

1 CONTRACT FOR PROVISION OF  
2 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
3 SPECIAL TREATMENT PROGRAM SERVICES

4 BETWEEN  
5 COUNTY OF ORANGE  
6 AND  
7 EXTENDED CARE HOSPITAL OF WESTMINSTER  
8 JULY 1, 2021 THROUGH JUNE 30, 2024  
9

10  
11 THIS CONTRACT entered into this 1st day of July 2021 (effective date), is by and between the  
12 COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and EXTENDED  
13 CARE HOSPITAL OF WESTMINSTER, a California nonprofit mutual benefit corporation  
14 (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually  
15 as "Party" or collectively as "Parties." This Contract shall be administered by the County of Orange  
16 Health Care Agency (ADMINISTRATOR).

17  
18 **W I T N E S S E T H:**

19 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Adult Mental  
20 Health Skilled Nursing Facility with Special Treatment Program Services described herein to the  
21 residents of Orange County; and

22 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and  
23 conditions hereinafter set forth:

24 NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained  
25 herein, COUNTY and CONTRACTOR do hereby agree as follows:

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**REFERENCED CONTRACT PROVISIONS**

**Term:** July 1, 2021 through June 30, 2024

Period One means the period from July 1, 2021 through June 30, 2022

Period Two means the period from July 1, 2022 through June 30, 2023

Period Three means the period from July 1, 2023 through June 30, 2024

**Amount Not to Exceed:**

Period One Amount Not to Exceed: \$ 4,529,606

Period Two Amount Not to Exceed: 4,665,494

Period Three Amount Not to Exceed: 4,805,457

TOTAL AMOUNT NOT TO EXCEED: \$14,000,557

**Basis for Reimbursement:** Net Negotiated Rate

**Payment Method:** Monthly in Arrears

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

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

**Notices to COUNTY and CONTRACTOR:**

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

CONTRACTOR: Extended Care Hospital of Westminster  
206 Hospital Circle  
Westminster, CA 92683  
Donna Meyer, Director of Operations  
[donna@westanaheimec.com](mailto:donna@westanaheimec.com)

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**I. ACRONYMS**

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

1		
2		
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4	A. AES	Advanced Encryption Standard
5	B. ARRA	American Recovery and Reinvestment Act of 2009
6	C. CAP	Corrective Action Plan
7	D. CCC	California Civil Code
8	E. CCR	California Code of Regulations
9	F. CFR	Code of Federal Regulations
10	G. CEO	County Executive Office
11	H. CFR	Code of Federal Regulations
12	I. CHPP	COUNTY HIPAA Policies and Procedures
13	J. CHHS	California Health and Human Services Agency
14	K. CMPPA	Computer Matching and Privacy Protection Act
15	L. COI	Certificate of Insurance
16	M. DHCS	California Department of Health Care Services
17	N. DRS	Designated Record Set
18	O. E-Mail	Electronic Mail
19	P. EHR	Electronic Health Records
20	Q. ePHI	Electronic Protected Health Information
21	R. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
22	S. FFS	Fee For Service
23	T. FIPS	Federal Information Processing Standards
24	U. FTE	Full Time Equivalents
25	V. GAAP	Generally Accepted Accounting Principles
26	W. HCA	County of Orange Health Care Agency
27	X. HHS	Health and Human Services
28	Y. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
29		Law 104-191
30	Z. HITECH Act	Health Information Technology for Economic and Clinical Health
31		Act, Public Law 111-005
32	AA. HSC	California Health and Safety Code
33	AB. IEA	Information Exchange Agreement
34	AC. IRIS	Integrated Records and Information System
35	AD. ISO	Insurance Services Office
36	AE. LPS	Lanterman/Petris/Short (Act)
37	AF. MHP	Mental Health Plan

1	AG. MHIS	Mental Health Inpatient Services
2	AH. NIST	National Institute of Standards and Technology
3	AI. NPI	National Provider Identifier
4	AJ. NPP	Notice of Privacy Practices
5	AK. NPI	National Provider Identifier
6	AL. OIG	Office of Inspector General
7	AM. OMB	Office of Management and Budget
8	AN. OPM	Office of Personnel Management
9	AO. P&P	Policy and Procedure
10	AP. PC	California Penal Code
11	AQ. PHI	Protected Health Information
12	AR. PII	Personally Identifiable Information
13	AS. PRA	California Public Records Act
14	AT. SIR	Self-Insured Retention
15	AU. SNF	Skilled Nursing Facility
16	AV. SSA	Social Services Agency
17	AW. STP	Special Treatment Program
18	AX. TBS	Therapeutic Behavioral Services
19	AY. TRC	Therapeutic Residential Center
20	AZ. UMDAP	Uniform Method of Determining Ability to Pay
21	BA. UOS	Unit of Service
22	BB. USC	United States Code
23	BC. WIC	State of California Welfare and Institutions Code

## **II. ALTERATION OF TERMS**

A. This Contract, 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 Contract.

B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of, the terms of this Contract 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 Contract, which has been formally approved and executed by both parties.

## **III. ASSIGNMENT OF DEBTS**

Unless this Contract is followed without interruption by another contract between the Parties hereto for the same services and substantially the same scope, at the termination of this Contract, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of

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

#### 6 **IV. COMPLIANCE**

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

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

13 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own  
14 compliance program, code of conduct and any compliance related policies and procedures.  
15 CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall  
16 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required  
17 elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to  
18 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 does not provide proof of its own compliance program to  
27 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance  
28 Program and Code of Conduct, CONTRACTOR shall submit to ADMINISTRATOR within thirty (30)  
29 calendar days of execution of this Contract a signed acknowledgement that CONTRACTOR will  
30 internally comply with ADMINISTRATOR's Compliance Program and Code of Conduct.  
31 CONTRACTOR shall have as many Covered Individuals it determines necessary complete  
32 ADMINISTRATOR's annual compliance training to ensure proper compliance.

