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REFERENCED CONTRACT PROVISIONS

Term: July 1, ~~2015~~2017 through June 30, ~~2017~~2020

Period One means the period from July 1, ~~2015~~2017 through June 30, ~~2016~~2018

Period Two means the period from July 1, ~~2016~~2018 through June 30, ~~2017~~2019

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

Maximum Obligation:

Period One Maximum Obligation: ~~---~~ \$ 358,140

Period Two Maximum Obligation: ~~---~~ \$358,140

Period Three Maximum Obligation: 358,140

TOTAL MAXIMUM OBLIGATION: ~~---~~ ~~\$716,280~~ \$1,074,420

Basis for Reimbursement: ~~Fee-for-Service~~ Negotiated Rate

Payment Method: Monthly ~~in~~In Arrears

CONTRACTOR DUNS Number: ~~046907267~~ 04-690-7267

CONTRACTOR TAX ID Number: 95-4168437

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: Western Pacific Re-Hab
~~4632~~4544 San Fernando Road; Suite 202
Glendale, CA 91204
Mark R. Hickman
mark@westpacmed.com

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I. Acronyms **ACRONYMS**

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

<u>1</u>		
<u>2</u>		
<u>3</u>		
<u>4</u>	A. ARRA	American Recovery and Reinvestment Act
<u>5</u>	B. ASRS	Alcohol and Drug Programs Reporting System
<u>6</u>	C. CalOMS	California Outcomes Measurement System
<u>7</u>	D. CAP	Corrective Action Plan
<u>8</u>	E. CCC	California Civil Code
<u>9</u>	F. CCR	California Code of Regulations
<u>10</u>	G. CEO	County Executive Office
<u>11</u>	H. CFDA	Catalog of Federal Domestic Assistance
<u>12</u>	I. CFR	Code of Federal Regulations
<u>13</u>	J. CHPP	COUNTY HIPAA Policies and Procedures
<u>14</u>	K. CHS	Correctional Health Services
<u>15</u>	L. COI	Certificate of Insurance
<u>16</u>	M. DATAR	Drug Abuse Treatment Access Report
<u>17</u>	N. D/MC	Drug/Medi-Cal
<u>18</u>	O. DHCS	Department of Health Care Services
<u>19</u>	P. DPFS	Drug Program Fiscal Systems
<u>20</u>	Q. DRS	Designated Record Set
<u>21</u>	R. ePHI	Electronic Protected Health Information
<u>22</u>	S. GAAP	Generally Accepted Accounting Principles
<u>23</u>	T. HCA	Health Care Agency
<u>24</u>	U. HHS	Health and Human Services
<u>25</u>	V. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
<u>26</u>		Law 104-191
<u>27</u>	W. HSC	California Health and Safety Code
<u>28</u>	X. IRIS	Integrated Record and Information System
<u>29</u>	Y. ISO	Insurance Services Office
<u>30</u>	Z. MHP	Mental Health Plan
<u>31</u>	AA. NIATx	Network Improvement of Addiction Treatment
<u>32</u>	AB. OCJS	Orange County Jail System
<u>33</u>	AC. OCPD	Orange County Probation Department
<u>34</u>	AD. OCR	Office for Civil Rights
<u>35</u>	AE. OCSD	Orange County Sheriff's Department
<u>36</u>	AF. OIG	Office of Inspector General
<u>37</u>	AG. OMB	Office of Management and Budget

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<u>1</u>	AH. OPM	Federal Office of Personnel Management
<u>2</u>	AI. PA DSS	Payment Application Data Security Standard
<u>3</u>	AJ. PC	State of California Penal Code
<u>4</u>	AK. PCI DSS	Payment Card Industry Data Security Standard
<u>5</u>	AL. PHI	Protected Health Information
<u>6</u>	AM. PII	Personally Identifiable Information
<u>7</u>	AN. PRA	Public Record Act
<u>8</u>	AO. SIR	Self-Insured Retention
<u>9</u>	AP. The HITECH Act	The [REDACTED] Health Information Technology for Economic and Clinical
<u>10</u>	[REDACTED]	Health Act, _____ Public Law
<u>11</u>	111-005	
<u>12</u>	AQ. USC	United States Code
<u>13</u>	AR. WIC	State of California Welfare and Institutions Code

II. ALTERATION OF TERMS

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

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

III. ASSIGNMENT OF DEBTS

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

IV. COMPLIANCE

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

37 //

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

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

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

3. If CONTRACTOR ~~elects~~ does not provide proof of its own Compliance program to ~~adhere~~ ADMINISTRATOR, CONTRACTOR shall acknowledge to ~~HCA's~~ comply with ADMINISTRATOR's Compliance Program and Code of Conduct; the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of ~~award~~ execution of this Agreement a signed acknowledgement that CONTRACTOR shall comply with ~~HCA's~~ ADMINISTRATOR's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program ~~and~~ Code of Conduct ~~and any Compliance related policies and procedures review by ADMINISTRATOR~~, then ~~it~~ CONTRACTOR shall submit a copy of its ~~Compliance~~ compliance Program, ~~Code~~ code of Conduct and all relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of ~~award~~ execution of this Agreement. ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty five (45) calendar days, and determine if CONTRACTOR's ~~Compliance Program~~ proposed compliance program and code of conduct contain all required elements to the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of Conduct ~~contains all required elements. CONTRACTOR shall take necessary action.~~ ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its compliance program and code of conduct to meet ~~said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain all required elements.~~ ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's Compliance Officer's determination and resubmit the same for review by the

ADMINISTRATOR.

