

AMENDMENT NO. 2 TO

MEDI-CAL MENTAL HEALTH MANAGED CARE
PSYCHIATRIC INPATIENT HOSPITAL SERVICES

BETWEEN

COUNTY OF ORANGE

AND

PROVIDER NAME

JULY 1, 2017 THROUGH JUNE 30, 2022~~0~~

THIS AGREEMENT entered into this 1st day of July 2021~~17~~ (effective date), is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and PROVIDER NAME, a California for profit corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

W I T N E S S E T H :

WHEREAS, on May 09, 2017, the Board of Supervisors (Board) approved the Master Agreement No. MA-042-20011214 with various providers for Medi-Cal Mental Health Managed Care Psychiatric Inpatient Hospital Services, effective July 1, 2017 through June 30, 2020, for negotiated rates that are paid directly by the California Department of Health Care Services (DHCS) through the annual state allocations for Orange County, renewable for two additional one-year periods (“Contract”); and

~~WHEREAS, the Parties now desire to enter into this Amendment No. 1 to renew the Contract with various providers for one year, renewable for one additional one-year period, for County to continue receiving and providers to continue providing the services set forth in the Contract and to amend the Standard language paragraphs of the Contract due to required regulatory language and changes needed for the term of the Contract; and~~

WHEREAS, the Parties executed Amendment No. 1 on June 2, 2020 to renew the Contract with various providers for one year, effective July 1, 2020 through June 30, 2021 renewable for one additional one-year period and to amend the Standard language paragraphs of the Contract due to required regulatory language and changes needed for the renewed term of the Contract; and

WHEREAS, the Parties now desire to enter into this Amendment No. 2 to amend Exhibit A and to renew the Contract for the final one year term for County to continue receiving and Contractor to continue providing the services set forth in the Contract.

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

1. The Contract is renewed for final term of one (1) year, effective July 1, 2021 through June 30, 2022, on the amended term and conditions and for the negotiated rates of ### for this renewal period that are paid directly by DHCS and the Administrative Day Rate is set and determined by DHCS.

2. Exhibit A, Paragraph VI. Services, subparagraph C., of the Contract is deleted in its entirety and replaced with the following:

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

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CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
Title Page	1
Contents	2
Referenced Contract Provisions	4
I. Acronyms	6 ⁵
II. Alteration of Terms	7 ⁶
III. Assignment of Debts	7 ⁶
IV. Compliance	8 ⁷
V. Confidentiality	13 ¹²
VI. Delegation, Assignment and Subcontracts	12 ¹¹
VII. Employee Eligibility Verification	14 ¹³
VIII. Facilities, Payments and Services	16 ¹⁵
IX. Indemnification and Insurance	16 ¹⁵
X. Inspections and Audits	20
XI. Licenses and Laws	22 ²¹
XII. Literature, Advertisements, and Social Media	23
XIII. Minimum Wage Law	24 ²³
XIV. Nondiscrimination	24
XV. Notices	27 ²⁶
XVI. Notification of Death	27
XVII. Notification of Public Events and Meetings	28
XVIII. Records Management and Maintenance	<u>Error!</u>
<u>Bookmark not defined.</u>	28
XIX. Research and Publication	30
XX. Revenue	30
XXI. Severability	31
XXII. Special Provisions	31
XXIII. Status of Contractor	32
XXIV. Term	32
XXV. Termination	32 ³³
XXVI. Third Party Beneficiary	34 ³⁵
XXVII. Waiver of Default or Breach	34 ³⁵
Signature Page	35 ³⁶

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36 //
37 //

CONTENTS

	<u>PAGE</u>
<u>EXHIBIT A</u>	
I. Common Terms and Definitions	1
II. Issue Resolution.....	4
III. Patient’s Rights.....	5
IV. Payments	6
V. Reports	9 ¹⁰
VI. Services	10
VII. Staffing.....	15
 <u>EXHIBIT B</u>	
I. Business Associate Contract	1
 <u>EXHIBIT C</u>	
I. Personal Information Privacy and Security Contract.....	1

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REFERENCED CONTRACT PROVISIONS

MASTER AGREEMENT Term: July 1, 2017 through June 30, 2021

Period One means the period from July 1, 2017 through June 30, 2018

Period Two means the period from July 1, 2018 through June 30, 2019

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

Period Four means the period from July 1, 2020 through June 30, 2021

Basis for Reimbursement: Negotiated Rate Amount

Payment Method: Direct Reimbursement from Department of Health Care Services

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: PROVIDER NAME
ADDRESS
CITY, STATE, ZIP CODE
AUTHORIZED SIGNATURE NAME, TITLE
E-MAIL ADDRESS

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I. ACRONYMS

3

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

4

5

A. ABC Allied Behavioral Care

6

B. AES Advanced Encryption Standards

7

C. ARRA American Recovery and Reinvestment Act

8

D. BBS Board of Behavioral Sciences

9

E. BCP Business Continuity Plan

10

F. CCC California Civil Code

11

G. CCR California Code of Regulations

12

H. CD/DVD Compact Disc/Digital Video or Versatile Disc

13

I. CYBH Children and Youth Behavioral Health

14

J. CEO County Executive Office

15

K. CFR Code of Federal Regulations

16

L. CHHS California Health and Human Services Agency

17

M. CHPP COUNTY HIPAA Policies and Procedures

18

N. CIPA California Information Practices Act

19

O. CMPPA Computer Matching and Privacy Protection

20

P. COI Certificate of Insurance

21

Q. DHCS Department of Health Care Services

22

R. DoD Department of Defense

23

S. DRP Disaster Recovery Plan

24

T. DRS Designated Record Set

25

U. DSM Diagnostic and Statistical Manual of Mental Disorders

26

V. E-Mail Electronic Mail

27

W. EHR Electronic Health Record

28

X. ePHI Electronic Protected Health Information

29

Y. FIPS Federal Information Processing Standards

30

Z. GAAP Generally Accepted Accounting Principles

31

AA. HCA Health Care Agency

32

AB. HHS Health and Human Services

33

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

34

35

AD. HSC California Health and Safety Code

36

AE. IEA Information Exchange Agreement

37

AF. ISO Insurance Services Office

1	AG. MHIS	Mental Health Inpatient Services
2	AH. NPI	National Provider Identifier
3	AI. NPP	Notice of Privacy Practices
4	AJ. OIG	Office of Inspector General
5	AK. OMB	Office of Management and Budget
6	AL. OPM	Federal Office of Personnel Management
7	AM. P&P	Policies and Procedures
8	AN. PC	State of California Penal Code
9	AO. PHI	Protected Health Information
10	AP. PII	Personally Identifiable Information
11	AQ. PRA	Public Record Act
12	AR. SIR	Self-Insured Retention
13	AS. SSA	Social Services Agency
14	AT. TAR	Treatment Authorization Request
15	AU. HITECH Act	Health Information Technology for Economic and Clinical Health Act, Public Law 111-005
16		
17	AV. UMDAP	Universal Method of Determining Ability to Pay
18	AW. UOS	Unit of Service
19	AX. USC	United States Code
20	AY. WIC	State of California Welfare and Institutions Code

II. ALTERATION OF TERMS

A. This Agreement, 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 Agreement.

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

III. ASSIGNMENT OF DEBTS

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

1 | behalf of said persons, shall be immediately given to COUNTY.

