one (1) location within the limits of the COUNTY or other local location approved, in writing, by ADMINISTRATOR.

**VII. REPORTS**

**A. PROGRAMMATIC**

1. CONTRACTOR shall submit to ADMINISTRATOR written quarterly reports on staff vacancies, recruitments, and nursing staff-per-patient ratio. These reports must be on a form acceptable to ADMINISTRATOR and shall be submitted to ADMINISTRATOR the 20th day of the month following the end of the quarter and should include the following information for each vacant position:

- a. Date the position became vacant;
- b. Total number of consecutive scheduled working days the position was vacant;
- c. Number of consecutive scheduled working days the position was vacant during the monthly billing period;
- d. Monthly position salary plus benefits.

2. CONTRACTOR shall submit quarterly performance outcomes as specified in the Responsibilities Paragraph of Exhibit A to the ~~Agreement~~Contract.

B. FINANCIAL - CONTRACTOR shall submit monthly expenditure and revenue reports on or before the 20th day of the month following the end of the month being reported.

C. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by the ADMINISTRATOR concerning CONTRACTOR's activities as they affect the contract duties and purposes contained herein. In no event, however, may the ADMINISTRATOR require such reports without at least thirty (30) days prior notification thereof. ADMINISTRATOR shall explain procedures for

1 reporting the required information.

2 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Reports of  
3 this Exhibit A to the AgreementContract.

4 **-VIII-L SERVICES**

5 A. FACILITIES

6 Services shall be provided in secure facilities located at:

7 206 Hospital Circle  
8 Westminster, CA 92683

645 South Beach Blvd.  
Anaheim, CA 92804

9 1. WESTMINSTER FACILITY

10 a. CONTRACTOR shall provide for exclusive use by COUNTY, a separate forty-six (46)  
11 bed licensed Client care area which shall consist of the TRC section of the main and a separate building  
12 which shall be used for Client activities and staff offices to maintain the capability of providing services  
13 hereunder to forty-six (46) adults, and a separate storage and an office area, known as the Annex  
14 building.

15 b. CONTRACTOR shall provide the following additional space:

- 16 1) Patio areas.
- 17 2) A shared dining area for ambulatory mental health Clients.
- 18 3) A shared outside area in the Annex building for ambulatory mental health Clients.
- 19 4) Storage areas.

20 2. WEST ANAHEIM FACILITY

21 a. CONTRACTOR shall provide for exclusive use by COUNTY, a separate fifty-one (51)  
22 bed licensed Client care area which shall consist of the TRC section of the main building to maintain the  
23 capability of providing services hereunder to fifty-one (51) adults.

24 b. CONTRACTOR shall make available to COUNTY the following additional space:

- 25 1) Patio areas.
- 26 2) A dining area for ambulatory mental health Clients located outside of the areas  
27 described above.
- 3) Storage areas.

B. PERSONS TO BE SERVED

1. CONTRACTOR shall provide services to adults, ages eighteen (18) and older, pursuant to  
Services Paragraph of this Exhibit A to the AgreementContract, who are referred for admission by  
ADMINISTRATOR.

2. CONTRACTOR shall admit Clients referred by ADMINISTRATOR who meet  
ADMINISTRATOR's criteria for therapeutic residential center services and who also meet the admission



1 criteria approved by DHCS and the "Admission of Patient's" guidelines under Title 22, Sections 72515 (a)-(b).

2 3. CONTRACTOR shall not refuse admission of Clients if they meet all of the admission criteria  
3 identified above.

4 4. CONTRACTOR shall accept for re-admission those Clients transferred from their facility for  
5 acute medical or psychiatric stabilization unless an alternative placement plan is indicated and agreed  
6 upon by ADMINISTRATOR.

7 5. CONTRACTOR shall provide services in a non-discriminatory manner and ensure that equal  
8 access is provided to all beneficiaries representative of the COUNTY's population.

9 6. CONTRACTOR shall make no distinction as to voluntary or involuntary status of Clients for  
10 the provision of these services. Characteristics of this target population shall include, but may not be  
11 limited to:

12 a. History of problem behaviors that currently exclude Clients from acceptance and/or  
13 manageability at a less restrictive level of care such as board and care facilities, including individuals with  
14 dual diagnosis of substance abuse and mental illness which may complicate Client compliance with  
15 psychiatric treatment.