33 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any  
34 Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR  
35 shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures  
36 to ADMINISTRATOR within thirty (30) calendar days of execution of this Contract.  
37 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a

1 reasonable time, which shall not exceed forty-five (45) calendar days, and determine if  
2 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to  
3 ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of  
4 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and  
5 CONTRACTOR shall revise its compliance program and code of conduct to meet  
6 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's  
7 Compliance Officer's determination and resubmit the same for review by ADMINISTRATOR.

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

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

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

27 2. An Ineligible Person shall be any individual or entity who:  
28 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in  
29 federal and state health care programs; or  
30 b. has been convicted of a criminal offense related to the provision of health care items or  
31 services and has not been reinstated in the federal and state health care programs after a period of  
32 exclusion, suspension, debarment, or ineligibility.

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

36 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors monthly to  
37 ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its



1 subcontractors use their best efforts to verify that they are eligible to participate in all federal and State  
2 of California health programs and have not been excluded or debarred from participation in any federal  
3 or state health care programs, and to further represent to CONTRACTOR that they do not have any  
4 Ineligible Person in their employ or under contract.

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

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

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

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

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

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

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

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

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

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

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

7 2. Such training will be made available to Covered Individuals within thirty (30) calendar  
8 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  
11 provide copies of the certifications upon request.

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

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

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

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

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

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

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

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

36 7. CONTRACTOR shall comply with the provisions of ADMINISTRATOR’s Cultural  
37 Competency Plan submitted and approved by the State. ADMINISTRATOR shall update the Cultural

1 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,  
2 §1810.410.subds. (c)-(d)).

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

## 9 10 **V. CONFIDENTIALITY**

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

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

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

22 3. In the event of a collaborative service agreement between Mental Health services providers,  
23 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,  
24 from the collaborative agency, for Clients receiving services through the collaborative agreement.

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

## 32 33 **VI. CONFLICT OF INTEREST**

34 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions  
35 that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation  
36 shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of  
37 goods and services provided under this Contract. CONTRACTOR's efforts shall include, but not be

1 limited to establishing rules and procedures preventing its employees, agents, and subcontractors from  
2 providing or offering gifts, entertainment, payments, loans or other considerations which could be  
3 deemed to influence or appear to influence COUNTY staff or elected officers in the performance of  
4 their duties.

## 6 **VII. COST REPORT**

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

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

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

29 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
30 pursuant to any or all Contracts between COUNTY and CONTRACTOR until such time that the  
31 accurate and complete individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

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

36 3. In the event that CONTRACTOR does not submit an accurate and complete individual  
37 and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the

1 termination of this Contract, and CONTRACTOR has not entered into a subsequent or new Contract for  
2 any other services with COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the  
3 term of the Contract shall be immediately reimbursed to COUNTY.

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

9 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,  
10 less applicable revenues and any late penalty, not to exceed COUNTY's Amount Not to Exceed as set  
11 forth in the Referenced Contract Provisions of this Contract. CONTRACTOR shall not claim  
12 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and  
13 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,  
14 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be  
15 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)  
16 calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect  
17 to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due  
18 COUNTY.

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

27 E. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of  
28 services provided pursuant to this Contract, less applicable revenues and late penalty, are higher than the  
29 aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the  
30 difference, provided such payment does not exceed the Total Amount Not to Exceed of COUNTY.

31 F. Unless approved by ADMINISTRATOR, costs that exceed the Statewide Maximum Allowance  
32 (SMA) rates per Medi-Cal Unit of Services, as determined by the DHCS, shall be unreimbursable to  
33 CONTRACTOR.

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

37 //



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

3  
4 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and  
5 supporting documentation prepared by \_\_\_\_\_ for the cost report period  
6 beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that, to the best of my  
7 knowledge and belief, costs reimbursed through this Contract are reasonable and  
8 allowable and directly or indirectly related to the services provided and that this Cost  
9 Report is a true, correct, and complete statement from the books and records of  
10 (provider name) in accordance with applicable instructions, except as noted. I also  
11 hereby certify that I have the authority to execute the accompanying Cost Report.

12  
13 Signed \_\_\_\_\_  
14 Name \_\_\_\_\_  
15 Title \_\_\_\_\_  
16 Date \_\_\_\_\_"

17  
18 **VIII. DEBARMENT AND SUSPENSION CERTIFICATION**

19 A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

37 //



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

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

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

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

17 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the  
18 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor  
19 subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR  
20 has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.

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

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

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

28 D. CONTRACTOR shall notify COUNTY in writing of any change in CONTRACTOR's status  
29 with respect to name changes that do not require an assignment of the Contract. CONTRACTOR is also  
30 obligated to notify COUNTY in writing if CONTRACTOR becomes a party to any litigation against  
31 COUNTY, or a party to litigation that may reasonably affect CONTRACTOR's performance under the  
32 Contract, as well as any potential conflicts of interest between CONTRACTOR and COUNTY that may  
33 arise prior to or during the period of Contract performance. While CONTRACTOR will be required to  
34 provide this information without prompting from COUNTY any time there is a change in  
35 CONTRACTOR's name, conflict of interest or litigation status, CONTRACTOR must also provide an  
36 update to COUNTY of its status in these areas whenever requested by COUNTY.