2 | **IV. COMPLIANCE**

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

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

9 | 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
10 | compliance program, code of conduct and any compliance related policies and procedures.
11 | CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall
12 | be verified by ADMINISTRATOR's Compliance Department to ensure they include all required
13 | elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to
14 | this Agreement. These elements include:

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

22 | 3. If CONTRACTOR does not provide proof of its own compliance program to
23 | ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
24 | Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within
25 | thirty (30) calendar days of execution of this Agreement a signed acknowledgement that
26 | CONTRACTOR will internally comply with ADMINISTRATOR's Compliance Program and Code of
27 | Conduct. CONTRACTOR shall have as many Covered Individuals it determines necessary complete
28 | ADMINISTRATOR's annual compliance training to ensure proper compliance.

29 | 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any
30 | Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR
31 | shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures
32 | to ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
33 | ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
34 | reasonable time, which shall not exceed forty-five (45) calendar days, and determine if contractor's
35 | proposed compliance program and code of conduct contain all required elements to the
36 | ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
37 | Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and

1 CONTRACTOR shall revise its compliance program and code of conduct to meet
2 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
3 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

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

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

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

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

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

33 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors monthly to
34 ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its
35 subcontractors use their best efforts to verify that they are eligible to participate in all federal and State
36 of California health programs and have not been excluded or debarred from participation in any federal
37 or state health care programs, and to further represent to CONTRACTOR that they do not have any

1 Ineligible Person in their employ or under contract.

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

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

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

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

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

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

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

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

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

35 //

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

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

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

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

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

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

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

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

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

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

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

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

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

34 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural
 35 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural
 36 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
 37 §1810.410.subds. (c)- (d).

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

8 **V. CONFIDENTIALITY**

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

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

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

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

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

32 **VI. CONFLICT OF INTEREST**

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

1 providing or offering gifts, entertainment, payments, loans or other considerations which could be
 2 deemed to influence or appear to influence COUNTY staff or elected officers in the performance of
 3 their duties.

5 **VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

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

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

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

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

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

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

1 dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a
 2 reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be
 3 brought to the attention of the County Purchasing Agent by way of the following process:

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

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

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

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

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

28 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

29 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and
 30 regulations regarding the employment of aliens and others and to ensure that employees, subcontractors,
 31 and consultants performing work under this Agreement meet the citizenship or alien status requirements
 32 set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
 33 subcontractors, and consultants performing work hereunder, all verification and other documentation of
 34 employment eligibility status required by federal or state statutes and regulations including, but not
 35 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
 36 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for
 37

1 all covered employees, subcontractors, and consultants for the period prescribed by the law.

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4 **X. FACILITIES, PAYMENTS AND SERVICES**

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

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

16
17 **XI. INDEMNIFICATION AND INSURANCE** **A.** CONTRACTOR agrees to indemnify,
18 defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed
19 officials, officers, employees, agents and those special districts and agencies for which COUNTY's
20 Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any
21 claims, demands or liability of any kind or nature, including but not limited to personal injury or
22 property damage, arising from or related to the services, products or other performance provided by
23 CONTRACTOR pursuant to this Agreement. If judgment is entered against CONTRACTOR and
24 COUNTY by a court of competent jurisdiction because of the concurrent active negligence of
25 COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be
26 apportioned as determined by the court. Neither Party shall request a jury apportionment.

27 **B.** COUNTY agrees to indemnify, defend and hold CONTRACTOR, its officers, employees,
28 agents, directors, members, shareholders and/or affiliates harmless from any claims, demands, including
29 defense costs, or liability of any kind or nature, including but not limited to personal injury or property
30 damage, arising from or related to the services, products or other performance provided by COUNTY
31 pursuant to this Agreement. If judgment is entered against COUNTY and CONTRACTOR by a court of
32 competent jurisdiction because of the concurrent active negligence of CONTRACTOR, COUNTY and
33 CONTRACTOR agree that liability will be apportioned as determined by the court. Neither party shall
34 request a jury apportionment.

35 **C.** Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
36 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary
37 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.

1 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
 2 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
 3 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
 4 subject to the same terms and conditions as set forth herein for CONTRACTOR.

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

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

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

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

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

28 F. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of
 29 this Agreement, the COUNTY may terminate this Agreement.

30 G. QUALIFIED INSURER

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

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

1 performance and financial ratings.

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

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

24 I. REQUIRED COVERAGE FORMS

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

27 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00
28 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

29 J. REQUIRED ENDORSEMENTS

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

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

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

1 insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

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

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

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

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

19 N. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
20 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
21 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
22 breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to suspend or terminate
23 this Agreement.

24 O. If CONTRACTOR’s Professional Liability, and Network Security & Privacy Liability are
25 “Claims-Made” policies, CONTRACTOR shall agree to maintain coverage for two (2) years following
26 the completion of the Agreement.

27 P. The Commercial General Liability policy shall contain a “severability of interests” clause also
28 known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

29 Q. Insurance certificates should be forwarded to the agency/department address listed on the
30 solicitation.

31 //

32 //

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

36 S. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
37 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or

1 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
2 adequately protect COUNTY.

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

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

11 V. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

35 XII. **INSPECTIONS AND AUDITS**

36 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
37 of the State of California, the Secretary of the United States Department of Health and Human Services,

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

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

12 a. Level and quality of care, including the necessity and appropriateness of the services
 13 provided.

14 b. Internal procedures for assuring efficiency, economy, and quality of care.

15 c. Compliance with COUNTY Client Grievance Procedures.

16 d. Financial records when determined necessary to protect public funds.

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

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

25 C. AUDIT RESPONSE

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

31 //

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

1 amount not to exceed the reimbursement due COUNTY.

