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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2017 through June 30, 2019

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

Aggregate Maximum Obligation:

Period One Maximum Obligation: \$ 11,133,043

Period Two Maximum Obligation: 11,522,699

TOTAL AGGREGATE MAXIMUM OBLIGATION: \$22,655,742

Basis for Reimbursement: Fee for Service

Payment Method: Monthly in Arrears

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: «CONTACT»
«LC_NAME»
«LC_DBA»
«ADDRESS»
«CITY_STATE_ZIP»
«CONTACT_EMAIL»

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I. ACRONYMS

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

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4	A. AES	Advanced Encryption Standard
5	B. ARRA	American Recovery and Reinvestment Act of 2009
6	C. BCP	Business Continuity Plan
7	D. CCC	California Civil Code
8	E. CCR	California Code of Regulations
9	F. CD/DVD	Compact Disc/Digital Video or Versatile Disc
10	G. CEO	County Executive Office
11	H. CFR	Code of Federal Regulations
12	I. CHHS	California Health and Human Services Agency
13	J. CHPP	COUNTY HIPAA Policies and Procedures
14	K. CIPA	California Information Practices Act
15	L. CMPPA	Computer Matching and Privacy Protection Act
16	M. COI	Certificate of Insurance
17	N. DHCS	California Department of Health Care Services
18	O. DoD	US Department of Defense
19	P. DRP	Disaster Recovery Plan
20	Q. DRS	Designated Record Set
21	R. Email	Electronic Mail
22	S. EHR	Electronic Health Records
23	T. ePHI	Electronic Protected Health Information
24	U. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
25	V. FIPS	Federal Information Processing Standards
26	W. GAAP	Generally Accepted Accounting Principles
27	X. HCA	County of Orange Health Care Agency
28	Y. ID	Identification
29	Z. IEA	Information Exchange Agreement
30	AA. HHS	Health and Human Services
31	AB. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
32		Law 104-191
33	AC. HITECH Act	Health Information Technology for Economic and Clinical Health
34		Act, Public Law 111-005
35	AD. HSC	California Health and Safety Code
36	AE. ISO	Insurance Services Office
37	AF. MHP	Mental Health Plan

1	AG. NIST	National Institute of Standards and Technology
2	AH. OCR	Federal Office for Civil Rights
3	AI. OMB	Federal Office of Management and Budget
4	AJ. OPM	Federal Office of Personnel Management
5	AK. PC	California Penal Code
6	AL. PHI	Protected Health Information
7	AM. PI	Personal Information
8	AN. PII	Personally Identifiable Information
9	AO. PRA	California Public Record Act
10	AP. SIR	Self-Insured Retention
11	AQ. TBS	Therapeutic Behavioral Services
12	AR. UMDAP	Uniform Method of Determining Ability to Pay
13	AS. USC	United States Code
14	AT. W&IC	California Welfare and Institutions Code

II. ALTERATION OF TERMS

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

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

III. ASSIGNMENT OF DEBTS

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

IV. COMPLIANCE

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

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

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

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

17 3. If CONTRACTOR does not provide proof of its own Compliance program to
18 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR’s
19 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the
20 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed
21 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR’s Compliance Program
22 and Code of Conduct.

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

35 5. Upon written confirmation from ADMINISTRATOR’s Compliance Officer that the
36 CONTRACTOR’s compliance program, code of conduct and any Compliance related policies and
37 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals

1 relative to this Agreement are made aware of CONTRACTOR’s compliance program, code of conduct,
2 related policies and procedures and contact information for the ADMINISTRATOR’s Compliance
3 Program.

4 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
5 retained to provide services related to this Agreement semi-annually to ensure that they are not
6 designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against
7 the General Services Administration's Excluded Parties List System or System for Award Management,
8 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
9 the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as
10 identified by the ADMINISTRATOR.

11 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
12 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide
13 health care items or services or who perform billing or coding functions on behalf of
14 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
15 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to
16 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
17 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the
18 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
19 made aware of ADMINISTRATOR’s Compliance Program, Code of Conduct and related policies and
20 procedures (or CONTRACTOR’s own compliance program, code of conduct and related policies and
21 procedures if CONTRACTOR has elected to use its own).

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

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

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

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

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

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

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

33
34 **V. CONFIDENTIALITY**

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

1 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this
2 Agreement are clients of the Orange County Mental Health services system, and therefore it may be
3 necessary for authorized staff of ADMINISTRATOR to audit client files, or to exchange information
4 regarding specific clients with COUNTY or other providers of related services contracting with
5 COUNTY.

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

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

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

20
21 **VI. COST REPORT**

22 A. CONTRACTOR shall submit an individual and/or consolidated Cost Report to COUNTY no
23 later than sixty (60) calendar days following termination of this Agreement. CONTRACTOR shall
24 prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state
25 and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement.
26 CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services,
27 and funding sources in accordance with such requirements and consistent with prudent business
28 practice, which costs and allocations shall be supported by source documentation maintained by
29 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event
30 CONTRACTOR has multiple Agreements for mental health services that are administered by HCA,
31 consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as
32 stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to
33 COUNTY no later than five (5) business days following approval by ADMINSTRATOR of all
34 individual Cost Reports to be incorporated into a consolidated Cost Report.

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

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

6 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
7 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
8 accurate and complete an individual and/or consolidated Cost Report is delivered to
9 ADMINISTRATOR.

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

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

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

24 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
25 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set
26 forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim
27 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and
28 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,
29 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be
30 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)
31 calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect
32 to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due
33 COUNTY.

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

37 //

1 E. In the event that CONTRACTOR is authorized to retain unanticipated revenues as described in
2 the Budget Paragraph of Exhibit A to this Agreement, CONTRACTOR shall specify in the Cost Report
3 the services rendered with such revenues.

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

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

14
15 Signed _____
16 Name _____
17 Title _____
18 Date _____"

19
20 **VII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

34 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
35 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
36 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
37 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR

1 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
2 delegation in derogation of this subparagraph shall be void.

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

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

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

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

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

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

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

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

31
32 **VIII. EMPLOYEE ELIGIBILITY VERIFICATION**

33 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations
34 regarding the employment of aliens and others and to ensure that employees, subcontractors, and
35 consultants performing work under this Agreement meet the citizenship or alien status requirements set
36 forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
37 subcontractors, and consultants performing work hereunder, all verification and other documentation of

1 employment eligibility status required by federal or state statutes and regulations including, but not
2 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
3 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
4 covered employees, subcontractors, and consultants for the period prescribed by the law.

5
6 **IX. FACILITIES, PAYMENTS AND SERVICES**

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

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

18
19 **X. INDEMNIFICATION AND INSURANCE**

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

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

37 //

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

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

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

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

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

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

29 F. QUALIFIED INSURER

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

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

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

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

H. REQUIRED COVERAGE FORMS

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

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

I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

1 R. SUBMISSION OF INSURANCE DOCUMENTS

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

3 a. Prior to the start date of this Agreement.

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

5 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
6 changes to any of the insurance types as set forth in Subparagraph G, above.