16 b. Resistance to medication treatment, non-compliance with medications, and resistance  
17 to treatment programming.

18 c. Poor self-care and social skills to a degree which currently precludes their functioning in  
19 more independent settings. Most Clients will be considered gravely disabled, and on involuntary status  
20 as a Lanterman Petris Short (LPS) conservatee.

21 d. Special cultural and language needs that prevent adequate treatment in traditional  
22 treatment settings.

23 C. SERVICES

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26 1. CONTRACTOR provided space shall be utilized for a long-term treatment program based  
27 on a therapeutic milieu with a rehabilitative focus and a behavioral modification program, to treat the  
severe and persistent mental health symptoms of COUNTY Clients.

a. The treatment program shall follow a therapeutic community model; and shall  
emphasize the development of skills for self-care, development of behavior for re-entry into a lower level  
of care, and placement to a less restrictive level of care.

b. The overall goal of this program shall be to increase the functional levels of Clients,  
enabling them to transition to less restrictive levels of intervention, including independent living.

2. ~~For~~ 3. Clients receiving with SNF-STP services pursuant to the Agreement Contract  
and as required by Title 22, Sections 72443 through 72457, of the CCR, which shall include therapeutic  
services, including prevocational preparation and discharge planning, provided to mentally disordered  
persons having special needs in one or more of the following general areas: self-help skills, behavior  
adjustment, and interpersonal relationships. CONTRACTOR shall provide or arrange for:

a. History and physical examination of each Client within seventy-two (72) hours of  
admission;

- 1 b. Psychiatric history, current DSM diagnosis and evaluation;  
 2 c. Diagnostic information for treatment authorization request;  
 3 d. Individual treatment plan;  
 4 e. Medication orders;  
 5 f. Psychiatric and psychological services compatible with individual treatment plans;  
 6 g. Facilitation in accessing Client health plans, primary care physicians, CalOptima, et al;  
 7 h. Discharge planning and continuing care services;  
 8 i. Clinical and neurological laboratory services;  
 9 j. Radiology services;  
 10 k. Pharmaceutical services;  
 11 l. Financial evaluation of each Client;  
 12 m. Determination of each Client's Medi-Cal eligibility;  
 13 n. Collection of fees and private insurance revenue;  
 14 o. Compliance with all rules and regulations of DHCS regarding the care and treatment of  
 15 Clients admitted under the program, pursuant to the AgreementContract, and to the extent not  
 16 inconsistent with COUNTY rules and regulations;

17 p. Monitoring of the condition of each Client receiving services pursuant to the  
 18 AgreementContract, and assessment of the appropriateness of Client's continued placement in the  
 19 CONTRACTOR's facility; and

20 q. Documentation of evaluations, treatment, and care provided to each Client and provision  
 21 of on-going assessment of the status of each Client receiving services pursuant to the  
 22 AgreementContract.

23 **34.** CONTRACTOR shall offer psychiatric rehabilitative services which emphasize amelioration  
 24 or stabilization of those impairments of a mental disorder which prevent the Client from successfully  
 25 functioning in a less restrictive setting. The program elements shall include:

26 a. Individualized psychiatric medication regimen tailored to the Client's history of poor  
 27 medication response, designed with a goal of maximum psychiatric symptom reduction, so that the Client  
 can participate in other rehabilitative services.

b. Individualized programming based on specific Client needs identified through an  
 interdisciplinary Client assessment.

c. Treatment modalities which focus on rehabilitative efforts such as personal care and  
 social skills training, pre-vocational and educational opportunities, self-awareness and self-help  
 strategies for coping with the symptoms of a Client's mental illness, recreational therapy and activities,  
 and medication management.

d. Provision of a therapeutic milieu which utilizes a multi-disciplinary approach to care  
 inclusive of psychiatric services with both treatment groups and individual behavioral interventions,  
 targeted to achieve treatment goals. Whenever possible, Client families and/or significant others will be  
 involved in treatment activities.

1 e. Twenty-seven (27) hours of therapeutic activities shall be provided for each Client per  
2 week, including behavioral contingencies designed to encourage the individual Client's participation at  
3 progressively higher levels. Flexibility within innovative programs may be approved on a case-by-case  
4 basis.