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

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

11 **XIII. LICENSES AND LAWS**

12 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
13 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
14 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
15 required by the laws, regulations and requirements of the United States, the State of California,
16 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
17 ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the
18 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
19 and exemptions. Said inability shall be cause for termination of this Agreement

20 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

21 1. CONTRACTOR certifies it is in full compliance with all applicable federal and State
22 reporting requirements regarding its employees and with all lawfully served Wage and Earnings
23 Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the
24 term of the Agreement with the County of Orange. Failure to comply shall constitute a material breach
25 of the Agreement and failure to cure such breach within sixty (60) calendar days of notice from the
26 COUNTY shall constitute grounds for termination of the Agreement.

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

29 //

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

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

35 3. It is expressly understood that this data will be transmitted to governmental agencies
36 charged with the establishment and enforcement of child support orders, or as permitted by federal
37

1 and/or state statute.

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

- 5 1. ARRA of 2009.
- 6 2. Trafficking Victims Protection Act of 2000.
- 7 3. WIC, Division 5, Community Mental Health Services.
- 8 4. WIC, Division 6, Admissions and Judicial Commitments.
- 9 5. WIC, Division 7, Mental Institutions.
- 10 6. HSC, §§1250 et seq., Health Facilities.
- 11 7. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 12 8. CCR, Title 9, Rehabilitative and Developmental Services.
- 13 9. CCR, Title 17, Public Health.
- 14 10. CCR, Title 22, Social Security.
- 15 11. CFR, Title 42, Public Health.
- 16 12. CFR, Title 45, Public Welfare.
- 17 13. USC Title 42, Public Health and Welfare.
- 18 14. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 19 15. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 20 16. 42 USC §1857, et seq., Clean Air Act.
- 21 17. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 22 18. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 23 19. Policies and procedures set forth in Mental Health Services Act.
- 24 20. Policies and procedures set forth in DHCS Letters.
- 25 21. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 26 22. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
27 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 28 23. 42 CFR, Section 438, Managed Care

29 **XIV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

36 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
37 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this

1 Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

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

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

13 **XV. MINIMUM WAGE LAWS**

14 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
15 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
16 federal or California Minimum Wage to all its employees that directly or indirectly provide services
17 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that
18 all its contractors or other persons providing services pursuant to this Agreement on behalf of
19 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
20 Wage.
21

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

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

30 **XVI. NONDISCRIMINATION**

31 A. EMPLOYMENT

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

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

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

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

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

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

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

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

1 factors identified above:

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

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

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

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

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

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

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

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

1 enforce rights secured by federal or state law.

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

6 XVII. NOTICES

7
8 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
9 authorized or required by this Agreement shall be effective:

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

13 2. When faxed, transmission confirmed;

14 3. When sent by Email; or

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

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

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

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

27 XVIII. NOTIFICATION OF DEATH

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

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

33 1. TELEPHONE NOTIFICATION

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

1 2. WRITTEN NOTIFICATION

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

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

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

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

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

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

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

23
24 **XX. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 I. CONTRACTOR may retain Client, and/or patient documentation electronically in accordance

1 with the terms of this Agreement and common business practices. If documentation is retained
2 electronically, CONTRACTOR shall, in the event of an audit or site visit:

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

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

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

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

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

17 **XXI. RESEARCH AND PUBLICATION**

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

22 **XXII. REVENUE**

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

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

35 C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately
36 ensure proper billing and collection procedures. CONTRACTOR's procedures shall specifically
37 provide for the identification of delinquent accounts and methods for pursuing such accounts.

1 CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current
 2 status of fees which are billed, collected, transferred to a collection agency, or deemed by
 3 CONTRACTOR to be uncollectible.

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

7 **XXIII. SEVERABILITY**

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

14 **XXIII. SPECIAL PROVISIONS**

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

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

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

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

8 **XXIV. STATUS OF CONTRACTOR**

9 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
 10 wholly responsible for the manner in which it performs the services required of it by the terms of this
 11 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
 12 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
 13 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
 14 or any of CONTRACTOR's employees, agents, consultants, volunteers, interns, or subcontractors.
 15 CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents,
 16 consultants, volunteers, interns, or subcontractors as they relate to the services to be provided during the
 17 course and scope of their employment. CONTRACTOR, its agents, employees, consultants, volunteers,
 18 interns, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and
 19 shall not be considered in any manner to be COUNTY's employees.

21 **XXVI. TERM**

22 A. This specific Agreement with CONTRACTOR is only one of several agreements to which the
 23 term of this Agreement applies. This specific Agreement shall commence as specified in the Reference
 24 Contract Provisions of this Agreement or the execution date, whichever is later. This specific
 25 Agreement shall terminate as specified in the Referenced Contract Provisions of this Agreement, unless
 26 otherwise sooner terminated as provided in this Agreement. CONTRACTOR shall be obligated to
 27 perform such duties as would normally extend beyond this term, including but not limited to,
 28 obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

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

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32 **XXVI. TERMINATION**

33 A. Either party may terminate this Agreement without cause, upon thirty (30)-calendar day written
 34 notice given the other party. CONTRACTOR shall be responsible for meeting all programmatic and
 35 administrative contracted objectives and requirements as indicated in this Agreement. CONTRACTOR
 36 shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives,
 37 continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed

1 within timeframe as determined by ADMINISTRATOR notice, payments may be reduced or withheld
2 until CAP is resolved and/or the Agreement could be terminated.

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

- 5 1. The loss by CONTRACTOR of legal capacity.
- 6 2. Cessation of services.
- 7 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
8 another entity without the prior written consent of COUNTY.
- 9 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
10 required pursuant to this Agreement.
- 11 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this
12 Agreement.
- 13 6. The continued incapacity of any physician or licensed person to perform duties required
14 pursuant to this Agreement.
- 15 7. Unethical conduct or malpractice by any physician or licensed person providing services
16 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
17 removes such physician or licensed person from serving persons treated or assisted pursuant to this
18 Agreement.

19 C. CONTINGENT FUNDING

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

29 D. In the event this Agreement is suspended or terminated prior to the completion of the term as
30 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its
31 sole discretion, reduce the Not To Exceed Amount of this Agreement to be consistent with the reduced
32 term of the Agreement.

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

- 34 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
35 is consistent with recognized standards of quality care and prudent business practice.
- 36 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
37 performance during the remaining contract term.

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

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

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

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

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

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

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

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

#XXVII. THIRD PARTY BENEFICIARY

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

XXVIII. WAIVER OF DEFAULT OR BREACH

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

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

3
4 PROVIDER NAME

5
6 BY: _____ DATED: _____

7
8 TITLE: _____

9
10
11 BY: _____ DATED: _____

12
13 TITLE: _____

14
15
16 COUNTY OF ORANGE

17
18
19 BY: _____ DATED: _____

20 HEALTH CARE AGENCY

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

27
28
29 BY: _____ DATED: _____

30 DEPUTY

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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 or
36 any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or
37 by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her signature
alone is required by ADMINISTRATOR.