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

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

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

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

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

22 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
23 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
24 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.
25

26 **XI. INSPECTIONS AND AUDITS**

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

37 //

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

5 C. CONTRACTOR shall not be subject to disallowances as the result of audits of the cost of
6 services.

7 D. 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
12 **XII. LICENSES AND LAWS**

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

21 **B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

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

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

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

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

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

33 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
34 Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
35 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
36 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement; and
37 //

1 failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
2 grounds for termination of this Agreement.

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

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

- 9 1. ARRA of 2009.
- 10 2. WIC, Division 5, Community Mental Health Services.
- 11 3. WIC, Division 6, Admissions and Judicial Commitments.
- 12 4. WIC, Division 7, Mental Institutions.
- 13 5. HSC, §§1250 et seq., Health Facilities.
- 14 6. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 15 7. CCR, Title 9, Rehabilitative and Developmental Services.
- 16 8. CCR, Title 17, Public Health.
- 17 9. CCR, Title 22, Social Security.
- 18 10. CFR, Title 42, Public Health.
- 19 11. CFR, Title 45, Public Welfare.
- 20 12. USC Title 42. Public Health and Welfare.
- 21 13. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 22 14. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 23 15. 42 USC §1857, et seq., Clean Air Act.
- 24 16. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 25 17. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 26 18. Policies and procedures set forth in Mental Health Services Act.
- 27 19. Policies and procedures set forth in DHCS Letters.
- 28 20. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 29 21. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
30 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal
31 Awards.

32 D. CONTRACTOR shall at all times be capable and authorized by the State of California to
33 provide treatment and bill for services provided to Medi-Cal eligible clients while working under the
34 terms of this Agreement.

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XIII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

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

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

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

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

XIV. MAXIMUM OBLIGATION

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

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

XV. MINIMUM WAGE LAWS

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

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1 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
2 Wage.

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

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

10
11 **XVI. NONDISCRIMINATION**

12 A. EMPLOYMENT

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

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

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

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

33 5. All solicitations or advertisements for employees placed by or on behalf of
34 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
35 for employment without regard to race, religious creed, color, national origin, ancestry, physical
36 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender

37 //

1 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
2 shall be deemed fulfilled by use of the term EOE.

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

8 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
9 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
10 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
11 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
12 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
13 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
14 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
15 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
16 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
17 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
18 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
19 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
20 or more of the factors identified above:

21 1. Denying a client or potential client any service, benefit, or accommodation.

22 2. Providing any service or benefit to a client which is different or is provided in a different
23 manner or at a different time from that provided to other clients.

24 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
25 others receiving any service or benefit.

26 4. Treating a client differently from others in satisfying any admission requirement or
27 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
28 any service or benefit.

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

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

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

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

3 b. Throughout the problem resolution and grievance process, client rights shall be
4 maintained, including access to the Patients’ Rights Office at any point in the process. Clients shall be
5 informed of their right to access the Patients’ Rights Office at any time.

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

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

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

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

23
24 **XVII. NOTICES**

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

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

30 2. When faxed, transmission confirmed;

31 3. When sent by Email; or

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

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

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

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

7
8 **XVIII. NOTIFICATION OF DEATH**

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

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

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

19 2. WRITTEN NOTIFICATION

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

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

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

31
32 **XIX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

36 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
37 of any applicable public event or meeting. The notification must include the date, time, duration,

1 location and purpose of the public event or meeting. Any promotional materials or event related flyers
2 must be approved by ADMINISTRATOR prior to distribution.

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

13
14 **XXI. RESEARCH AND PUBLICATION**

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

18
19 **XXII. REVENUE**

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

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

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

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

3
4 **XXIII. SEVERABILITY**

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

10
11 **XXIV. SPECIAL PROVISIONS**

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

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

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

- 34 1. Funding travel or training (excluding mileage or parking).
- 35 2. Making phone calls outside of the local area unless documented to be directly for the
36 purpose of client care.
- 37 3. Payment for grant writing, consultants, certified public accounting, or legal services.

1 4. Purchase of artwork or other items that are for decorative purposes and do not directly
2 contribute to the quality of services to be provided pursuant to this Agreement.
3

4 **XXV. STATUS OF CONTRACTOR**

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

17 **XXVI. TERM**

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

25 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a weekend
26 or holiday may be performed on the next regular business day.
27

28 **XXVII. TERMINATION**

29 A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar days’
30 written notice given the other party.

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

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

- 37 1. The loss by CONTRACTOR of legal capacity.

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

14 D. CONTINGENT FUNDING

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

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

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

- 30 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
- 31 is consistent with recognized standards of quality care and prudent business practice.
- 32 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
- 33 performance during the remaining contract term.
- 34 3. Until the date of termination, continue to provide the same level of service required by this
- 35 Agreement.

36 //
37 //

1 4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
2 upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an
3 orderly transfer.

4 5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with
5 client's best interests.

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

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

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

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

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

22
23 **XXVIII. THIRD PARTY BENEFICIARY**

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

27
28 **XXIX. WAIVER OF DEFAULT OR BREACH**

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

34 //
35 //
36 //
37 //

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

3
4 «UC_NAME»

5 «UC_DBA»
6

7 BY: _____ DATED: _____

8
9 TITLE: _____
10

11
12 BY: _____ DATED: _____

13
14 TITLE: _____
15

16
17
18 COUNTY OF ORANGE
19

20
21 BY: _____ DATED: _____

22 HEALTH CARE AGENCY
23

24
25 APPROVED AS TO FORM
26 OFFICE OF THE COUNTY COUNSEL
27 ORANGE COUNTY, CALIFORNIA
28

29
30 BY:  _____ DATED: 2/24/2017

31 C4E3886C1E6D4FD...
DEFU I
32
33

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

EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 «UC_NAME»
 «UC_DBA»
 JULY 1, 2017 THROUGH JUNE 30, 2019

I. IDENTIFICATION OF SERVICES

CONTRACTOR agrees to provide the following Psychiatric Skilled Nursing Facility services, hereunder marked with an X, pursuant to the terms and conditions specified in the Agreement and in accordance with Exhibit B to the Agreement for the provision of such services by and between COUNTY and CONTRACTOR dated July 1, 2017 as hereinafter indicated. CONTRACTOR and COUNTY may mutually agree, in writing, to add or delete services to be provided by CONTRACTOR.

	<u>PERIOD ONE</u>	<u>PERIOD TWO</u>	<u>PERIOD THREE</u>
Skilled Nursing Facility Services	<u>«OP_REC_1»</u>	<u>«OP_REC_2»</u>	<u>«OP_REC_3»</u>
Skilled Nursing Facility Services with Special Treatment Program (SNF/STP) Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
<u>Specialized Services</u>			
Hearing Impaired/Psychiatric Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
Specialized Nursing Care Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
Subacute Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
Subacute Medical Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
Augmented Treatment Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>

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1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 «UC_NAME»
 8 «UC_DBA»
 9 JULY 1, 2017 THROUGH JUNE 30, 2019

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

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

14 1. Additional Income Source means Additional Income Source and refers to all income other
15 than SSI and includes such sources of income as retirement income, disability income, trust fund
16 income, SSI, Veteran’s Affairs disability income, etc.

17 2. Client Day means one (1) calendar day during which CONTRACTOR provides all of the
18 services described hereunder, including the day of admission and excluding the day of discharge. If
19 admission and discharge occur on the same day, one (1) Client Day shall be charged.