37 //



**X. DISPUTE RESOLUTION**

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

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

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

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

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

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

**XI. EMPLOYEE ELIGIBILITY VERIFICATION**

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

1 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently  
2 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all  
3 covered employees, subcontractors, and consultants for the period prescribed by the law.  
4

## 5 **XII. EQUIPMENT**

6 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all  
7 property of a Relatively Permanent nature with significant value, purchased in whole or in part by  
8 ADMINISTRATOR to assist in performing the services described in this Contract. “Relatively  
9 Permanent” is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000  
10 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as  
11 Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes  
12 and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may  
13 contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not  
14 limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of  
15 Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated  
16 according to GAAP.

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

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

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

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

35 F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure  
36 approved by ADMINISTRATOR and the Notices Paragraph of this Contract. In addition,  
37 //

1 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of  
2 Equipment are moved from one location to another or returned to COUNTY as surplus.

3 G. Unless this Contract is followed without interruption by another contract between the Parties for  
4 substantially the same type and scope of services, at the termination of this Contract for any cause,  
5 CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this  
6 Contract.

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

### 9 10 **XIII. FACILITIES, PAYMENTS AND SERVICES**

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

16 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or  
17 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Amount Not to Exceed  
18 for the appropriate Period as well as the Total Amount Not to Exceed. The reduction to the Amount Not  
19 to Exceed for the appropriate Period as well as the Total Amount Not to Exceed shall be in an amount  
20 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide  
21 services, staffing, facilities or supplies.

### 22 23 **XIV. INDEMNIFICATION AND INSURANCE**

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

34 B. Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all  
35 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary  
36 to satisfy COUNTY that the insurance provisions of this Contract have been complied with.  
37 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements

1 on deposit with COUNTY during the entire term of this Contract. In addition, all subcontractors  
2 performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject  
3 to the same terms and conditions as set forth herein for CONTRACTOR.

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

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

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

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

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

27 E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this  
28 Contract, COUNTY may terminate this Contract.

29 F. QUALIFIED INSURER

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence
	\$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made
	\$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

22  
23 H. REQUIRED COVERAGE FORMS

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

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

28 I. REQUIRED ENDORSEMENTS

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

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

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



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

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

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

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

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

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

20           M. If CONTRACTOR's Professional Liability and/or Network Security & Privacy Liability are  
21 "Claims-Made" policies, CONTRACTOR shall agree to maintain coverage for two (2) years following  
22 the completion of the Contract.

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

25           O. Insurance certificates should be forwarded to the agency/department address specified in the  
26 Referenced Contract Provisions of this Contract.

27           P. If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)  
28 days of notification by CEO/Purchasing or the agency/department purchasing division, it shall constitute  
29 a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate  
30 this Contract.

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

35           R. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
36 CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with  
37 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this

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

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

6 T. SUBMISSION OF INSURANCE DOCUMENTS

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

8 a. Prior to the start date of this Contract.

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

10 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding  
11 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

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

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

17 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
18 pursuant to any and all Contracts between COUNTY and CONTRACTOR until such time that the  
19 required COI and endorsements that meet the insurance provisions stipulated in this Contract are  
20 submitted to ADMINISTRATOR.

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

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

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

30  
31 **XV. INSPECTIONS AND AUDITS**

32 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative  
33 of the State of California, the Secretary of the United States Department of Health and Human Services,  
34 the Comptroller General of the United States, or any other of their authorized representatives, shall to  
35 the extent permissible under applicable law have access to any books, documents, and records, including  
36 but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client  
37 records, of CONTRACTOR that are directly pertinent to this Contract, for the purpose of responding to

1 a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making  
 2 transcripts during the periods of retention set forth in the Records Management and Maintenance  
 3 Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the  
 4 services provided pursuant to this Contract, and the premises in which they are provided.

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

9 C. AUDIT RESPONSE

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

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

22 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual  
 23 Single Audit as required by 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR  
 24 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal  
 25 Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen (14)  
 26 calendar days of receipt.

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

31  
 32 **XVI. LICENSES AND LAWS**

33 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout  
 34 the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations,  
 35 waivers, and exemptions necessary for the provision of the services hereunder and required by the laws,  
 36 regulations and requirements of the United States, the State of California, COUNTY, and all other  
 37 applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and



1 in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals,  
 2 permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be  
 3 cause for termination of this Contract.

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

- 7 1. ARRA of 2009.
- 8 2. Trafficking Victims Protection Act of 2000.
- 9 3. Title 22, CCR, §51009, Confidentiality of Records.
- 10 4. California Welfare and Institutions Code, §14100.2, Medicaid Confidentiality.
- 11 5. Federal Medicare Cost reimbursement principles and cost reporting standards.
- 12 6. State of California-Health and Human Services Agency, Department of Health Care  
 13 Services, MHSD, Medi-Cal Billing Manual, October 2013.
- 14 7. Orange County Medi-Cal Mental Health Managed Care Plan.
- 15 8. Short-Doyle/Medi-Cal Manual for the Rehabilitation Option and Targeted Case  
 16 Management.
- 17 9. Short-Doyle/Medi-Cal Modifications/Revisions for the Rehabilitation Option and Targeted  
 18 Case Management Manual, including DMH Letter 94-14, dated July 7, 1994, DMH Letter No. 95-04,  
 19 dated July 27, 1995, DMH Letter 96-03, dated August 13, 1996.
- 20 10. WIC, Division 5, Community Mental Health Services.
- 21 11. WIC, Division 6, Admissions and Judicial Commitments.
- 22 12. WIC, Division 7, Mental Institutions.
- 23 13. HSC, §§1250 et seq., Health Facilities.
- 24 14. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 25 15. CCR, Title 9, Rehabilitative and Developmental Services.
- 26 16. CCR, Title 17, Public Health.
- 27 17. CCR, Title 22, Social Security.
- 28 18. CFR, Title 42, Public Health.
- 29 19. CFR, Title 45, Public Welfare.
- 30 20. USC Title 42. Public Health and Welfare.
- 31 21. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 32 22. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 33 23. 42 USC §1857, et seq., Clean Air Act.
- 34 24. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 35 25. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 36 26. Policies and procedures set forth in Mental Health Services Act.
- 37 27. Policies and procedures set forth in DHCS Letters.