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 MEDI-CAL MENTAL HEALTH MANAGED CARE
 4 PSYCHIATRIC INPATIENT HOSPITAL SERVICES
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 PROVIDER NAME
 9 JULY 1, 2017 THROUGH JUNE 30, 2020

10
11 **I. COMMON TERMS AND DEFINITIONS**

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

14 A. Administrative Day means those days authorized by ADMINISTRATOR’s designated
15 Utilization Case Management Unit when the client no longer meets criteria for acute psychiatric
16 hospital services and remains in the facility due to unavailability of access to non-acute residential
17 treatment facilities.

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

20 C. Additional Income Source means Additional Income Source and refers to all income other than
21 SSI and includes such sources of income as retirement income, disability income, trust fund income,
22 SSI, Veteran’s Affairs disability income, etc.

23 D. ASO means Administrative Services Organization and refers to administrative and mental
24 health services components that include maintenance of a contract provider network including
25 credentialing and contracting, adjudication of provider claims for outpatient and inpatient specialty
26 mental health services, and the operation of a 24-hour telephone access and authorization line

27 E. Client Day means one (1) calendar day during which CONTRACTOR provides all of the
28 services described hereunder, including the day of admission and excluding the day of discharge. If
29 admission and discharge occur on the same day, one (1) client day shall be charged.

30 F. Client or Consumer means an individual, referred by COUNTY or enrolled in
31 CONTRACTOR’s program for services under the Agreement, who is dealing with a chronic mental
32 illness.

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35 G. Crisis Stabilization Unit (CSU) means a psychiatric crisis stabilization program that operates
36 twenty-four (24) hours a day that serves Orange County residents aged thirteen (13) and older who are
37 experiencing a psychiatric crisis and need immediate evaluation. Individuals receive a thorough

1 psychiatric evaluation, crisis stabilization treatment, and referral to the appropriate level of continuing
 2 care. As a designated outpatient facility, the CSU may evaluate and treat individuals for no longer than
 3 twenty-three (23) hours and fifty-nine (59) minutes.

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

7 I. DSM means Diagnostic and Statistical Manual of Mental Disorders and refers to the
 8 publication by the American Psychiatric Association that is used as a guide in the diagnosis of mental
 9 disorders.

10 J. ECT means Electro Convulsive Therapy and refers to a psychiatric treatment in which seizures
 11 are electrically induced in anesthetized patients for therapeutic effect.

12 K. HIPAA means Health Insurance Portability and Accountability Act and refers to the federal law
 13 that establishes standards for the privacy and security of health information, as well as standards for
 14 electronic data interchange of health information. HIPAA law has two main goals, as its name implies:
 15 making health insurance more portable when persons change employers, and making the health care
 16 system more accountable for costs-trying especially to reduce waste and fraud.

17 L. Hospital Based Ancillary Services means services which include but are not limited to ECT and
 18 MRI. Other ancillary services include: the use of facilities; laboratory, medical and social services
 19 furnished by CONTRACTOR including drugs such as take-home drugs, biologicals, supplies,
 20 appliances and equipment; nursing, pharmacy and dietary services; and supportive and administrative
 21 services required to provide Psychiatric Inpatient Hospital Services. Ancillary services do not include
 22 physician or psychologist services that are separately billed to DHCS.

23 M. ITP means Individualized Treatment Plan for each client. All psychiatric, psychological, and
 24 social services must be compatible with the ITP.

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

30 O. Long Term Care (LTC) refers to the County department that reviews referrals for placement in
 31 county-contracted long term care facilities.

32 P. MRI means Magnetic Resonance Imaging and refers to a medical imaging technique used in
 33 radiology to visualize detailed internal structures.

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36 Q. Medical Necessity means the requirements as defined in the MHP Medical Necessity for
 37 Medi-Cal reimbursed Specialty Mental Health Services that includes diagnosis, impairment criteria and

1 intervention related criteria.

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

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

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

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

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

23 S. MHSA means Mental Health Services Act and refers to the law that provides funding for
24 expanded community mental health services. It is also known as "Proposition 63."

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

29 U. NPP means Notice of Privacy Practices and refers to a document that notifies individuals of
30 uses and disclosures of PHI that may be made by or on behalf of the health plan or health care provider
31 as set forth in the HIPAA.

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

37 //

1 individual, provision of health care to an individual, or the past, present, or future payment for health
2 care provided to an individual.

3 W. Psychiatric Inpatient Hospital Services means services, including ancillary services, provided
4 either in an acute care hospital or a free-standing psychiatric hospital for the care and treatment of an
5 acute episode of mental illness.

6 X. Psychiatrist means an individual who meets the minimum professional and licensure
7 requirements set forth in CCR, Title 9, Section 623.

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

10 Z. Recovery means a “deeply personal, unique process of changing one’s attitudes, values,
11 feelings, goals, skills and/or roles. It is a way of living a satisfying, hopeful and contributing life even
12 with limitations caused by the illness. Recovery involves the development of new meaning and purpose
13 in one’s life as one grows beyond the catastrophic effects of mental illness. Ultimately, because
14 recovery is a personal and unique process, everyone with a psychiatric illness develops his or her own
15 definition of recovery. However, certain concepts or factors are common to recovery.” (William
16 Anthony, 1993).

17 AA. Referral means providing the effective linkage of a client to another service, when indicated;
18 with follow-up to be provided within five (5) working days to assure that the client has made contact
19 with the referred service.

20 AB. SNF means Skilled Nursing Facility and refers to a facility that provides twenty-four (24)-
21 hour/day skilled nursing care and supervision.

22 AC. SSI/SSP means Supplemental Security Income/State Supplemental Income and refers to
23 revenue resources paid to an eligible client, or the client’s payee by the federal Social Security
24 Administration.

25 AD. Unit of Service means one (1) calendar day during which CONTRACTOR provides all of the
26 services described hereunder, which day shall begin at twelve o’clock midnight.

27 28 **II. ISSUE RESOLUTION**

29 For resolution of issues between CONTRACTOR and ADMINISTRATOR with respect to the
30 implementation and operation of this Agreement or COUNTY’s policies and procedures regarding
31 services described herein, the following sequential steps shall apply:

32 A. CONTRACTOR shall routinely utilize all informal communication processes and methods with
33 ADMINISTRATOR program and administrative staff including, but not limited to, telephone contact,
34 electronic mail (e-mail), FAX, written correspondence and meetings, to resolve any issues or problems

35 //

36 regarding the implementation and operation of this Agreement or COUNTY’s policies and procedures
37 regarding services described herein.