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

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

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

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

36 //
37 //

1 7. Medical Necessity means the requirements as defined in the MHP Medical Necessity for
2 Medi-Cal reimbursed Specialty Mental Health Services that includes Diagnosis, Impairment Criteria and
3 Intervention Related Criteria.

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

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

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

17 9. Rehabilitation Service means an activity which includes assistance in improving,
18 maintaining, or restoring a Client’s or group of Clients’ functional skills, daily living skills, social and
19 leisure skills, grooming and personal hygiene skills, meal preparation skills, support resources and/or
20 medication education.

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

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

29 12. 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 13. 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 health
36 or condition of an individual, provision of health care to an individual, or the past, present, or future
37 payment for health care provided to an individual.

1 14. Psychiatrist means an individual who meets the minimum professional and licensure
2 requirements set forth in Title 9, CCR, Section 623.

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

5 16. Recovery means a process of change through which individuals improve their health and
6 wellness, live a self-directed life and strive to reach their full potential, and identifies four major
7 dimensions to support Recovery in life:

8 a. Health: Overcoming or managing one’s disease(s) as well as living in a physically and
9 emotionally healthy way;

10 b. Home: A stable and safe place to live;

11 c. Purpose: Meaningful daily activities, such as a job, school, volunteerism, family
12 caretaking, or creative endeavors, and the independence, income, and resources to participate in society;
13 and

14 d. Community: Relationships and social networks that provide support, friendship, love,
15 and hope.

16 17. Referral means providing the effective linkage of a Client to another service, when
17 indicated.

18 18. SNF/STP means Skilled Nursing Facility with Special Treatment Program and refers to a
19 facility certified by the Department of Health Care Services (DHCS) to provide 24-hour/day skilled
20 nursing care and supervision and at least 27 hours of programming to Clients with a primary psychiatric
21 diagnosis, who may also have co-existing medical conditions. In most cases, Clients are conserved under
22 LPS.

23 19. SSI/SSP means Social Security Income/Supplemental Security Payment and refers to
24 revenue resources paid to an eligible Client, or the Client’s payee, by the federal Social Security
25 Administration.

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

28
29 **II. ISSUE RESOLUTION**

30 A. CONTRACTOR agrees that for resolution of issues between COUNTY and CONTRACTOR,
31 with respect to the implementation and operation of the Agreement or COUNTY’s P&P regarding
32 services described herein, the following sequential steps will be followed:

33 1. CONTRACTOR shall routinely utilize all informal communication processes and methods
34 with ADMINISTRATOR including, but not limited to, telephone, email, and fax communication,
35 written correspondence and meetings, to resolve any issues or problems regarding the implementation
36 and operation of the Agreement or COUNTY’s P&P regarding services described herein.

37 //

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

7 3. CONTRACTOR agrees that if the parties are still unable to obtain resolution of the issue,
8 they shall submit a joint written Statement describing the facts of the issue, within thirty (30) calendar
9 days after the written notice described above to COUNTY’s Director of Behavioral Health, or designee,
10 for final resolution.

11 B. The rights and remedies provided by this Paragraph are in addition to those provided by law to
12 either party.

13 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Issue
14 Resolution Paragraph of this Exhibit B to the Agreement.

15
16 **III. PATIENTS’ RIGHTS**

17 A. CONTRACTOR shall post the current DHCS Patients’ Rights poster as well as the local MHP
18 Complaint and Grievance posters in all threshold languages in locations readily available to patients and
19 staff and have complaint forms and complaint envelopes readily accessible to patients.

20 B. In addition to those processes provided by COUNTY and the resident County, CONTRACTOR
21 shall have complaint resolution and grievance processes approved by COUNTY, to which the
22 beneficiary shall have access.

23 1. CONTRACTOR’s complaint resolution processes shall emphasize informal, easily
24 understood steps designed to resolve disputes as quickly and simply as possible in all threshold
25 languages.

26 2. CONTRACTOR’s complaint resolution and grievance processes shall incorporate
27 COUNTY’s and the resident County’s grievance, patients’ rights, and utilization management guidelines
28 and procedures.

29 C. Complaint Resolution and Grievance Process - COUNTY shall support complaint and grievance
30 procedures in concert with the resident County that shall include the components outlined below. The
31 resident County will handle such complaints that may include allegations of denial of rights,
32 dissatisfaction with services or with the quality of care, or dissatisfaction with the condition of the
33 physical plant. COUNTY will handle such complaints regarding access to care or regarding COUNTY’s
34 Public Administrator/Public Guardian Office services.

35 1. Complaint Resolution. This process will specifically address and attempt to resolve Client
36 complaints and concerns at CONTRACTOR’s facility.

37 //

1 2. Formal Grievance. When the Client's complaint is not resolved at CONTRACTOR's
2 facility and the Client or Client representative requests it, the complaint becomes a formal grievance.
3 The request is made to the respective Resident County or ADMINISTRATOR and represents the first
4 step in the formal grievance process.

5 3 Title IX Rights Advocacy. This process may be initiated by a Client who registers a
6 statutory rights violation or a denial or abuse complaint with COUNTY Patients' Rights Office. The
7 Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply,
8 which involve COUNTY Behavioral Health Director and the State Patients' Rights Office.

9 D. CONTRACTOR agrees that Clients have recourse to initiate a complaint to CONTRACTOR,
10 appeal to the respective resident County or COUNTY's Patients' Rights Office, to file a formal
11 grievance, file a Title IX complaint. The Patients' Advocate shall advise and assist the Client,
12 investigate the cause of the complaint or grievance, and attempt to resolve the matter.

13 E. CONTRACTOR agrees that no provision of the Agreement shall be construed to replace or
14 conflict with the duties of COUNTY Patients' Rights Office pursuant to WIC Section 5500.

15 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the
16 Patients' Rights Paragraph of this Exhibit B to the Agreement.

17
18 **IV. PAYMENTS**

19 **A. COUNTY REIMBURSED IMD RATES**

20 1. COUNTY shall pay CONTRACTOR monthly, in arrears, at the prevailing SNF/STP daily
21 rate, as determined by the California DHCS; however, the total of all such payments to CONTRACTOR
22 and all other providers of mental health SNF/STP services shall not exceed COUNTY's Aggregate
23 Maximum Obligation as specified in the Referenced Contract Provisions of the Agreement.

24 a. COUNTY may adjust the SNF/STP daily rate of reimbursement as directed by the
25 DHCS.

26 b. COUNTY will reimburse CONTRACTOR only for services provided to Clients who
27 are certified by COUNTY as eligible to receive services and for whom there is a current COUNTY
28 treatment assessment/certification in place.

29 2. COUNTY shall collect SSI/SSP revenue. CONTRACTOR shall collect additional income
30 sources and all other revenues due the Client, conservator/guardian, or legally responsible person to
31 determine a Client share of cost. CONTRACTOR shall ensure that the Client share of cost is clearly
32 stated on the CONTRACTOR's invoice. CONTRACTOR shall deduct the Client's share of costs from
33 the amount owed to CONTRACTOR by the COUNTY.

34 a. ADMINISTRATOR shall review and approve Client's revenue and share of cost.
35 ADMINISTRATOR may adjust CONTRACTOR's monthly invoice if the appropriate revenue is not
36 stated and/or the share of cost has not been appropriately deducted from the amount due from the
37 COUNTY.