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

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

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

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

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

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

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

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

**XVIII. AMOUNT NOT TO EXCEED**

A. The Total Amount Not to Exceed of COUNTY for services provided in accordance with this Contract, and the separate Amounts Not to Exceed for each period under this Contract, are as specified in the Referenced Contract Provisions of this Contract, except as allowed for in Subparagraph B. below.

//

1 B. ADMINISTRATOR may amend the Total Amount Not to Exceed by an amount not to exceed  
2 ten percent (10%) of Period One funding for this Contract.

3  
4 **XIX. MINIMUM WAGE LAWS**

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

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

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

19  
20 **XX. NONDISCRIMINATION**

21 **A. EMPLOYMENT**

22 1. During the term of this Contract, CONTRACTOR and its Covered Individuals (as defined  
23 in the "Compliance" paragraph of this Contract) shall not unlawfully discriminate against any employee  
24 or applicant for employment because of his/her race, religious creed, color, national origin, ancestry,  
25 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,  
26 gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally,  
27 during the term of this Contract, CONTRACTOR and its Covered Individuals shall require in its  
28 subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for  
29 employment because of his/her race, religious creed, color, national origin, ancestry, physical disability,  
30 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,  
31 gender expression, age, sexual orientation, or military and veteran status.

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

36 //  
37 //

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

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

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

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

18 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not  
19 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities  
20 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental  
21 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender  
22 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the  
23 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights  
24 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division  
25 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information  
26 Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and  
27 regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all  
28 may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination  
29 paragraph, discrimination includes, but is not limited to the following based on one or more of the  
30 factors identified above:

- 31 1. Denying a Client or potential Client any service, benefit, or accommodation.
- 32 2. Providing any service or benefit to a Client which is different or is provided in a different  
33 manner or at a different time from that provided to other Clients.
- 34 3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by  
35 others receiving any service and/or benefit.

36 //  
37 //

1 4. Treating a Client differently from others in satisfying any admission requirement or  
2 condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
3 any service and/or benefit.

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

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

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

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

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

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

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

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

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

37 //



**XXI. NOTICES**

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract 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 Contract 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 Contract 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 Contract, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

**XXII. NOTIFICATION OF DEATH**

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

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

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

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

### 7 **XXIII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

### 16 **XXIV. PATIENT'S RIGHTS**

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

21 B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an  
22 internal grievance processes approved by ADMINISTRATOR, to which the beneficiary shall have  
23 access.  
24

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

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

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

37 //

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

3  
4 **XXV. RECORDS MANAGEMENT AND MAINTENANCE**

5 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term  
6 of this Contract, prepare, maintain and manage records appropriate to the services provided and in  
7 accordance with this Contract and all applicable requirements.

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

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

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

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

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

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

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

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

35 F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,  
36 billings, and revenues available at one (1) location within the limits of the County of Orange. If  
37 CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide



1 written approval to CONTRACTOR to maintain records in a single location, identified by  
2 CONTRACTOR.

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

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

10 1. The medical records and billing records about individuals maintained by or for a covered  
11 health care provider;

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

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

15 I. CONTRACTOR may retain client, and/or patient documentation electronically in accordance  
16 with the terms of this Contract and common business practices. If documentation is retained  
17 electronically, CONTRACTOR shall, in the event of an audit or site visit:

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

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

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

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

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

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

### 34 **XXVI. RESEARCH AND PUBLICATION**

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

**XXVII. REVENUE**

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

B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Contract 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 Contract.

**XXVIII. SEVERABILITY**

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

**XXIX. SPECIAL PROVISIONS**

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

- 1. Making cash payments to intended recipients of services through this Contract.
- 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.

//

1 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for  
2 CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of  
3 Directors or governing body.

4 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing  
5 body for expenses or services.

6 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,  
7 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized  
8 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.

9 7. Paying an individual salary or compensation for services at a rate in excess of the current  
10 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary  
11 Schedule may be found at [www.opm.gov](http://www.opm.gov).

12 8. Severance pay for separating employees.

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

15 10. Supplanting current funding for existing services.

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

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

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

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

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

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

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

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

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

31  
32 **XXX. STATUS OF CONTRACTOR**

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

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

### 7 8 **XXXI. TERM**

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

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

### 17 18 **XXXII. TERMINATION**

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

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

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

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

37 //

1 6. The continued incapacity of any physician or licensed person to perform duties required  
2 pursuant to this Contract.

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

7 D. CONTINGENT FUNDING

8 1. Any obligation of COUNTY under this Contract is contingent upon the following:

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

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

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

17 E. In the event this Contract is suspended or terminated prior to the completion of the term as  
18 specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its  
19 sole discretion, reduce the Total Amount Not To Exceed of this Contract to be consistent with the  
20 reduced term of the Contract.