5 **45.** CONTRACTOR shall develop and maintain a continuous quality improvement process,  
6 including the formation of a quality improvement committee, the overall goal of which is the maintenance  
7 of high quality Client care and effective utilization of services offered. This process will address utilization  
8 management, peer case review, chart review, supervisory review and medication monitoring.

9 **56.** CONTRACTOR shall provide services pursuant to the AgreementContract in a manner that  
10 is culturally and linguistically appropriate for the population served. CONTRACTOR shall  
11 maintain documentation of such efforts which may include, but not be limited to:

- 12 a. Records of participation of COUNTY sponsored or other applicable training;
- 13 b. Recruitment and hiring policies and procedures;
- 14 c. Copies of literature in multiple languages and formats, as appropriate; and
- 15 d. Descriptions of measures taken to enhance accessibility for, and sensitivity to, persons  
16 who are physically challenged.

17 **67.** CONTRACTOR shall meet the requirements set forth in Title 22 of the CCR to be certified  
18 to provide a STP.

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22 **8.** CONTRACTOR shall provide those services required by Title 22 of the CCR and Federal  
23 laws establishing standards for participation in the Medi-Cal Program, as they exist now or may be  
24 hereafter amended or changed, and shall as a minimum include the following:

- 25 a. Direct Services
  - 26 1) Room and dietetic services;
  - 27 2) Nursing services, including drug administration and Client care; and
  - 28 3) Client activity program, including arranging for Client transportation for activities  
29 outside of facility.
- 30 b. Support Services
  - 31 1) Housekeeping;
  - 32 2) Laundry;
  - 33 3) Maintenance;
  - 34 4) Medical records;
  - 35 5) Drug order processing;
  - 36 7) Provision for emergency medical and ancillary services; and
  - 37 8) Arrange for transportation to and from medical appointments.

38 **89.** COUNTY shall pay for ambulance or medical van transportation to another mental health

1 facility in accordance with COUNTY's Medical Transportation Contract. CONTRACTOR shall provide an  
 2 accompanying escort with Client if a return trip is intended.

3 ~~910.~~ For each full-scope Medi-Cal beneficiary under twenty-one (21) years of age admitted,  
 4 CONTRACTOR shall give the beneficiary/guardian/conservator the DHCS notification materials entitled,  
 5 EPSDT, and TBS. CONTRACTOR shall document in the beneficiary's medical record that these  
 6 materials were provided.

7 D. UOS shall be one (1) calendar day during which services are provided under the  
 8 ~~AgreementContract~~ to a Client. The day of admission is included; the day of discharge is excluded. If  
 9 both admission and discharge occur on the same day, the day is considered a day of admission and  
 10 counts as a full day. UOS under the ~~AgreementContract~~ totals forty-six (46) beds per day at the  
 11 Westminster TRC for a total of sixteen thousand ~~seveneight~~ hundred ~~ninetythirty-six~~ (16,~~790836~~)  
 12 annually, and fifty-one (51) beds per day at West Anaheim TRC for a total of ~~seventeeneighteen~~ thousand  
 13 ~~threesix~~ hundred ~~twenty-four (17,324sixty-six (18,666))~~ annually.

14 E. PERFORMANCE OUTCOMES

15 1. For each quarter, CONTRACTOR shall submit requested information to ADMINISTRATOR,  
 16 and shall include information provided for the purpose of establishing a baseline to compare against  
 17 Period One; this will be used to measure future performance outcomes and will include:

- 18 a. The total number of Clients discharged to a less restrictive level of care;
- 19 b. The total number of Clients who participate in a pre-vocational or educational training  
 20 program; and
- 21 c. The total hours Clients are in a pre-vocational or educational training program.

22 2. CONTRACTOR shall cooperate with ADMINISTRATOR in meeting quality improvement and  
 23 utilization review standards.

24 3. Contractor shall provide assistance to ADMINISTRATOR in conducting its utilization and  
 25 reporting functions, and medical necessity determination.

26 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Services  
 27 Paragraph of this Exhibit A to the ~~AgreementContract~~.