1 b. ADMINISTRATOR may authorize CONTRACTOR to use a portion of the revenue for
2 non-covered costs such as personal and/or incidental costs for the Client's care or personal needs.
3 ADMINISTRATOR shall monitor such costs and may adjust the invoice to ensure that the appropriate
4 costs are deducted from the amount due from the COUNTY.

5 B. CONTRACTORs that provide Specialized Services in addition to SNF or SNF/STP Services,
6 shall be reimbursed the prevailing SNF/STP daily rate and the following per diem rate for each
7 Supplemental Service:

- 8 a. Hearing Impaired/Psychiatric Services, «HEAR_IMP_RATE»
- 9 b. Specialized Nursing Care Services, «SPECIALIZED_NURSING_RATE»
- 10 c. Subacute Services, «SUBACUTE_RATE»;
- 11 d. Subacute-Medical Services, «SUBACUTE_MED_RATE»;
- 12 e. Augmented Treatment Services, «AUG_TRTMT_RATE»;

13 3. CONTRACTOR's invoices shall be on a form approved or supplied by COUNTY and
14 provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th) day of
15 the month. Invoices received after the due date may not be paid within the same month. Payments to
16 CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after
17 receipt of the correctly completed invoice.

18 C. MEDI-CAL REIMBURSED SNF/STP RATES – CONTRACTORs reimbursed by Medi-Cal for
19 SNF/STP Services provided in accordance with the Services Paragraph of this Exhibit B to the
20 Agreement, shall invoice the State directly for those services. COUNTY shall not pay CONTRACTOR
21 for SNF/STP Services paid directly to CONTRACTOR from the State.

22 D. MEDI-CAL REIMBURSED SNF RATES – CONTRACTORs reimbursed by Medi-Cal for
23 SNF Services provided in accordance with the Services Paragraph of this Exhibit B to the Agreement,
24 shall invoice the State directly for those services. COUNTY shall not pay CONTRACTOR for SNF
25 Services paid directly to CONTRACTOR from the State.

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

28 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
29 Payments Paragraph of this Exhibit B to the Agreement.

30
31 **V. REPORTS**

32 A. CONTRACTOR shall report all special incidents to ADMINISTRATOR and shall submit a
33 written special incident report referred to as a "Notable Incident Form" in accordance with the Notices
34 Paragraph of the Agreement. Special incidents shall include, but are not limited to, a Client's suicide or
35 attempted suicide, elopement or absence without leave, serious injury, death, criminal behavior including
36 arrests with or without conviction, positive test results for substance use from urine screenings, or any
37 other incidents which may expose COUNTY or CONTRACTOR to liability.

1 B. CONTRACTOR shall provide COUNTY copies of all DHCS surveys, including any plans of
2 correction.

3 C. STAFFING – CONTRACTOR shall submit to ADMINISTRATOR, on a quarterly basis, a list
4 of persons who provide services under the Agreement and their job descriptions. The staff list shall state
5 the employee name, job title, profession degree, and license number, if applicable.

6 D. PROGRAMMATIC – CONTRACTOR shall submit monthly programmatic reports to
7 ADMINISTRATOR which shall be received no later than fourteen (14) calendar days following the end
8 of the month being reported. These reports shall be on a form acceptable to, or provided by
9 ADMINISTRATOR and shall evaluate each Client’s participation and functioning in CONTRACTOR’s
10 psycho-social rehabilitation program, and readiness for discharge.

11 E. CONTRACTOR shall ensure that all staff are trained and have a clear understanding of all
12 P&P’s. CONTRACTOR shall provide signature confirmation of the P&P training for each staff member
13 and place it in their personnel files.

14 F. CONTRACTOR shall obtain a NPI.

15 1. All HIPAA covered healthcare providers, individuals and organizations must obtain a NPI
16 for use to identify themselves in HIPAA standard transactions. The NPI is assigned for life.

17 2. CONTRACTOR shall ensure that each employee who is required to obtain a NPI to provide
18 services under the Agreement, will obtain a NPI upon commencement of the Agreement or prior to
19 providing services under the Agreement. CONTRACTOR shall report to ADMINISTRATOR, on a
20 form approved or supplied by ADMINISTRATOR, all NPIs as soon as they are available.

21 G. COUNTY, as the MHP, shall provide the NPP to Client, conservator/guardian, or legally
22 responsible person at the time of the first service provided under the Agreement to individuals who are
23 covered by Medi-Cal and have not previously received services at a COUNTY operated clinic.
24 COUNTY shall also provide, upon request from Client, conservator/guardian, or legally responsible
25 person the NPP for the COUNTY, as the MHP, to any individual who received services under the
26 Agreement.

27 H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Reports
28 Paragraph of this Exhibit B to the Agreement.

29
30 **VI. SERVICES**

31 **A. FACILITY REQUIREMENTS**

32 1. CONTRACTOR shall maintain at least one facility as a licensed SNF which may be
33 designated by the State as an IMD and, if providing STP Services, must be certified to provide STP
34 Services, located at the following:

35 //
36 //
37 //

1 «FAC_NAME»
2 «FAC_ADDR»
3 «FAC_CSZ»
4

5 2. CONTRACTOR shall provide a facility that maintains a safe and secure treatment setting
6 appropriate for the level of care needed by the Client.

- 7 3. CONTRACTOR’s facility shall include the following:
8 a. Private or semi-private rooms for each Client;
9 b. Group room(s) with an appropriate capacity for group meetings, occupational and
10 vocational therapy, activities, or visitors;
11 c. Office space for confidential medical examinations and Client interviews;
12 d. A supervised outside Client recreational area;
13 e. Office space for CONTRACTOR’s nursing, psychiatric, and social services staff; and
14 f. Dining area.

15 B. PERSONS TO BE SERVED

16 1. CONTRACTOR shall serve seriously and persistently mentally ill adults, as defined by
17 WIC Section 5903, who are COUNTY residents that are referred by COUNTY and authorized for
18 services under the Agreement.

19 2. CONTRACTOR shall admit Clients with a diagnosis that meets the diagnostic criteria
20 identified in the current Diagnostic and Statistical Manual of Mental Disorders in need of twenty-four
21 (24) hour skilled nursing services and who are appropriate for SNF or SNF/STP levels of care. These
22 Clients may include persons who have histories of, or are at risk for, the following symptoms:

- 23 a. Displaying assaultive or combative behaviors elopement, risk of suicidality,
24 management problems and excessive verbal abusiveness which preclude them from being admitted into
25 a lower level of care and require intensive treatment in a secured setting, most of whom may be LPS
26 conservatees.
27 b. Being gravely disabled and potentially dangerous, and may be recently discharged or
28 diverted from State Hospitals.
29 c. Requiring twenty-four (24) hour nursing or medical care due to medical conditions that
30 include, but are not limited to, colostomies, open or healing wounds, ileostomies, indwelling or
31 intermittent catheterization, tube feedings, and dialysis.

32 3. CONTRACTOR shall accept all Clients referred by COUNTY when the number of
33 COUNTY Clients receiving services pursuant to the Agreement in CONTRACTOR’s facility is less than
34 the number of beds contracted, pursuant to Subparagraph VI.C. of this Exhibit B to the Agreement.