21 F. In the event this Contract is terminated CONTRACTOR shall do the following:

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

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

26 3. Until the date of termination, continue to provide the same level of service required by this  
27 Contract.

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

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

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

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

37 //

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

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

11 G. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days' written  
12 notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be  
13 exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.

14  
15 **XXXIII. THIRD PARTY BENEFICIARY**

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

19  
20 **XXXIV. WAIVER OF DEFAULT OR BREACH**

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

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

3  
4 EXTENDED CARE HOSPITAL OF WESTMINSTER

5  
6 BY: DocuSigned by:  
George Rodes  
EF4F66A846504AB... DATED: 4/6/2021

7  
8  
9 TITLE: Chief Financial Officer

10  
11  
12  
13  
14  
15  
16 COUNTY OF ORANGE

17  
18  
19 BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
20 HEALTH CARE AGENCY

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

26  
27 BY: DocuSigned by:  
Brittany McLean  
9713A4061D4343D... DATED: 4/6/2021  
28 DEPU I Y

29  
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32  
33  
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the  
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer  
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution  
37 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 CONTRACT FOR PROVISION OF  
3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
4 SPECIAL TREATMENT PROGRAM SERVICES

5  
6 BETWEEN  
7 COUNTY OF ORANGE  
8 AND  
9 EXTENDED CARE HOSPITAL OF WESTMINSTER  
10 JULY 1, 2021 THROUGH JUNE 30, 2024

11  
12 **I. COMMON TERMS AND DEFINITIONS**

13 A. The Parties agree to the following terms and definitions, and to those terms and definitions  
14 which, for convenience, are set forth elsewhere in the Contract.

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

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

20 3. Client or Consumer means an individual, referred by COUNTY or enrolled in  
21 CONTRACTOR's program for services under this Contract, who is dealing with a chronic mental  
22 illness.

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

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

31 6. Medical Necessity means the requirements as defined in the MHP Medical Necessity for  
32 Medi-Cal reimbursed Specialty Mental Health Services that includes Diagnosis, Impairment Criteria and  
33 Intervention Related Criteria.

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

37 //



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

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

11 c. Rehabilitation Service means an activity which includes assistance in improving,  
12 maintaining, or restoring a Client's or group of Clients' functional skills, daily living skills, social and  
13 leisure skills, grooming and personal hygiene skills, meal preparation skills, support resources and/or  
14 medication education.

15 d. Therapy means a service activity which is a therapeutic intervention that focuses  
16 primarily on symptom reduction as a means to improve functional impairments. Therapy may be  
17 delivered to an individual or group of beneficiaries which may include family therapy in which the  
18 beneficiary is present.

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

21 9. NPI means the standard unique health identifier that was adopted by the Secretary of HHS  
22 under HIPAA for health care providers. All HIPAA covered healthcare providers, individuals and  
23 organizations must obtain a NPI for use to identify themselves in HIPAA standard transactions. The  
24 NPI is assigned for life.

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

27 11. PHI means individually identifiable health information usually transmitted by electronic  
28 media, maintained in any medium as defined in the regulations, or for an entity such as a health plan,  
29 transmitted or maintained in any other medium. It is created or received by a covered entity and relates  
30 to the past, present, or future physical or mental health or condition of an individual, provision of health  
31 care to an individual, or the past, present, or future payment for health care provided to an individual.

32 12. Psychiatrist means an individual who meets the minimum professional and licensure  
33 requirements set forth in Title 9, CCR, Section 623.

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

36 14. Recovery means a "deeply personal, unique process of changing one's attitudes, values,  
37 feelings, goals, skills and/or roles. It is a way of living a satisfying, hopeful and contributing life even

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

6 15. Referral means providing the effective linkage of a Client to another service, when  
7 indicated; with follow-up to be provided within five (5) working days to assure that the Client has made  
8 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 means additional cash benefits to supplement the federal SSI payment.

16 19. Unit of Service means one (1) calendar day during which CONTRACTOR provides all of  
17 the SNF-STP described hereunder, which day shall begin at twelve o’clock midnight. The number of  
18 billable Units of Service shall include the day of admission and exclude the day of discharge unless  
19 admission and discharge occur on the same day.

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

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

27 **II. BUDGET**

28 The following budget is set forth for informational purposes only and may be adjusted by mutual  
29 written agreement of CONTRACTOR and ADMINISTRATOR. CONTRACTOR and  
30 ADMINISTRATOR may mutually agree, in writing, to modify the Budget Paragraph of this Exhibit A  
31 to the Contract.

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	PERIOD	PERIOD	PERIOD	TOTAL
	<u>ONE</u>	<u>TWO</u>	<u>THREE</u>	
PROGRAM COSTS				
Westminster	\$ 6,493,394	\$ 6,654,864	\$ 6,821,202	\$19,969,460
West Anaheim	<u>6,388,498</u>	<u>6,528,982</u>	<u>6,672,546</u>	<u>19,590,026</u>
TOTAL PROGRAM COSTS	\$12,881,892	\$13,183,846	\$13,493,748	\$39,559,486
COUNTY FUNDED COSTS				
Westminster	\$ 2,687,050	\$ 2,767,662	\$ 2,850,692	\$8,305,404
West Anaheim	<u>1,842,556</u>	<u>1,897,832</u>	<u>1,954,765</u>	<u>5,695,153</u>
TOTAL COUNTY FUNDED COSTS	\$4,529,606	\$4,665,494	\$4,805,457	\$14,000,557
PROVIDER REVENUE				
Projected Medi-Cal Revenue	\$8,107,286	\$8,228,352	\$8,388,291	\$24,723,929
Prior Years Excess Revenue	<u>275,000</u>	<u>290,000</u>	<u>300,000</u>	<u>\$ 865,000</u>
TOTAL MEDICAL REVENUE	\$8,382,286	\$8,518,352	\$8,688,291	\$25,588,929
TOTAL COUNTY AMOUNT NOT TO EXCEED	\$4,529,606	\$4,665,494	\$4,805,457	\$14,000,557

### **III. ISSUE RESOLUTION**

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

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

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 concern related to the obligations under the Contract. ADMINISTRATOR shall have fifteen (15) 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.