~~VIII.~~ IX. STAFFING

A. CONTRACTOR shall provide the following clinical staffing, expressed in FTEs, which shall be  
 equal to an average of forty (40) hours per week, and is required to maintain this at all times for the  
 provision of services hereunder:

WESTMINSTER TRC	FTEs
Director of Nursing	_1.00
Registered Nurse	_1.00
Licensed Vocational Nurse	_7.00
Certified Nursing Assistant	<u>17.40</u>
O.T. Activity Assistant	_2.00

1	Ward Clerk	<u>1.00</u>
2	Program Director	<u>1.00</u>
3	Social Worker	<u>1.00</u>
4	Mental Health Worker/MH Spec	<u>10.00</u>
5	<del>Peer Mentor/Mental Health Worker/Peer</del>	
6	<del>MentorSpec</del>	<u>0.50</u>
7	<del>Clerk/Typist</del>	<u>1.00</u>
8	<del>Clerk/Typist</del>	<u>4.00</u>
9	Subcontractor	<u>.90</u>
10	TOTAL FTEs	43.80

10	WEST ANAHEIM TRC	FTEs
11	Director of Nursing	1.00
12	Licensed Vocational Nurse	9.50
13	Certified Nursing Assistant	<u>18.00</u>
14	O.T. Activity Assistant	2.00
15	Ward Clerk	1.50
16	Program Director	1.00
17	Social Worker	<del>1.00</del> <u>4.00</u>
18	Mental Health Worker/MH Spec <u>7.00</u>	7.00
19	<del>Peer Mentor/Mental Health Worker/Peer</del>	
20	<del>MentorSpec</del>	<u>0.50</u>
21	<del>Clerk Typist</del>	<u>1.00</u>
22	<del>Van Driver</del>	<u>1.00</u>
23	<del>Subcontractor</del>	<u>.90</u>
24	TOTAL FTEs	<del>42.40</del> <u>43.90</u>

22 B. CONTRACTOR shall provide appropriate administrative and clerical staff to support the staffing and services provided under the ~~Agreement~~Contract.

23 C. CONTRACTOR shall include bilingual/bicultural services to meet the needs of threshold languages as determined by COUNTY. Whenever possible, bilingual/bicultural therapists should be retained. Any clinical vacancies occurring at a time when bilingual and bicultural composition of the clinical staffing does not meet the above requirement must be filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in writing, to the filling of those positions with non-bilingual staff.



1 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing  
Paragraph of this Exhibit A to the Agreement-Contract."

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1 EXHIBIT B  
 2 AGREEMENT FOR PROVISION OF  
 3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
 4 SPECIAL TREATMENT PROGRAM SERVICES  
 5 BETWEEN  
 6 COUNTY OF ORANGE  
 7 AND  
 8 EXTENDED CARE HOSPITAL OF WESTMINSTER  
 9 JULY 1, 2019 THROUGH JUNE 30, 2020

10 **I. BUSINESS ASSOCIATE CONTRACT**

11 ~~A. GENERAL PROVISIONS AND RECITALS~~

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

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

22 This Amendment No. 1 modifies the Contract, only as expressly set forth herein. Wherever there is a  
23 conflict in the terms or conditions between this Amendment No. 1, and the Contract, the terms and  
24 conditions of this Amendment No. 1 prevail. In all other respects, the terms and conditions of the Contract,  
25 not specifically changed by this Amendment No. 1, remain in full force and effect.

26 **SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: Extended Care Hospital of Westminster**

_____	_____
<u>Print Name</u>	<u>Title</u>
_____	_____
<u>Signature</u>	<u>Date</u>

**County of Orange, a political subdivision of the State of California**

**Purchasing Agent/Designee Authorized Signature:**

_____	_____
<u>Print Name</u>	<u>Title</u>
_____	_____
<u>Signature</u>	<u>Date</u>

~~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~~

1 ~~Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the~~  
 2 ~~covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the~~  
 3 ~~terms of this Business Associate Contract and the applicable standards, implementation specifications,~~  
 4 ~~and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,~~  
 5 ~~with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed~~  
 6 ~~pursuant to the Agreement.~~

~~B. DEFINITIONS~~

7 ~~1. "Administrative Safeguards" are administrative actions, and policies and procedures, to~~  
 8 ~~manage the selection, development, implementation, and maintenance of security measures to protect~~  
 9 ~~electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of~~  
 10 ~~that information.~~

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

~~a. Breach excludes:~~

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

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

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

24 ~~b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or~~  
 25 ~~disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach~~  
 26 ~~unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised~~  
 27 ~~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~~

1 ~~Rule in 45 CFR § 164.501.~~

2 ~~4. “DRS” shall have the meaning given to such term under the HIPAA Privacy Rule in~~  
 3 ~~45 CFR § 164.501.~~