- 35 a. CONTRACTOR may request to deny admission of a Client within three (3) days of
36 COUNTY’s notification of the proposed admission. Such request for denial shall be in writing and shall
37 //

1 specify the reason(s) for the request and the specific behaviors which must change in order for the Client
2 to be admitted. Such requests are subject to approval by ADMINISTRATOR.

3 b. If the number of COUNTY Clients receiving services pursuant to the Agreement in
4 CONTRACTOR’s facility exceeds the number of beds specified in Subparagraph VI.C. of this Exhibit B
5 to the Agreement, CONTRACTOR may deny admission of a Client based upon availability of beds.

6 c. CONTRACTOR agrees to the same terms and conditions specified in the Agreement
7 for any number of Clients receiving services pursuant to the Agreement.

8 C. SERVICES PROVIDED

9 1. SNF SERVICES

10 a. CONTRACTOR shall provide a minimum of «MIN_BEDS» or «CLIENT_DAYS»
11 days within a licensed SNF.

12 b. CONTRACTOR shall provide SNF Services that include medication management,
13 therapy groups, activities therapy, and other Recovery focused adjunctive therapies.

14 c. CONTRACTOR shall provide twenty-four (24) hour nursing or medical care to Clients
15 due to medical conditions that include, but are not limited to, colostomies, open or healing wounds,
16 ileostomies, indwelling or intermittent catheterization, tube feedings, and dialysis.

17 d. CONTRACTOR shall coordinate Client discharge planning with ADMINISTRATOR
18 to insure orderly discharge to appropriate levels of care for Clients whom COUNTY determines are no
19 longer eligible for services. CONTRACTOR shall begin discharge planning on the day of admission
20 and include Client self-help groups and contact with community service providers when appropriate.

21 e. CONTRACTOR shall provide, or cause to be provided, services which shall include,
22 but not be limited to, the following:

- 23 1) Room and dietetic services;
- 24 2) Nursing services including medication administration and Client care;
- 25 3) Client activities including occupational, recreational, and vocational services,
26 prevocational preparation services, and pre-discharge planning in a therapeutic behavioral modification
27 treatment milieu with training in the following areas:

- 28 a) Life skills
- 29 b) Self-help skills
- 30 c) Strategies for coping with the symptoms of the Client’s mental illness
- 31 d) Money management
- 32 e) Behavioral intervention
- 33 f) Interpersonal relationships
- 34 g) Accessing community services

35 f. CONTRACTOR shall provide psychiatric and psychological treatment and other
36 services consistent with the treatment plans and in accordance with CCR, Title 22 and the Clients’
37 physicians' orders.

1 g. CONTRACTOR shall provide dual diagnosis services for Clients with both chemical
2 dependency and serious mental disorders which shall include programming to assist Clients in coping
3 with their symptoms of mental illness without depending on mood altering substances.

4 h. CONTRACTOR shall ensure that Clients are full participants in any meetings
5 governing decisions about treatment or services and should be encouraged to involve family members or
6 friends.

7 i. CONTRACTOR shall provide support services to include the following:

- 8 1) Housekeeping;
- 9 2) Laundry;
- 10 3) Maintenance;
- 11 4) Medical records;
- 12 5) Medication order processing;
- 13 6) Access to required medical treatment;
- 14 7) Up-to-date psychopharmacology; and
- 15 8) Emergency and non-emergency medical and ambulance services.

16 j. CONTRACTOR shall provide, or cause to be provided, transportation to an appropriate
17 medical facility for Clients who are provided services hereunder and who require emergency or non-
18 emergency medical care for illness or accident. The cost of such transportation as well as the cost of any
19 medical care shall not be reimbursable under the Agreement.

20 k. CONTRACTOR shall coordinate the application process and prepare medical records
21 for current Clients and any forthcoming Clients as are necessary for making application to the Disability
22 Evaluation Division, Department of Social Services and the Social Security Administration for SSI/SSP
23 benefits.

24 l. CONTRACTOR shall provide psychiatrist time and services regarding Conservatorship
25 issues. This includes the annual filing of Court documents to renew Conservatorship, as well as LPS
26 Conservatorship Court appearances/testimony as requested by COUNTY. CONTRACTOR shall
27 provide medical and psychiatric records as needed for all Court appearances.

28 m. CONTRACTOR shall obtain all applicable current legal and Conservatorship
29 documents, and authorization for the release of information signed, with original signature, by the Client,
30 conservator/guardian, or legally responsible person. Such documentation shall be maintained by
31 CONTRACTOR in Client's chart.

32 n. CONTRACTOR shall track the legal status of Clients and notify COUNTY within three
33 (3) business days when Conservatorship terminates.

34 o. CONTRACTOR shall complete COUNTY's LTC Discharge Form and fax it to the
35 ADMINISTRATOR within one business day of Client discharge. CONTRACTOR shall also notify the
36 ADMINISTRATOR of the discharge by telephone call.

37 //

1 p. CONTRACTOR shall provide census data on a monthly basis or more frequently as
2 requested by the ADMINISTRATOR.

3 q. CONTRACTOR shall notify the ADMINISTRATOR by telephone whenever a County
4 Client is sent out for acute psychiatric or general medical hospital care. CONTRACTOR will notify
5 ADMINISTRATOR in writing whether the Client will be accepted back as soon as the Client is
6 stabilized and ready for return.

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

11 2. SNF/STP SERVICES

12 a. CONTRACTOR shall provide a minimum of «MIN_BEDS» or «CLIENT_DAYS»
13 days within a licensed SNF which may be designated as an Institution of Mental Disease.

14 b. CONTRACTOR shall provide SNF/STP Services that include medication management,
15 therapy groups, activities therapy, and other Recovery focused adjunctive therapy.

16 c. CONTRACTOR shall have a written Recovery based SNF/STP plan, approved by
17 ADMINISTRATOR, which focuses on the improved social functioning for the treatment resistant
18 Client.

19 d. CONTRACTOR shall make an initial individual assessment/certification of each Client to
20 identify the current level of functioning and program needs of the Client. The assessment/certification
21 shall be standardized and recorded on forms approved or provided by ADMINISTRATOR, and must be
22 signed by COUNTY's Mental Health Director, or designee, within thirty (30) calendar days of
23 admission.

24 e. The initial treatment assessment/certification shall be for a period of one hundred
25 twenty (120) calendar days and may be extended in increments of one hundred twenty (120) calendar
26 days at the sole discretion of ADMINISTRATOR.

27 f. CONTRACTOR shall submit to ADMINISTRATOR a plan for continued Client
28 treatment at least thirty (30) calendar days prior to the termination of the initial, or any subsequent one
29 hundred twenty (120)-day Client treatment certification period.

30 g. At least every four (4) months, in conjunction with ADMINISTRATOR,
31 CONTRACTOR shall reassess each Client to certify the need for continued placement. This
32 assessment/certification must be signed by COUNTY's Mental Health Director or designee. Approval
33 of continued Client treatment is at the sole discretion of ADMINISTRATOR.