1 B. If the parties are unable to resolve the issue, CONTRACTOR shall give written notice to
 2 ADMINISTRATOR setting forth in specific terms the existence and nature of any unresolved matter or
 3 concern related to the purposes and obligations of this Agreement. ADMINISTRATOR shall have
 4 fifteen (15) calendar days following such notice to obtain resolution of any issue(s) identified in this
 5 manner, provided, however, by mutual consent this period of time may be extended to thirty (30)
 6 calendar days.

7 C. If the parties are unable to obtain resolution of the issue, they shall submit a joint written
 8 Statement describing the facts of the issue, within thirty (30) calendar days after the written notice
 9 described above to ADMINISTRATOR's Director of Behavioral Health Care for final resolution.

10 D. The rights and remedies provided by this paragraph are in addition to those provided by law to
 11 either party.

12 E. CONTRACTOR AND ADMINISTRATOR may mutually agree, in writing, to modify the Issue
 13 Resolution Paragraph of this Exhibit A to the Agreement.

14 **III. PATIENT'S RIGHTS**

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

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

22 1. CONTRACTOR's grievance processes shall incorporate COUNTY's grievance, patients'
 23 rights, and/or utilization management guidelines and procedures. The patient has the right to utilize
 24 either or

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26 both grievance process simultaneously in order to resolve their dissatisfaction.

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

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

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

IV. PAYMENTS

A. CONTRACTOR shall be reimbursed by DHCS for services provided at the following all-inclusive rates per client day for acute Psychiatric Inpatient Hospital Services and based on the following accommodation codes.

<u>Accommodation Code</u>	<u>Description</u>	<u>Rate</u>		
		<u>Period One</u>	<u>Period Two</u>	<u>Period Three</u>
<u>097</u>	<u>Adolescent/Child, Psychiatric</u>	<u>\$00.00</u>	<u>\$00.00</u>	<u>\$00.00</u>
<u>114 - 204</u>	<u>Adult, Psychiatric</u>	<u>\$00.00</u>	<u>\$00.00</u>	<u>\$00.00</u>
<u>169</u>	<u>Administrative Day</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>

1. The rate for Accommodation Code 169 is established and adjusted by the DHCS.
 2. Rates are inclusive of all Psychiatric Inpatient Hospital Services as defined in this Exhibit A to the Agreement, and shall constitute payment in full for these services.

3. The number of billable Units of Service shall include the day of admission and exclude the day of discharge unless admission and discharge occur on the same day.

4. DHCS may reimburse Administrative Days for dates in which documentation does not meet requirements for Acute Day reimbursement, contingent upon CONTRACTOR documentation of services that qualify for the Administrative Day reimbursement.

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5. Rates do not include physician or psychologist services rendered to clients, or transportation services required in providing Psychiatric Inpatient Hospital services. These services shall be billed separately from the above per diem rate for Psychiatric Inpatient Hospital services as follows:

a. When Medi-Cal eligible mental health services are provided by a psychiatrist, such services shall be billed to COUNTY's ASO. Prior authorization and notification are not required prior to providing these services.

b. When Medi-Cal eligible medical services are provided by a physician, such services shall be billed to the designated medical health plan, depending on the Client's health coverage benefit. Prior authorization and notification may be required prior to providing these services.

c. When Medi-Cal eligible transportation services are provided, such services shall be billed to the designated CalOptima Plan or CalOptima Direct, depending on the client's health coverage benefit. Prior authorization and notification may be required prior to providing these services.

6. The client daily rates stated above do not include ECT or MRI Services. The rates for ECT

1 and MRI Services shall apply only for the day(s) in which the client received an approved ECT or MRI
 2 (rates listed below). These rates reflect CONTRACTOR's reimbursement only and associated
 3 professional services shall be billed to COUNTY's ASO, the designated CalOptima Plan or CalOptima
 4 Direct. CONTRACTOR must obtain prior approval from the ADMINISTRATOR to perform the ECT
 5 or MRI in order to be reimbursed. CONTRACTOR shall submit to ADMINISTRATOR ECT and MRI
 6 invoices that indicate for whom services were provided, the date of service, and shall be supported with
 7 such documentation as may be required by ADMINISTRATOR.

Description	Rate
Psychiatric, ECT	N/A
Psychiatric, MRI	N/A

8 9 10 11 12 13 14 B. Billing Procedures

15 1. CONTRACTOR must obtain an NPI.

16 2. CONTRACTOR shall invoice DHCS for each client day, approved by the
 17 ADMINISTRATOR, for each client who meets notification, admission and/or continued stay criteria,
 18 documentation requirements, treatment and discharge planning requirements and occupies a psychiatric
 19 inpatient hospital bed at 12:00 AM in CONTRACTOR's facility. CONTRACTOR may invoice DHCS
 20 if the client is admitted and discharged during the same day; provided, however, that such admission
 21 and discharge is not within twenty-four (24) hours of a prior discharge.

22 3. CONTRACTOR shall determine that Psychiatric Inpatient Hospital services provided
 23 pursuant to the Agreement are not covered, in whole or in part, under any other state or federal medical
 24 care program or under any other contractual or legal entitlement including, but not limited to, a private
 25 group indemnification or insurance program or Workers' Compensation Program. CONTRACTOR
 26 shall seek to be reimbursed by other coverage prior to seeking reimbursement by DHCS. DHCS's
 27 maximum obligation shall be reduced if other coverage is available.

28 4. CONTRACTOR shall submit claims to DHCS's fiscal intermediary for all services
 29 rendered pursuant to the Agreement, in accordance with the applicable invoice and billing requirements
 30 contained in WIC, Section 5778.

31 5. CONTRACTOR may appeal, in writing, a denied request for reimbursement to the
 32 ADMINISTRATOR. In the event that the appeal is denied, by the ADMINISTRATOR,

33 //

34 CONTRACTOR may continue the appeals process by writing directly to DHCS, within thirty (30)
 35 calendar days of the ADMINISTRATOR's decision. The decision of DHCS shall be final.

36 C. Overpayments

37 1. CONTRACTOR agrees that DHCS may recoup any such overpayment by withholding the

1 amount owed to DHCS from future payments due CONTRACTOR, in the event that an audit or review
 2 performed by the ADMINISTRATOR, DHCS, the State Controller's Office, or any other authorized
 3 agency discloses that CONTRACTOR has been overpaid.

4 2. CONTRACTOR agrees that DHCS may recoup funds from prior year's overpayments,
 5 which occurred prior to the effective date of the Agreement, by withholding the amount currently owed
 6 to CONTRACTOR by DHCS.