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 to COUNTY’s Director of Behavioral Health Services for final resolution.

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

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

**IV. 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 Total Amount Not to Exceed specified in the Referenced Contract Provisions of the Contract:

1. Period One: three hundred seventy-seven thousand four hundred sixty-seven dollars (\$377,467) per month for the period July 1, 2021 through June 30, 2022.

2. Period Two: three hundred eighty-eight thousand seven hundred ninety-one dollars (\$388,791) per month for the period July 1, 2022 through June 30, 2023.

3. Period Three: four hundred thousand four hundred fifty-four dollars and seventy-five cents (\$400,454.75) per month for the period July 1, 2023 through June 30, 2024.

B. If the Contract 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.

Period	Westminster	West Anaheim
FY 2021-22	\$7,361.78	\$5,048.09
FY 2022-23	\$7,582.64	\$5,199.54
FY 2023-24	\$7,810.12	\$5,355.52

C. CONTRACTOR's invoices shall be on a form approved or supplied by ADMINISTRATOR and shall 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 thirty (30) days after receipt of a correctly completed invoice. Failure to comply with any of the provisions of the Contract may result in ADMINISTRATOR delaying or withholding any payment to CONTRACTOR.

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1 D. REVENUE

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

5 2. "Period One Revenue" means revenue actually received during period of July 1, 2021  
6 through June 30, 2022, which revenue is anticipated by the Parties to be \$8,107,286.

7 3. "Period Two Revenue" means revenue actually received during period of July 1, 2022  
8 through June 30, 2023, which revenue is anticipated by the Parties to be \$8,228,352.

9 4. "Period Three Revenue" means revenue actually received during period of July 1, 2023  
10 through June 30, 2024, which revenue is anticipated by the Parties to be \$8,388,291.

11 5. "Total Revenue" means the total of Revenues received during Period One through Period  
12 Three.

13 6. Prior Years' Excess Revenue:

14 a. CONTRACTOR has agreed to utilize prior years' excess revenue, to offset proposed  
15 program costs for the period July 1, 2021 through June 30, 2024.

16 b. "Prior Years' Excess Revenue" for Period One means the amount of revenue generated  
17 above \$7,830,793, for the period July 1, 2020 through June 30, 2021. It is anticipated this amount will  
18 be \$275,000.

19 c. "Prior Years' Excess Revenue" for Period Two means the amount of revenue generated  
20 above \$ 8,007,286 for the period July 1, 2021 through June 30, 2022. It is anticipated this amount will  
21 be \$290,000.

22 d. "Prior Years' Excess Revenue" for Period Three means the amount of revenue  
23 generated above \$8,228,352 for the period July 1, 2022 through June 30, 2023. It is anticipated this  
24 amount will be \$300,000.

25 e. If the Total Revenue received by CONTRACTOR is greater than \$24,723,929, for FY  
26 July 1, 2021 through June 30, 2024, then the excess shall be either paid to COUNTY or included in  
27 whole or in part in a subsequent contract between COUNTY and CONTRACTOR and deemed as Prior  
28 Years' Excess Revenue and separately identified as such.

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

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

37 //

1 h. In the event that this Contract terminates before June 30, 2024, the Revenues and Total  
2 Revenue stipulated in Payment subparagraph above shall be proportionately modified by  
3 ADMINISTRATOR, based upon the number of days this Contract was in effect.

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

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

13 G. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply  
14 with any provision of this Contract.

15 H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
16 Payments Paragraph of this Exhibit A to the Contract.

17  
18 **V. QUALITY IMPROVEMENT**

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

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

29 C. CONTRACTOR shall allow ADMINISTRATOR to participate in utilization review and quality  
30 improvement activities.

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

33  
34 **VI. RECORDS**

35 A. CLIENT RECORDS - CONTRACTOR shall maintain adequate medical records on each  
36 individual Client which shall include legal status; diagnosis; psychiatric evaluation; medical history;  
37 individual treatment plan; records of Client interviews; progress notes; recommended continuing care



1 plan; discharge summary and records of service provided by various professional and paraprofessional  
2 personnel in sufficient detail to permit an evaluation of services.

3 B. FINANCIAL RECORDS - CONTRACTOR shall prepare and maintain accurate and complete  
4 financial records of its cost and operating expenses. Such records shall reflect the actual cost of the type  
5 of service for which payment is claimed. Any apportionment of or distribution of costs, including  
6 indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and  
7 shall be made in accordance with generally accepted principles of accounting, the CRDC Manual, and  
8 Medicare regulations. The Client eligibility determination and fee charged to and collected from  
9 Clients, together with a record of all billings rendered and revenues received from any source, on behalf  
10 of Clients treated pursuant to the Contract, must be reflected in CONTRACTOR's financial records.

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

15 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
16 Records Paragraph of this Exhibit A to the Contract.