34 h. CONTRACTOR shall coordinate Client discharge planning with ADMINISTRATOR
35 to insure orderly discharge to appropriate levels of care for Clients whom COUNTY determines are no
36 longer eligible for services. CONTRACTOR shall begin discharge planning on the day of admission
37 //

1 and include opportunities to participate in community activities, Client self-help groups, and contact
2 with community service providers when appropriate.

3 i. CONTRACTOR shall provide, or cause to be provided, services which shall include,
4 but not be limited to, the following:

- 5 1) Room and dietetic services;
- 6 2) Nursing services including medication administration and Client care;
- 7 3) Client activities including occupational, recreational, and vocational services,
8 prevocational preparation services, and pre-discharge planning in a therapeutic behavioral modification
9 treatment milieu with training in the following areas:
 - 10 a) Life skills
 - 11 b) Self-help skills
 - 12 c) Strategies for coping with the symptoms of the Client's mental illness
 - 13 d) Money management
 - 14 e) Behavioral intervention
 - 15 f) Interpersonal relationships
 - 16 g) Accessing community services

17 j. CONTRACTOR shall provide psychiatric and psychological treatment and other
18 services consistent with the treatment plans and in accordance with CCR, Title 22 and the Clients'
19 physicians' orders and guidelines.

20 k. CONTRACTOR shall provide dual diagnosis services for Clients with both chemical
21 dependency and serious mental disorders which shall include programming to assist Clients in coping
22 with their symptoms of mental illness without depending on mood altering substances.

23 l. CONTRACTOR shall provide service plans that are based upon an individualized
24 assessment of Client needs and preferences and include, but not be limited to, the following:

- 25 1) Housing;
- 26 2) Income support;
- 27 3) Vocational and educational goals;
- 28 4) Self-management of symptoms including the roles of medication;
- 29 5) Substance abuse;
- 30 6) Enhancement of interpersonal skills;
- 31 7) Relationship to significant others;
- 32 8) Linkages to the community; and
- 33 9) Survival skills

34 m. CONTRACTOR shall ensure that Clients are full participants in any meetings
35 governing decisions about treatment or services and should be encouraged to involve family members or
36 friends.

37 //

- 1 n. CONTRACTOR shall provide support services to include the following:
- 2 1) Housekeeping;
- 3 2) Laundry;
- 4 3) Maintenance;
- 5 4) Medical records;
- 6 5) Medication order processing;
- 7 6) Access to required medical treatment;
- 8 7) Up-to-date psychopharmacology;
- 9 8) Emergency and non-emergency medical and ambulance services; and
- 10 9) Transportation for supervised Client therapeutic outings.
- 11 o. CONTRACTOR shall provide, or cause to be provided, transportation to an appropriate
- 12 medical facility for Clients who are provided services hereunder and who require emergency or non-
- 13 emergency medical care for illness or accident. The cost of such transportation as well as the cost of any
- 14 medical care shall not be reimbursable under the Agreement.
- 15 p. CONTRACTOR shall coordinate the application process and prepare medical records
- 16 for current Clients and any forthcoming Clients as are necessary for making application to the Disability
- 17 Evaluation Division, Department of Social Services and the Social Security Administration for SSI/SSP
- 18 benefits.
- 19 q. CONTRACTOR shall provide psychiatrist time and services regarding Conservatorship
- 20 issues. This includes the annual filing of Court documents to renew Conservatorship, as well as LPS
- 21 Conservatorship Court appearances/testimony as requested by COUNTY. CONTRACTOR shall
- 22 provide medical and psychiatric records as needed for all Court appearances.
- 23 r. CONTRACTOR shall provide a minimum average of twenty-seven (27) hours per week
- 24 of direct group or individual program service for each client.
- 25 s. CONTRACTOR shall provide structured training regimens with individualized therapy
- 26 to assist clients in the development of new skills and in modifying behaviors that prevent them from
- 27 living in a lower level of care facility
- 28 t. CONTRACTOR shall obtain all applicable current legal and Conservatorship
- 29 documents, and authorization for the release of information signed, with original signature, by the Client,
- 30 conservator/guardian, or legally responsible person. Such documentation shall be maintained by
- 31 CONTRACTOR in Client's chart.
- 32 u. CONTRACTOR shall track the legal status of Clients and notify COUNTY within three
- 33 (3) business days when Conservatorship terminates.
- 34 v. CONTRACTOR shall complete COUNTY's LTC Discharge Form and fax it to the
- 35 ADMINISTRATOR within one business day of Client discharge. CONTRACTOR shall also notify the
- 36 ADMINISTRATOR of the discharge by telephone call.
- 37 //

1 w. CONTRACTOR shall provide census data on a monthly basis or more frequently as
2 requested by the ADMINISTRATOR.

3 x. CONTRACTOR shall notify the ADMINISTRATOR by telephone whenever a County
4 Client is sent out for acute psychiatric or general medical hospital care. CONTRACTOR will notify
5 ADMINISTRATOR in writing whether the Client will be accepted back as soon as the Client is
6 stabilized and ready for return.

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

11 3. SPECIALIZED SERVICES

12 a. In addition to providing SNF or SNF/STP Services, CONTRACTOR may provide the
13 following Specialized Services: «SP_SVCS»:

- 14 1) «HEAR_IMP_MBED» Minimum beds for Hearing Impaired/Psychiatric Services;
- 15 2) «SK_NURSE_MBED» Minimum beds for Specialized Nursing Care Services;
- 16 3) «SUBACUTE_MBED» Minimum beds for Subacute Services;
- 17 4) «SUBACUTE_MED_MBED» Minimum beds for Subacute Medical Services; and
- 18 5) «AUG_TRTMT_MBED» Minimum beds for Augmented Treatment Services.

19 b. CONTRACTOR understands that Clients may require Specialized Services due to
20 medical conditions that require services that exceed the provided SNF or SNF/STP Services. These
21 Specialized Services are described as follows:

22 1) Hearing Impaired/Psychiatric Services – include, but are not limited to, specialized
23 sign language interpretation for Clients with severe hearing impairment.

24 2) Specialized Nursing Care Services - include, but are not limited to, custodial care
25 due to incontinence, assistance with eating and daily living activities due to a medical condition or
26 severe psychiatric symptoms, intensive supervision, stabilization, and treatment programming for Clients
27 removed or diverted from the State Hospital system. In addition to standard medical and psychiatric
28 work-ups, neuro-psychological evaluations shall also be performed in order to provide a baseline for
29 medications and a foundation for behaviorally oriented treatment plans directed towards increasing the
30 quality of life of the Client and enhancing their ability to benefit from nursing care and treatment
31 activities.

32 3) Subacute Services - include, but are not limited to, the following:

33 a) Additional mental health clinical positions to provide individual and group
34 counseling.

35 b) A basic token economy program that identifies and rewards targeted behaviors
36 and skills as appropriate for each Client. Cigarettes or tobacco products shall not be provided as rewards
37 for targeted behaviors.