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

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

8 ~~7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45~~  
 9 ~~CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with~~  
 10 ~~45 CFR § 164.502(g).~~

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

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

16 ~~10. “PHI” shall have the meaning given to such term under the HIPAA regulations in~~  
 17 ~~45 CFR § 160.103.~~

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

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

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

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

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

31 ~~16. “Technical safeguards” means the technology and the policy and procedures for its use that~~  
 32 ~~protect electronic PHI and control access to it.~~

33 ~~17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable,~~  
 34 ~~unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology~~  
 35 ~~specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.~~

36 ~~18. “Use” shall have the meaning given to such term under the HIPAA regulations in~~



1 ~~45 CFR § 160.103.~~

2 ~~C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:~~

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

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

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

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

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

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

23 ~~7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a~~  
24 ~~written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an Individual~~  
25 ~~in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with~~  
26 ~~PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall~~  
27 ~~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~~

1 compliance with the HIPAA Privacy Rule:

2 ~~10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to~~  
 3 ~~CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,~~  
 4 ~~and to make information related to such Disclosures available as would be required for COUNTY to~~  
 5 ~~respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with~~  
 6 ~~45 CFR § 164.528.~~

7 #

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

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

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

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

27 ~~15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting~~  
 28 ~~CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at no~~  
 29 ~~cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative~~  
 30 ~~proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed~~  
 31 ~~violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves~~  
 32 ~~inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee,~~  
 33 ~~or agent is a named adverse party.~~

34 ~~16. The Parties acknowledge that federal and state laws relating to electronic data security and~~  
 35 ~~privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to~~

1 provide for procedures to ensure compliance with such developments. The Parties specifically agree to  
2 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH  
3 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon  
4 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY  
5 concerning an amendment to this Business Associate Contract embodying written assurances consistent  
6 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other  
7 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the  
8 event:

9 #  
10 a. CONTRACTOR does not promptly enter into negotiations to amend this Business  
11 Associate Contract when requested by COUNTY pursuant to this subparagraph C; or

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

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

18 ~~D. SECURITY RULE~~

19 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and  
20 maintain appropriate Administrative, Physical and Technical Safeguards in accordance with  
21 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to  
22 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.  
23 CONTRACTOR shall develop and maintain a written information privacy and security program that  
24 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of  
25 CONTRACTOR's operations and the nature and scope of its activities.

26 2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to  
27 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

1 ~~E, below;~~

2 ~~\_\_\_\_\_ b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in~~  
3 ~~conducting operations on behalf of COUNTY;~~

4 ~~\_\_\_\_\_ e. Providing a level and scope of security that is at least comparable to the level and scope~~  
5 ~~of security established by the OMB in OMB Circular No. A 130, Appendix III Security of Federal~~  
6 ~~Automated Information Systems, which sets forth guidelines for automated information systems in~~  
7 ~~Federal agencies;~~

8 ~~\_\_\_\_\_ 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or~~  
9 ~~transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same~~  
10 ~~restrictions and requirements contained in this subparagraph D of this Business Associate Contract.~~

11 #

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

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

18 ~~\_\_\_\_\_ E. DATA SECURITY REQUIREMENTS~~

19 ~~\_\_\_\_\_ 1. Personal Controls~~

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

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

31 ~~\_\_\_\_\_ c. Confidentiality Statement. All persons that will be working with PHI COUNTY discloses~~  
32 ~~to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY~~  
33 ~~must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy~~  
34 ~~Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the~~  
35 ~~workforce member prior to access to such PHI. The statement must be renewed annually. The~~  
36 ~~CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for a~~  
37 ~~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) calendar or business 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 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~~



1 ~~logging functionality must be enabled. Audit trail data must be archived for at least 3 years after~~  
2 ~~occurrence.~~

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

6 ~~m. Transmission encryption. All data transmissions of PHI COUNTY discloses to~~  
7 ~~CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY~~  
8 ~~outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is~~  
9 ~~128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files~~  
10 ~~containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website~~  
11 ~~access, file transfer, and E-Mail.~~

12 ~~n. Intrusion Detection. All systems involved in accessing, holding, transporting, and~~  
13 ~~protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,~~  
14 ~~#~~  
15 ~~or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a~~  
16 ~~comprehensive intrusion detection and prevention solution.~~

### 17 ~~3. Audit Controls~~

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

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

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

### 31 ~~4. Business Continuity/Disaster Recovery Control~~

32 ~~a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan~~  
33 ~~to enable continuation of critical business processes and protection of the security of PHI COUNTY~~  
34 ~~discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of~~  
35 ~~COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance~~

1 or situation that causes normal computer operations to become unavailable for use in performing the work  
2 required under this Agreement for more than 24 hours.