## 17 18 **VII. REPORTS**

### 19 **A. PROGRAMMATIC**

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

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

29 2. CONTRACTOR shall submit quarterly performance outcomes as requested by  
30 ADMINISTRATOR.

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

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

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

3  
4 **VIII. SERVICES**

5 **A. FACILITIES**

6 Services shall be provided in secure facilities located at:

7		
8	Westminster Facility	West Anaheim Facility
9	206 Hospital Circle	645 South Beach Blvd.
10	Westminster, CA 92683	Anaheim, CA 92804

11  
12 **1. WESTMINSTER FACILITY**

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

18 b. CONTRACTOR shall provide the following additional space:

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

23 **2. WEST ANAHEIM FACILITY**

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

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

- 28 1) Patio areas.
- 29 2) A dining area for ambulatory mental health Clients located outside of the areas  
30 described above.
- 31 3) Storage areas.

32 **B. PERSONS TO BE SERVED**

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

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

1 admission criteria approved by DHCS and the “Admission of Patient’s” guidelines under Title 22,  
2 Sections 72515 (a)-(b).

3 3. CONTRACTOR shall not refuse admission of Clients if they meet all of the admission  
4 criteria identified above. CONTRACTOR shall provide written documentation to ADMINISTRATOR  
5 with justification for any Client denied admission referred by the Crisis Stabilization at the time of  
6 denial.

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

10 5. CONTRACTOR shall provide services in a non-discriminatory manner and ensure that  
11 equal access is provided to all beneficiaries representative of the County population.

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

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

19 b. Resistance to medication treatment, non-compliance with medications, and resistance  
20 to treatment programming.

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

24 d. Special cultural and language needs that prevent adequate treatment in traditional  
25 treatment settings.

26 C. SERVICES

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

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

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

35 3. Clients with SNF-STP services pursuant to the Contract and as required by Title  
36 22, Sections 72443 through 72457, of the CCR, which shall include therapeutic services, including  
37 prevocational preparation and discharge planning, provided to mentally disordered persons having

1 special needs in one or more of the following general areas: self-help skills, behavior adjustment, and  
 2 interpersonal relationships. CONTRACTOR shall provide or arrange for:

- 3 a. History and physical examination of each Client within seventy-two (72) hours of  
 4 admission;
- 5 b. Psychiatric history, current DSM diagnosis and evaluation;
- 6 c. Diagnostic information for treatment authorization request;
- 7 d. Individual treatment plan;
- 8 e. Medication orders;
- 9 f. Psychiatric and psychological services compatible with individual treatment plans;
- 10 g. Facilitation in accessing Client health plans, primary care physicians, CalOptima, et al;
- 11 h. Discharge planning and continuing care services;
- 12 i. Clinical and neurological laboratory services;
- 13 j. Radiology services;
- 14 k. Pharmaceutical services;
- 15 l. Financial evaluation of each Client;
- 16 m. Determination of each Client's Medi-Cal eligibility;
- 17 n. Collection of fees and private insurance revenue;
- 18 o. Compliance with all rules and regulations of DHCS regarding the care and treatment of  
 19 Clients admitted under the program, pursuant to the Contract, and to the extent not inconsistent with  
 20 COUNTY rules and regulations;
- 21 p. Monitoring of the condition of each Client receiving services pursuant to the Contract,  
 22 and assessment of the appropriateness of Client's continued placement in CONTRACTOR's facility; and
- 23 q. Documentation of evaluations, treatment, and care provided to each Client and  
 24 provision of on-going assessment of the status of each Client receiving services pursuant to the Contract.

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

- 28 a. Individualized psychiatric medication regimen tailored to the Client's history of poor  
 29 medication response, designed with a goal of maximum psychiatric symptom reduction, so that the  
 30 Client can participate in other rehabilitative services.
- 31 b. Individualized programming based on specific Client needs identified through an  
 32 interdisciplinary Client assessment.
- 33 c. Treatment modalities which focus on rehabilitative efforts such as personal care and  
 34 social skills training, pre-vocational and educational opportunities, self-awareness and self-help  
 35 strategies for coping with the symptoms of a Client's mental illness, recreational therapy and activities,  
 36 and medication management.

37 //

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

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

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

14 6. CONTRACTOR shall provide services pursuant to the Contract in a manner that is  
15 culturally and linguistically appropriate for the population served. CONTRACTOR shall maintain  
16 documentation of such efforts which may include, but not be limited to:

17 a. Records of participation of COUNTY sponsored or other applicable training;  
18 b. Recruitment and hiring policies and procedures;  
19 c. Copies of literature in multiple languages and formats, as appropriate; and  
20 d. Descriptions of measures taken to enhance accessibility for, and sensitivity to, persons  
21 who are physically challenged.

22 7. CONTRACTOR shall meet the requirements set forth in Title 22 of the CCR to be certified  
23 to provide a STP.

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

27 a. Direct Services  
28 1) Room and dietetic services;  
29 2) Nursing services, including drug administration and Client care; and  
30 3) Client activity program, including arranging for Client transportation for activities  
31 outside of facility.

32 b. Support Services  
33 1) Housekeeping;  
34 2) Laundry;  
35 3) Maintenance;  
36 4) Medical records;  
37 5) Drug order processing;

7) Provision for emergency medical and ancillary services; and

8) Arrange for transportation to and from medical appointments.

9. COUNTY shall pay for ambulance or medical van transportation to another mental health facility in accordance with COUNTY's Medical Transportation Contract. CONTRACTOR shall provide an accompanying escort with Client if a return trip is intended.