1 4) Subacute Medical Services - include, but are not limited to, supervision, nursing
2 care, and programming for Clients requiring additional medical support specific to Clients' individual
3 medical needs, continual nursing, and program monitoring and reporting. Medical conditions include,
4 but are not limited to, Polydipsia, Human Immunodeficiency Virus – Acquired Immune Deficiency
5 Syndrome, Chronic Obstructive Pulmonary Disease, Diabetes, Seizure Disorders, and other medical
6 conditions. The following additional services provided shall include, but are not limited to, the
7 following:

8 a) Additional mental health clinical positions to provide individual and group
9 counseling;

10 b) A basic token economy program that identifies and rewards targeted behaviors
11 related to their medical conditions and designed to improve self-care, monitoring, and reporting.
12 Cigarettes or tobacco products shall not be provided as rewards for targeted behaviors.

13 5) Augmented Treatment Services - include, but are not limited to, the following:

14 a) Supervision and treatment programming for Clients in transition from the
15 Subacute Services program.

16 b) Additional mental health clinical positions to provide individual and group
17 counseling.

18 c) A basic token economy program that identifies and rewards targeted behaviors
19 and skills as appropriate for each Client. Cigarettes or tobacco products shall not be provided as rewards
20 for targeted behaviors.

21 D. QUALITY IMPROVEMENT AND PERFORMANCE OUTCOMES

22 1. The overall goal of the SNF and SNF/STP Services program is to increase the functional
23 levels of Clients, enabling them to transition to less restrictive levels of intervention, including
24 independent living.

25 2. CONTRACTOR shall develop and maintain a plan for quality improvement, the overall
26 goal of which is the maintenance of high quality care and effective utilization of services offered. This
27 plan shall include utilization review, peer review, and medication monitoring as mandated by the DHCS.
28 This plan will contain measurable outcomes and focus on personal growth and Recovery for Clients who
29 are functionally impaired by psychiatric symptoms with a path to treatment in less restrictive levels of
30 care and a return to community living.

31 3. CONTRACTOR shall facilitate physician to physician consultation between
32 CONTRACTOR physician and ADMINISTRATOR physician to review the Client's clinical course
33 following any adverse outcome.

34 4. CONTRACTOR shall provide assistance to COUNTY in conducting its utilization and
35 reporting functions, and medical necessity determination.

36 E. CONTRACTOR shall make its best effort to provide services pursuant to the Agreement in a
37 manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR

1 shall maintain documentation of such efforts which may include, but not be limited to: records of
 2 participation in COUNTY sponsored or other applicable training, recruitment and hiring Policies and
 3 Procedures, copies of literature in multiple languages and formats, as appropriate, and descriptions of
 4 measures taken to enhance accessibility for, and sensitivity to, individuals who are physically
 5 challenged.

6 F. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources,
 7 with respect to any individual(s) who have been referred to CONTRACTOR by COUNTY under the
 8 terms of the Agreement. Further, CONTRACTOR agrees that the funds provided hereunder will not be
 9 used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian
 10 institution, or religious belief.

11 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the
 12 Services Paragraph of this Exhibit B to the Agreement.

13
 14 **VII. STAFFING**

15 A. SNF Services - CONTRACTOR shall provide the required staffing positions in accordance with
 16 CCR Title 22, Division 5, Chapter 3.

17 B. SNF/STP Services - CONTRACTOR shall provide the required staffing positions in accordance
 18 with CCR Title 22, Division 5, Chapter 3, Article 4.

19 C. Specialized Services - CONTRACTOR shall, at a minimum, provide the following staffing
 20 pattern expressed in Full-Time Equivalents (FTEs) continuously throughout the term of the Agreement
 21 to provide Specialized Services. One (1) FTE will be equal to an average of forty (40) hours work per
 22 week.

23 1. Hearing Impaired/Psychiatric Services

24 a. FTE for the Psychiatrist, Medical Director, and Internal Medicine M.D. shall be
 25 consultation time non-billable to the COUNTY. Contractor shall ensure that specialized sign language
 26 interpretation services are provided for Clients with severe hearing impairment.

27
 28 **CLINICAL STAFFING**

FTEs

29	«HEARING_PSYCH_POS_1»	«HEARING_PSYCH_FTE_1»
30	«HEARING_PSYCH_POS_2»	«HEARING_PSYCH_FTE_2»
31	«HEARING_PSYCH_POS_3»	«HEARING_PSYCH_FTE_3»
32	«HEARING_PSYCH_POS_4»	«HEARING_PSYCH_FTE_4»
33	«HEARING_PSYCH_POS_5»	«HEARING_PSYCH_FTE_5»
34	«HEARING_PSYCH_POS_6»	«HEARING_PSYCH_FTE_6»
35	«HEARING_PSYCH_POS_7»	«HEARING_PSYCH_FTE_7»
36	«HEARING_PSYCH_POS_8»	«HEARING_PSYCH_FTE_8»
37	«HEARING_PSYCH_POS_9»	«HEARING_PSYCH_FTE_9»

1	«HEARING_PSYCH_POS_10»	«HEARING_PSYCH_FTE_10»	
2	TOTAL FTEs		0.00

3

4 2. Specialized Nursing Care Services

5 a. FTE for the Psychiatrist, Medical Director, and Internal Medicine M.D. shall be
6 consultation time non-billable to the COUNTY.

7

8 CLINICAL STAFFING

FTEs

9	«SPEC_NURS_POS_1»	«SPEC_NURS_FTE_1»	
10	«SPEC_NURS_POS_2»	«SPEC_NURS_FTE_2»	
11	«SPEC_NURS_POS_3»	«SPEC_NURS_FTE_3»	
12	«SPEC_NURS_POS_4»	«SPEC_NURS_FTE_4»	
13	«SPEC_NURS_POS_5»	«SPEC_NURS_FTE_5»	
14	«SPEC_NURS_POS_6»	«SPEC_NURS_FTE_6»	
15	«SPEC_NURS_POS_7»	«SPEC_NURS_FTE_7»	
16	«SPEC_NURS_POS_8»	«SPEC_NURS_FTE_8»	
17	«SPEC_NURS_POS_9»	«SPEC_NURS_FTE_9»	
18	«SPEC_NURS_POS_10»	«SPEC_NURS_FTE_10»	
19	TOTAL FTEs		0.00

20

21 3. Subacute Services

22 a. The Clinical Director shall be a licensed mental health professional.

23 b. 4.70 FTE of mental health clinical positions shall provide individual and group
24 counseling.

25 c. CONTRACTOR shall maintain a staff-to-patient ratio of 1:5.

26

27 CLINICAL STAFFING

FTEs

28	«SUBACUTE_POS_1»	«SUBACUTE_FTE_1»	
29	«SUBACUTE_POS_2»	«SUBACUTE_FTE_2»	
30	«SUBACUTE_POS_3»	«SUBACUTE_FTE_3»	
31	«SUBACUTE_POS_4»	«SUBACUTE_FTE_4»	
32	«SUBACUTE_POS_5»	«SUBACUTE_FTE_5»	
33	«SUBACUTE_POS_6»	«SUBACUTE_FTE_6»	
34	«SUBACUTE_POS_7»	«SUBACUTE_FTE_7»	
35	«SUBACUTE_POS_8»	«SUBACUTE_FTE_8»	
36	«SUBACUTE_POS_9»	«SUBACUTE_FTE_9»	
37	«SUBACUTE_POS_10»	«SUBACUTE_FTE_10»	

1 TOTAL FTEs 0.00

2

3 4. Subacute –Medical Services

4 a. CONTRACTOR shall maintain a staff-to-patient ratio of 1:3.