7 3. CONTRACTOR may appeal recoupments according to applicable procedural requirements
 8 of the regulations adopted pursuant to WIC, Sections 5775, et seq. and 14680, et seq., with the
 9 following exceptions:

10 a. The recovery or recoupment shall commence sixty (60) calendar days after issuance of
 11 account status or demand resulting from an audit or review and shall not be deferred by the filing of a
 12 request for an appeal according to the applicable regulations.

13 b. CONTRACTOR's liability to COUNTY for any amount recovered shall be as
 14 described in WIC, Section 5778(h).

15 D. Customary Charges Limitation – DHCS's obligation to CONTRACTOR shall not exceed
 16 CONTRACTOR's total customary charges for like services during each hospital fiscal year or portion
 17 thereof in which the Agreement is in effect. DHCS may recoup any portion of the total payments to
 18 CONTRACTOR which are in excess of CONTRACTOR's total customary charges.

19 E. CONTRACTOR shall submit the 18-3 TAR for authorization of payment for Psychiatric
 20 Inpatient Hospital services to ADMINISTRATOR no later than fourteen (14) calendar days after:

- 21 1. Ninety-nine (99) calendar days of continuous service to a client, and/or
- 22 2. Discharge.

23 //

24 F. CONTRACTOR shall resubmit the 18-3 TAR and any additional information requested, no
 25 later than sixty (60) calendar days from the date of the deferral letter, in the event ADMINISTRATOR
 26 defers the 18-3 TAR back to CONTRACTOR to obtain further information.

27 G. ADMINISTRATOR shall provide CONTRACTOR with a Notification Form confirming
 28 hospitalization of the client. CONTRACTOR must submit the Notification Form, along with the
 29 client's TAR to ADMINISTRATOR for review of medical necessity and payment authorization.

30 H. CONTRACTOR must document, in the client's medical record, each contact with the
 31 appropriate placement facility or the person or agency responsible for placement. CONTRACTOR
 32 must continue to document contacts with appropriate placement facilities until the client is discharged.
 33 Contacts shall be documented by a brief description of the placement facilities reported bed availability
 34 status, reason for denial if applicable, and the signature of the person making the contact.

35 I. ADMINISTRATOR shall monitor the client's status, the appropriateness of the facilities being
 36 contacted for referral, and/or the client's chart to determine if the client's status has changed.

37 J. CONTRACTOR shall notify ADMINISTRATOR, prior to 12:00 PM Monday through Friday,

1 | excluding holidays, of the daily census of all clients in which reimbursement for Psychiatric Inpatient
 2 | Hospital Services will be requested. The census report following a weekend and/or holiday shall
 3 | include any admissions made during that time.

4 | K. CONTRACTOR shall notify ADMINISTRATOR of any client discharge within twenty-four
 5 | (24) hours of the client's discharge, excluding weekends and holidays. CONTRACTOR shall include
 6 | the client's name, discharge date, discharge placement and placement phone number. CONTRACTOR
 7 | shall inform COUNTY of where the client has been referred for continuing treatment, along with the
 8 | facility's phone number, contact person and the client's first appointment time and date.

9 | L. CONTRACTOR shall notify the Regional Center Service Coordinator and Nurse Consultant of
 10 | a Regional Center client's admission within twenty-four (24) hours of admission or within twenty-four
 11 | (24) hours of identifying that a client is a Regional Center client.

12 | M. CONTRACTOR shall notify both the client's Regional Center Service Coordinator and one of
 13 | the Regional Center Nurse Consultants of the intent to seek their placement services. Such notification
 14 | must occur on or before the date for which CONTRACTOR intends to seek Administrative Day
 15 | reimbursement. CONTRACTOR may seek reimbursement from Regional Center for all Administrative
 16 | Days after the first three (3) Administrative Days.

17 | N. CONTRACTOR shall notify the ADMINISTRATOR within twenty-four (24) hours of
 18 | admission of all clients, served under this agreement, who are admitted on involuntary hold.

19 | O. CONTRACTOR shall notify the ADMINISTRATOR on the day that the other health insurance
 20 | benefit has been exhausted, or the day the other health insurance benefit is known to be denied, if the
 21 | client has other health insurance coverage in addition to Medi-Cal, and the CONTRACTOR intends to
 22 | seek Medi-Cal reimbursement for all or a portion of the hospital stay.

23 | P. CONTRACTOR shall provide Psychiatric Inpatient Hospital Services in the same manner to
 24 | Medi-Cal clients as it provides to all other clients and not discriminate against Medi-Cal clients in any
 25 | manner, including admission practices, placement in special wings or rooms, or provision of special or
 26 | separate meals.

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

30 | **V. REPORTS**

31 | A. CONTRACTOR shall maintain records and make statistical reports as required by
 32 | ADMINISTRATOR and/or DHCS on forms provided by either agency.

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

37 | C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the

1 Reports Paragraph of this Exhibit A to the Agreement.

2
3 **VI. SERVICES**

4 A. FACILITY – CONTRACTOR shall provide Psychiatric Inpatient Hospital Services at the
5 following location:

6
7 Street Address

8 City, State, Zip Code

9
10 B. CLIENTS SERVED – CONTRACTOR shall admit and serve all Clients referred by
11 ADMINISTRATOR who meet the ADMINISTRATOR’s criteria for acute psychiatric hospitalization
12 and who also meet the criteria approved by DHCS and the guidelines under Title 9, Chapter 11, Section
13 1820.205. This may include Clients with co-morbid medical conditions and substance use disorder.
14 CONTRACTOR shall not refuse admissions of Clients if they meet all the admission criteria identified
15 above. CONTRACTOR may admit and serve Clients not referred by the ADMINISTRATOR or the
16 County CSU; however, CONTRACTOR must first notify the ADMINISTRATOR of any Client served
17 under the Agreement who has not been referred by ADMINISTRATOR or the County CSU upon
18 admission. C. SERVICES PROVIDED

19 1. CONTRACTOR shall provide Psychiatric Inpatient Hospital Services, which include but
20 are not limited to physician services, psychologist services, and transportation services, in accordance
21 with WIC, Sections 5774, et seq. and 14680, et seq.

22 2. CONTRACTOR shall provide services that include but are not limited to psychiatric,
23 ancillary, testimony, medical, specialized services, and additional services required of general acute
24 care hospitals. CONTRACTOR’s services shall be designed to engage seriously mentally ill adults,
25 including those who are dually diagnosed, in a partnership to achieve the individual’s wellness and
26 recovery goals. CONTRACTOR shall provide services in collaboration with the COUNTY’s Director
27 of Behavioral Health, or designee.