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

9 ~~\_\_\_\_\_ 5. Paper Document Controls~~

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

16 #

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

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

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

26 ~~\_\_\_\_\_ e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or  
27 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~~

1 a single package shall be sent using a tracked mailing method which includes verification of delivery and  
2 receipt, unless the prior written permission of COUNTY to use another method is obtained.

3 ~~F. BREACH DISCOVERY AND NOTIFICATION~~

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

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

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

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

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

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

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

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

25 ~~2) A description of the types of Unsecured PHI that were involved in the Breach (such~~  
26 ~~as whether full name, social security number, date of birth, home address, account number, diagnosis,~~  
27 ~~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~~

1 of any instance of which it is aware in which the confidentiality of the information has been breached.

2 ~~\_\_\_\_\_ c. CONTRACTOR may use or further disclose PHI COUNTY discloses to~~  
3 ~~CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of~~  
4 ~~CONTRACTOR.~~

5 ~~\_\_\_\_\_ 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry~~  
6 ~~out legal responsibilities of CONTRACTOR.~~

7 ~~\_\_\_\_\_ 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR~~  
8 ~~consistent with the minimum necessary policies and procedures of COUNTY.~~

9 ~~\_\_\_\_\_ 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as~~  
10 ~~required by law.~~

11 ~~\_\_\_\_\_ H. PROHIBITED USES AND DISCLOSURES~~

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

17 ~~\_\_\_\_\_ 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI~~  
18 ~~COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on~~  
19 ~~behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by~~  
20 ~~42 USC § 17935(d)(2).~~

21 ~~\_\_\_\_\_ I. OBLIGATIONS OF COUNTY~~

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

25 ~~\_\_\_\_\_ 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission~~  
26 ~~by an Individual to use or disclose his or her PHI, to the extent that such changes may affect~~  
27 ~~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:~~

1 ~~\_\_\_\_\_ a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the~~  
2 ~~violation within thirty (30) business days; or~~  
3 ~~\_\_\_\_\_ b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure~~  
4 ~~the material Breach or end the violation within (30) days, provided termination of the Agreement is~~  
5 ~~feasible.~~  
6 ~~\_\_\_\_\_ 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to~~  
7 ~~COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or~~  
8 ~~received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.~~  
9 ~~\_\_\_\_\_ a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents~~  
10 ~~of CONTRACTOR.~~  
11 ~~\_\_\_\_\_ b. CONTRACTOR shall retain no copies of the PHI.~~  
12 ~~\_\_\_\_\_ c. In the event that CONTRACTOR determines that returning or destroying the PHI is not~~  
13 ~~feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or~~  
14 ~~destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,~~  
15 ~~CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit~~  
16 ~~further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible,~~  
17 ~~for as long as CONTRACTOR maintains such PHI.~~  
18 ~~\_\_\_\_\_ 3. The obligations of this Business Associate Contract shall survive the termination of the~~  
19 ~~Agreement.~~

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EXHIBIT C
AGREEMENT FOR PROVISION OF
ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH
SPECIAL TREATMENT PROGRAM SERVICES
BETWEEN
COUNTY OF ORANGE
AND
EXTENDED CARE HOSPITAL OF WESTMINSTER
JANUARY 1, 2017 THROUGH JUNE 30, 2019

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 "PI 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, Civil Code § 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 Information Exchange Agreement currently in effect between the SSA and DHCS.

6. "Notice-triggering Personal Information" shall mean the personal information identified in California Civil Code § 1798.29(e) whose unauthorized access may trigger notification requirements under California Civil Code § 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. "PI" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in California Civil Code § 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.~~

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~~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 E of the Business Associate Contract, Exhibit B 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~~

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~~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 B 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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**APPROVED AS TO FORM**  
Office of the County Counsel  
Orange County, California

\_\_\_\_\_  
Print Name

Deputy County Counsel  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date