5 b. 1.50 FTE of mental health clinical positions shall provide individual and group
6 counseling.

7

8 CLINICAL STAFFING

FTEs

9 «SUB_MED_POS_1»

«SUB_MED_FTE_1»

10 «SUB_MED_POS_2»

«SUB_MED_FTE_2»

11 «SUB_MED_POS_3»

«SUB_MED_FTE_3»

12 «SUB_MED_POS_4»

«SUB_MED_FTE_4»

13 «SUB_MED_POS_5»

«SUB_MED_FTE_5»

14 «SUB_MED_POS_6»

«SUB_MED_FTE_6»

15 «SUB_MED_POS_7»

«SUB_MED_FTE_7»

16 «SUB_MED_POS_8»

«SUB_MED_FTE_8»

17 «SUB_MED_POS_9»

«SUB_MED_FTE_9»

18 «SUB_MED_POS_10»

«SUB_MED_FTE_10»

19 TOTAL FTEs

0.00

20

21 5. Augmented Treatment Services

22 a. The Clinical Director shall be a licensed clinical psychologist.

23 b. 1.50 FTE of mental health clinical positions shall provide individual and group
24 counseling.

25 c. CONTRACTOR shall maintain a counseling staff-to-patient ratio of 1:6.

26

27 CLINICAL STAFFING

FTEs

28 «AUG_TRTMT_POS_1»

«AUG_TRTMT_FTE_1»

29 «AUG_TRTMT_POS_2»

«AUG_TRTMT_FTE_2»

30 «AUG_TRTMT_POS_3»

«AUG_TRTMT_FTE_3»

31 «AUG_TRTMT_POS_4»

«AUG_TRTMT_FTE_4»

32 «AUG_TRTMT_POS_5»

«AUG_TRTMT_FTE_5»

33 «AUG_TRTMT_POS_6»

«AUG_TRTMT_FTE_6»

34 «AUG_TRTMT_POS_7»

«AUG_TRTMT_FTE_7»

35 «AUG_TRTMT_POS_8»

«AUG_TRTMT_FTE_8»

36 «AUG_TRTMT_POS_9»

«AUG_TRTMT_FTE_9»

37

1	«AUG_TRTMT_POS_10»	«AUG_TRTMT_FTE_10»
2	TOTAL FTEs	0.00

3
4 D. CONTRACTOR shall adhere to the following requirements at each facility:

5 1. All therapeutic treatment activities shall be carried out by personnel with appropriate
6 specialized mental health training.

7 2. Documentation of employment qualifications and job descriptions which include duties and
8 responsibilities bilingual/bicultural capabilities, and proof of licensure, if appropriate, for each staff
9 position.

10 3. A written policy for the use of volunteers and part-time student interns which may augment
11 paid staff. An intern is a person enrolled in an accredited undergraduate or graduate level program in a
12 health care or mental health discipline or a related field.

13 4. Make available to ADMINISTRATOR, upon request, a list of the persons who provide
14 services under the Agreement. The list must include the name, title, professional degree, license number
15 (if applicable) and job description of each person.

16 5. Provide additional administrative/support staff as necessary to all programs.

17 E. CONTRACTOR shall provide effective administrative management of the budget, staffing,
18 recording, and reporting portion of the Agreement with the COUNTY. If administrative responsibilities
19 are delegated to subcontractors, CONTRACTOR must ensure that any subcontractor(s) possesses the
20 qualifications and capacity to perform all delegated responsibilities. Responsibilities include, but are not
21 limited to the following:

22 1. Designate the responsible position(s) in your organization for managing the funds allocated
23 to this program;

24 2. Maximize the use of the allocated funds;

25 3. Ensure timely and accurate reporting of monthly expenditures;

26 4. Maintain appropriate staffing levels;

27 5. Request budget and/or staffing modifications to the Agreement;

28 6. Effectively communicate and monitor the program for its success;

29 7. Track and report expenditures electronically;

30 8. Maintain electronic and telephone communication between key staff and the Contract and
31 Program Administrators; and

32 9. Act quickly to identify and solve problems.

33 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Staffing
34 Paragraph of this Exhibit B to the Agreement.

35 //

36 //

37 //

1 EXHIBIT C
2 TO AGREEMENT FOR PROVISION OF
3 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 «UC_NAME»
8 «UC_DBA»
9 JULY 1, 2017 THROUGH JUNE 30, 2019

11 **I. BUSINESS ASSOCIATE CONTRACT**

12 A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

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

4 B. DEFINITIONS

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

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

11 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in
25 45 CFR § 160.103.

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

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

32 18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
33 160.103.

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

37 //

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

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

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

9 D. SECURITY RULE

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

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

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

26 a. Complying with all of the data system security precautions listed under subparagraphs
27 E, below;

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

30 c. Providing a level and scope of security that is at least comparable to the level and scope
31 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 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
35 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
36 restrictions and requirements contained in this subparagraph D of this Business Associate Contract.

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

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

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

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

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

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

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

34 2. Technical Security Controls

35 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
37 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

1 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
2 COUNTY.

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

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

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

17 e. Antivirus software. 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 installed and actively use comprehensive anti-virus software
20 solution with automatic updates scheduled at least daily.

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

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

- 1) Upper case letters (A-Z)
 - 2) Lower case letters (a-z)
 - 3) Arabic numerals (0-9)
 - 4) Non-alphanumeric characters (punctuation symbols)
- h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.
- i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

1 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
2 comprehensive intrusion detection and prevention solution.

3 3. Audit Controls

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

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

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

17 4. Business Continuity/Disaster Recovery Control

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

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

30 5. Paper Document Controls

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

37 //

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

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

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

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

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

22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

16 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
17 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
18 COUNTY.

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

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

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

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

36 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
37 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs

1 in addressing the Breach and consequences thereof, including costs of investigation, notification,
2 remediation, documentation or other costs associated with addressing the Breach.

3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

13 1) The Disclosure is required by law; or

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

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

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

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

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

28 H. PROHIBITED USES AND DISCLOSURES

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

34 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
35 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
36 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC §
37 17935(d)(2).

1 I. OBLIGATIONS OF COUNTY

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

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

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

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

13 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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37 //

1 EXHIBIT D
 2 TO AGREEMENT FOR PROVISION OF
 3 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 «UC_NAME»
 8 «UC_DBA»
 9 JULY 1, 2017 THROUGH JUNE 30, 2019

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

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

14 A. DEFINITIONS

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

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

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

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

24 5. "IEA" shall mean the Information Exchange Agreement currently in effect between the
 25 SSA and DHCS.

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

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

33 8. "PI" shall have the meaning given to such term in California Civil Code § 1798.3(a).

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

1 information, and a civil or an authorized investigative demand. It also includes Medicare conditions of
2 participation with respect to health care providers participating in the program, and statutes or
3 regulations that require the production of information, including statutes or regulations that require such
4 information if payment is sought under a government program providing public benefits.

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

8 B. TERMS OF AGREEMENT

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

13 2. Responsibilities of CONTRACTOR

14 CONTRACTOR agrees:

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

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

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

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

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

36 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
37 CONTRACTOR shall also comply with the substantive privacy and security requirements in the

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

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

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

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

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

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

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

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