28 a. PSYCHIATRIC SERVICES – CONTRACTOR shall provide psychiatric services that
29 include psychiatric assessment, psychiatric treatment and psychiatric support services in accordance
30 with all applicable laws and regulations. Psychiatric services shall include but not be limited to:

31 1) A psychiatric evaluation, within twenty-four (24) hours of admission, by a licensed
32 psychiatrist. The psychiatric evaluation shall include a psychiatric history, diagnosis, and be completed
33 in accordance with the current DSM;

34 2) A review of each client’s medical history and a physical examination within
35 twenty-four (24) hours of admission;

36 3) Initiation of an ITP of each new client within twenty-four (24) hours of admission;

37 4) An ITP for each client must be completed with signatures of the treatment team

1 and the client (or explanation of inability to obtain) within seventy-two (72) hours of admission. All
2 psychiatric, psychological, and social services must be compatible with the ITP;

3 5) Appropriate collateral therapy and interventions for each client;

4 6) Appropriate one-on-one, client-to-staff counseling as appropriate to the diagnosis
5 and ITP;

6 7) Documentation of client's attendance and their participation in collateral therapy
7 including schedule of therapies, attendance log, and medical record progress notes;

8 8) Daily rounds and progress notes ~~by psychiatrists~~ on all Clients by:

9 a) Psychiatrist or

10 b) Nurse Practitioner working under the supervision as evidenced by psychiatrists
11 countersigning the progress note(s) within 48 hours

12 a) Psychiatrist or

13 b) Nurse Practitioner working under the supervision as evidenced by psychiatrists
14 countersigning the progress note(s) within 48 hours on all clients;

15 9) Discharge planning that includes but is not limited to continuing care planning, and
16 referral services;

17 a) Discharge planning must begin upon admission and occur seven (7) days a
18 week;

19 b) ADMINISTRATOR may provide assistance to CONTRACTOR to initiate,
20 develop and finalize discharge planning and necessary follow-up services on a case-by case basis;

21 c. CONTRACTOR shall document in the Client's medical record, for those Clients being
22 referred to a non-acute residential treatment facility at discharge, having made at least one contact per
23 day (except weekends and holidays), starting with the day the Client is placed on administrative day
24 status. Once five contacts have been made and documented, any remaining days within the seven
25 consecutive day period can be authorized. The ADMINISTRATOR can waive the five contacts per
26 week requirement if there are fewer than five appropriate non-acute residential treatment facilities
27 available as treatment options.

28 e) CONTRACTOR shall contact COUNTY clinics daily, Monday through Friday,
29 excluding holidays, if the client requires Board and Care placement, or until the client is either
30 discharged or no longer requires Board and Care placement. CONTRACTOR shall comply with P&P's,
31 established by ADMINISTRATOR, for placing Board and Care clients; and

32 f) CONTRACTOR shall arrange a specific date and time for an aftercare
33 appointment with a COUNTY outpatient clinic, for any Client referred to outpatient treatment at
34 discharge. CONTRACTOR shall send through secure electronic mail to the COUNTY outpatient
35 clinic, at the time of discharge, the Hospital Discharge Referral Form or the hospital's aftercare plan,
36 the initial psychiatric evaluation, the history and physical examination report, recent lab studies, the
37 medication list, and any medical consults.

1 10) On-call psychiatric and medical specialist coverage twenty-four (24) hours per day,
2 seven (7) days per week;

3 11) Daily evaluation and documentation by the treating psychiatrist or nurse
4 practitioner under the supervision of psychiatrist as evidenced by psychiatrist co-signature within 48
5 hours, for each day of psychiatric service;

6 12) A psycho-social assessment completed within forty-eight (48) hours of admission;
7 and

8 13) Linkages with COUNTY-operated clinics or COUNTY contracted behavioral
9 health clinics or programs. Linkages must be made five (5) days a week, Monday through Friday.
10 Linkages must be documented in the Client's medical record.

11 14) Discharges must be completed by psychiatrist. Discharges shall include discharge
12 orders and discharge summary.

13 b. ANCILLARY SERVICES

14 CONTRACTOR shall provide ancillary services, necessary for the evaluation and treatment of
15 psychiatric conditions. Services shall be recovery-based, non-coercive and must focus on assisting
16 clients to become more independent and self-sufficient. Services shall include but not be limited to:

- 17 1) Group therapy;
- 18 2) Activities therapy and other adjunctive therapy;
- 19 3) Initial laboratory services that are consistent with CONTRACTOR's usual and
20 customary hospital admitting protocol;
- 21 4) Additional laboratory and diagnostic services, when necessary for the initiation and
22 monitoring of psychiatric medication treatments; and
- 23 5) Pharmaceutical services.

24 c. TESTIMONY SERVICES – CONTRACTOR will provide expert witness testimony by
25 appropriate mental health professionals in all legal proceedings required for the institutionalization,
26 admission, or treatment of COUNTY Clients. These services shall include, but not be limited to, writs
27 of habeas corpus, capacity hearings, conservatorship, probable cause hearings, court-ordered evaluation,
28 and appeal and post-certification proceedings. ADMINISTRATOR shall provide representation to
29 CONTRACTOR, at ADMINISTRATOR's cost and expense, in all legal proceedings required for
30 conservatorship. CONTRACTOR shall cooperate with ADMINISTRATOR in all such proceedings.
31 ADMINISTRATOR will provide hearing officers for probable cause hearings for Clients approved by
32 ADMINISTRATOR only, all other hearings will be provided at CONTRACTOR's cost and expense.

33 d. MEDICAL SERVICES – CONTRACTOR shall provide all medical care services
34 deemed appropriate according to usual and customary hospital practices without regard for payer status.
35 Medical services include physician and/ or other professional services required by the client.
36 CONTRACTOR shall provide transportation to the medical treatment and an escort to and from the
37 service.

1 1) INPATIENT/OUTPATIENT ECT and MRI – CONTRACTOR shall provide ECT
 2 and MRI services for clients. ECT and MRI services must be performed pursuant to all legal and
 3 regulatory requirements and be approved by ADMINISTRATOR in advance to treatment.
 4 ADMINISTRATOR approval shall be documented in the client’s medical record.

5 2) COMPUTERIZED TOMORGRAPHY (CT) – CONTRACTOR shall provide CT
 6 scans as part of the diagnosis and evaluation of a client’s psychiatric condition when indicated. CT
 7 scans must be approved by ADMINISTRATOR in advance of treatment. ADMINISTRATOR approval
 8 shall be documented in the client’s medical record.