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

D. UOS shall be one (1) calendar day during which services are provided under the Contract to a Client. The day of admission is included; the day of discharge is excluded. If both admission and discharge occur on the same day, the day is considered a day of admission and counts as a full day. UOS under the Contract totals forty-six (46) beds per day at the Westminster TRC for a total of sixteen thousand eight hundred thirty-six (16,836) annually, and fifty-one (51) beds per day at West Anaheim TRC for a total of eighteen thousand six hundred sixty-six (18,666) annually.

E. PERFORMANCE OUTCOMES

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

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

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

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

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

**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:

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//



1	WESTMINSTER TRC	FTEs
2	Director of Nursing	1.00
3	Registered Nurse	1.00
4	Licensed Vocational Nurse	7.00
5	Certified Nursing Assistant	17.40
6	O.T. Activity Assistant	2.00
7	Ward Clerk	1.00
8	Program Director	1.00
9	Social Worker	1.00
10	Mental Health Worker/MH Spec	10.00
11	Peer Mentor/Mental Health Spec	0.50
12	Clerk/Typist	1.00
13	Subcontractor	<u>TBD</u>
14	TOTAL FTEs	42.90
15		
16	WEST ANAHEIM TRC	FTEs
17	Director of Nursing	1.00
18	Licensed Vocational Nurse	9.50
19	Certified Nursing Assistant	18.00
20	O.T. Activity Assistant	2.00
21	Ward Clerk	1.50
22	Program Director	1.00
23	Social Worker	1.40
24	Mental Health Worker/MH Spec	7.00
25	Peer Mentor/Mental Health Spec	0.50
26	Clerk Typist	1.00
27	Van Driver	1.00
28	Subcontractor	<u>TBD</u>
29	TOTAL FTEs	43.90
30		

31 B. CONTRACTOR shall provide appropriate administrative and clerical staff to support the  
32 staffing and services provided under the Contract.

33 C. CONTRACTOR shall include bilingual/bicultural services to meet the needs of threshold  
34 languages as determined by COUNTY. Whenever possible, bilingual/bicultural therapists should be  
35 retained. Any clinical vacancies occurring at a time when bilingual and bicultural composition of the  
36 clinical staffing does not meet the above requirement must be filled with bilingual and bicultural staff  
37 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  
2 Staffing Paragraph of this Exhibit A to the Contract.

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1 EXHIBIT B  
2 CONTRACT 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, 2021 THROUGH JUNE 30, 2024  
10

11 **I. BUSINESS ASSOCIATE CONTRACT**

12 **A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

1 CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the  
2 Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and  
3 electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

4 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

33 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in  
34 45 CFR § 164.501.

35 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in  
36 45 CFR § 160.103.

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

3 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in  
4 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance  
5 with 45 CFR § 164.502(g).

6 8. "Physical Safeguards" are physical measures, policies, and procedures to protect  
7 CONTRACTOR's electronic information systems and related buildings and equipment, from natural  
8 and environmental hazards, and unauthorized intrusion.

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

11 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in  
12 45 CFR § 160.103.

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

15 12. "Secretary" shall mean the Secretary of the Department of HHS or his or her designee.

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

21 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of ePHI at  
22 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

23 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in  
24 45 CFR § 160.103.

25 16. "Technical safeguards" means the technology and the P&Ps for its use that protect  
26 electronic PHI and control access to it.

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

30 18. "Use" shall have the meaning given to such term under the HIPAA regulations in  
31 45 CFR § 160.103.

32 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

7 D. SECURITY RULE

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

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

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

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

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

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

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

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

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

4           E. DATA SECURITY REQUIREMENTS

5           1. Personal Controls

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

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

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

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

31           2. Technical Security Controls

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

37 //

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

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

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

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

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

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

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

1 3) Arabic numerals (0-9)

2 4) Non-alphanumeric characters (punctuation symbols)

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

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

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

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

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

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

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

37 3. Audit Controls



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

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

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

#### 14 4. Business Continuity/Disaster Recovery Control

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

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

#### 27 5. Paper Document Controls

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

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

37 //



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

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

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

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

19 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

11 1) The Disclosure is required by law; or

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

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

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

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

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

26 H. PROHIBITED USES AND DISCLOSURES

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

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

36 I. OBLIGATIONS OF COUNTY

37 //

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

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

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

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

12 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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1 EXHIBIT C  
2 TO CONTRACT FOR PROVISION OF  
3 ADULT MENTAL HEALTH SKILLED NURSING FACILITY WITH  
4 SPECIAL TREATMENT PROGRAM SERVICES

5  
6 BETWEEN  
7 COUNTY OF ORANGE  
8 AND  
9 EXTENDED CARE HOSPITAL OF WESTMINSTER  
10 JULY 1, 2021 THROUGH JUNE 30, 2024

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

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

15 A. DEFINITIONS

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

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

20 3. "CMPPA Contract" means the CMPPA Contract between the SSA and CHHS.

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

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

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

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

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

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



1 participation with respect to health care providers participating in the program, and statutes or  
2 regulations that require the production of information, including statutes or regulations that require such  
3 information if payment is sought under a government program providing public benefits.

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

#### 7 B. TERMS OF CONTRACT

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

#### 12 2. Responsibilities of CONTRACTOR

13 CONTRACTOR agrees:

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

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

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

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

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

35 3) If the data obtained by CONTRACTOR from COUNTY includes PII,  
36 CONTRACTOR shall also comply with the substantive privacy and security requirements in the  
37 CMPPA Contract between the SSA and the CHHS and in the Contract between the SSA and DHCS,



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

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

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

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

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

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

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

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36 //  
37 //