9 e. ADDITIONAL SERVICES – CONTRACTOR shall provide additional services
 10 required of general acute care hospitals. Additional services shall include, but not be limited to, the
 11 following:

12 1) Direct Services – including a therapeutic milieu, room and dietetic services,
 13 nursing services, including drug administration and client care, and a client activity program including
 14 adjunctive therapy and rehabilitation services.

15 2) Support Services – including housekeeping, laundry, maintenance, medical
 16 records, and drug order processing services.

17 3) In-Service Training – Provide formalized in-service training to staff that focuses on
 18 subjects that increase their expertise in mental health services and ability to manage and serve clients;
 19 and

20 4) Program Description – Maintain an ADMINISTRATOR approved, written
 21 description of the inpatient psychiatric program, which shall include goals, objectives, philosophy, and
 22 activities which reflect the active involvement of nursing personnel in all aspects of the inpatient
 23 therapeutic milieu.

24 D. CONTRACTOR shall provide a copy of the “COUNTY Guide to Medi-Cal Mental Health
 25 Services” and “County Behavioral Health Services Plan Provider List” to each
 26 client/guardian/conservator at the time of admission. CONTRACTOR shall ensure that the client signs
 27 a form indicating receipt of both

28 //
 29 handbooks, and this form shall become part of the client’s medical record. If the client refuses to sign
 30 or receive the handbooks, a hospital staff member shall document that the handbooks were provided.

31 E. CONTRACTOR shall provide the client/guardian/conservator the DHCS notification materials
 32 entitled, “EPSDT”, and “TBS” to each full-scope Medi-Cal client under twenty-one (21) years of age
 33 admitted for acute psychiatric inpatient services. CONTRACTOR shall document in the client’s
 34 medical record that these materials were provided.

35 F. CONTRACTOR shall provide, the NPP for the COUNTY, as the MHP, to any individual who
 36 received services under the Agreement.

37 G. CONTRACTOR shall allow ADMINISTRATOR to conduct a face-to-face evaluation of the

1 client for assessment and recommendation to CONTRACTOR regarding the appropriate level of care
2 and need for the clients' hospitalization.

3 H. CONTRACTOR shall send a completed Hospital Discharge Referral Form or a copy of the
4 Hospital's Aftercare Plan to the appropriate clinic at the time of client discharge, for Medi-Cal clients
5 being referred to COUNTY outpatient clinics or COUNTY contracted outpatient clinics. COUNTY
6 clients shall be discharged with medication prescriptions or a seven (7) days' supply of medications.
7 This includes psychiatric medications and other medications needed to treat concurrent medical
8 conditions. CONTRACTOR will also fax copies of the Initial Psychiatric Evaluation, History and
9 Physical Exam, most recent lab studies, medical consults, and Medication Sheets.

10 I. QUALITY IMPROVEMENT – CONTRACTOR shall cooperate with ADMINISTRATOR in
11 meeting quality improvement and utilization review requirements. Quality improvement and utilization
12 reviews shall include, but not be limited to, performance outcome studies and client satisfaction
13 surveys. CONTRACTOR shall cooperate with managed care procedures related to treatment
14 authorization, including the provision of working space for ADMINISTRATOR to conduct visits with
15 the client, interview staff and perform chart reviews.

16 J. PERFORMANCE OUTCOMES – CONTRACTOR shall perform outcome studies, on-site
17 reviews and written reports to be made available to ADMINISTRATOR upon request.

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

20 L. CONTRACTOR shall provide services pursuant to the Agreement in a manner that is culturally
21 and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain
22 documentation of such efforts which may include, but not be limited to: records of participation in
23 COUNTY sponsored or other applicable training; recruitment and hiring P&Ps; copies of literature in
24 multiple languages and formats, as appropriate; and descriptions of measures taken to enhance
25 accessibility for, and sensitivity to, persons who are physically challenged.

26 M. CONTRACTOR shall provide Inpatient Psychiatric Hospital Services that are non-
27 discriminatory and tailored to meet the individual needs of the multi-cultural clients served under the
28 Agreement. CONTRACTOR shall demonstrate program access, linguistically appropriate and timely
29 mental health service delivery, staff training, and organizational P&P's related to the treatment of
30 culturally diverse populations. CONTRACTOR shall ensure that high quality accessible mental health
31 care includes:

32 1. Clinical care and therapeutic interventions which are linguistically and culturally
33 appropriate; including, at a minimum, admission, discharge, and medication consent forms available in
34 all County threshold languages;

35 2. Medically appropriate interventions which acknowledge specific cultural influences;

36 3. Provision and utilization of qualified interpreters within twenty-four (24) hours of
37 identified need;

1 adherence to the course of treatment and assuming responsibility for preventive mental health
2 behaviors.

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EXHIBIT B
 TO AGREEMENT FOR PROVISION OF
 MEDI-CAL MENTAL HEALTH MANAGED CARE
 PSYCHIATRIC INPATIENT HOSPITAL SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 PROVIDER NAME
 JULY 1, 2017 THROUGH JUNE 30, 2020

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

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

3 B. DEFINITIONS

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

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

9 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 other than as provided for by this Business Associate Contract.

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

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

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

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

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

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

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

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

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

1 //

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

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

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

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

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

36 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
37 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of

1 HIPAA, the HITECH Act, and the HIPAA regulations.

2 //

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

6 D. SECURITY RULE

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

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

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

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

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

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

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

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

37 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who

1 shall be responsible for carrying out the requirements of this paragraph and for communicating on
2 security matters with COUNTY.

3 E. DATA SECURITY REQUIREMENTS

4 1. Personal Controls

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

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

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

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

30 2. Technical Security Controls

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

36 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
37 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY

1 must have sufficient administrative, physical, and technical controls in place to protect that data, based
2 upon a risk assessment/system security review.

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

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

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

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

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

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

1 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
3 must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media
4 may

5 //

6 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
27 privilege.

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

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

1 3. Audit Controls

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

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

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

15 4. Business Continuity/Disaster Recovery Control

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

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

28 5. Paper Document Controls

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

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

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

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

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

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

20 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

11 1) The Disclosure is required by law; or

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

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

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

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

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

26 H. PROHIBITED USES AND DISCLOSURES

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

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

36 I. OBLIGATIONS OF COUNTY

37 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of

1 | privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
2 | CONTRACTOR’s Use or Disclosure of PHI.

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

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

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

11 | J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

24 | b. CONTRACTOR shall retain no copies of the PHI.

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

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

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EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 MEDI-CAL MENTAL HEALTH MANAGED CARE
 PSYCHIATRIC INPATIENT HOSPITAL SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 PROVIDER
 JULY 1, 2017 THROUGH JUNE 30, 2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

6 B. TERMS OF AGREEMENT

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

11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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