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

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

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

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

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

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

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

1 Agreement.

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

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

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

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

26 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance
27 Training ~~and Provider Compliance Training, where appropriate,~~ available to Covered Individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Agreement on the basis of such default.

2

3 **V. CONFIDENTIALITY CONFIDENTIALITY**

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

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

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

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

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

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

30

31 **VI. COST REPORT COST REPORT**

32 A.—CONTRACTOR shall submit separate Cost Reports for Period One, Period two, and Period
33 TwoThree, or for a portion thereof, to COUNTY no later than forty-five (45) calendar days following the
34 period for which they are prepared or termination of this Agreement. CONTRACTOR shall prepare the
35 Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the
36 Special Provisions Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs
37 to and between programs, cost centers, services, and funding sources in accordance with such

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1 requirements and consistent with prudent business practice, which costs and allocations shall be supported
2 by source documentation maintained by CONTRACTOR, and available at any time to
3 ADMINISTRATOR upon reasonable notice.

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

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

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

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

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

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

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

37 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to

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

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

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

13 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
14 supporting documentation prepared by _____ for the cost report period
15 beginning _____ and ending _____ and that, to the best of my knowledge
16 and belief, costs reimbursed through this Agreement are reasonable and allowable and
17 directly or indirectly related to the services provided and that this Cost Report is a true,
18 correct, and complete statement from the books and records of (provider name) in
19 accordance with applicable instructions, except as noted. I also hereby certify that I
20 have the authority to execute the accompanying Cost Report.
21

22 Signed _____
23 Name _____
24 Title _____
25 Date _____"

26
27
28 **VII. DEBARMENT AND SUSPENSION CERTIFICATION**

29 A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

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

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

VIII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

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

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

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

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

1 delegation in derogation of this subparagraph shall be void.

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

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

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

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

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

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

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

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

29 //

30 //

31 //

32 //

33 **IX. EMPLOYEE ELIGIBILITY VERIFICATION EMPLOYEE ELIGIBILITY**
34 **VERIFICATION**

35 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations
36 regarding the employment of aliens and others and to ensure that employees, subcontractors, and
37 ~~consultants performing work under this Agreement meet the citizenship or alien status requirements set~~

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

7 8 **X. ~~EQUIPMENT~~EQUIPMENT**

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

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

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

30 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with
 31 funds paid through this Agreement, including date of purchase, purchase price, serial number,
 32 #
 33 model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and
 34 shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost,
 35 if any.

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

1 or all Equipment to COUNTY.

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

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

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

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

13
14 **XI. FACILITIES, PAYMENTS AND SERVICES** **FACILITIES, PAYMENTS AND**
15 **SERVICES**

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

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

27
28 **XII. INDEMNIFICATION AND INSURANCE** **INDEMNIFICATION AND INSURANCE**

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

1 request a jury apportionment.

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

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

19 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
20 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
21 amount in excess of ~~\$25~~ \$50,000 (\$5,000 for automobile liability); shall specifically be approved by the
22 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If
23 CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other
24 indemnity provision(s) in this Agreement, agrees to all of the following:

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

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

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

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

1 F. QUALIFIED INSURER

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

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

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

<u>12</u>	<u>13</u> <u>Coverage</u>	<u>14</u> <u>Minimum Limits</u>
<u>15</u>	<u>16</u> Commercial General Liability	<u>17</u> \$1,000,000 per occurrence <u>18</u> \$2,000,000 aggregate
<u>19</u>	<u>20</u> Automobile Liability including coverage <u>21</u> for owned, non-owned and hired vehicles	<u>22</u> \$1,000,000 per occurrence
<u>23</u>	<u>24</u> Workers' Compensation	<u>25</u> Statutory
<u>26</u>	<u>27</u> Employers' Liability Insurance	<u>28</u> \$1,000,000 per occurrence
<u>29</u>	<u>30</u> Network Security & Privacy Liability	<u>31</u> \$1,000,000 per claims made
<u>32</u>	<u>33</u> Professional Liability Insurance	<u>34</u> \$1,000,000 per claims made <u>35</u> \$1,000,000 aggregate
<u>36</u>	<u>37</u> Sexual Misconduct Liability	\$1,000,000 per occurrence

32 H. REQUIRED COVERAGE FORMS

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

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

37 I. REQUIRED ENDORSEMENTS –

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

a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN AGREEMENT.

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

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

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

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

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

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

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

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

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

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

1 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
 2 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY
 3 incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall
 4 constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this
 5 Agreement ~~may be in breach without further notice to CONTRACTOR, and by~~ COUNTY ~~shall be entitled~~
 6 ~~to all legal remedies.~~

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

10 R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

34 ~~XIII. INSPECTIONS AND AUDITS~~ INSPECTIONS AND AUDITS

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

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

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

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

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

18 **XIV. LICENSES AND LAWS**

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

27 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

35 c. A certification that CONTRACTOR has fully complied with all applicable federal and
 36 state reporting requirements regarding its employees;
 37

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

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

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

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

- 15 1 1. ~~2 CFR 230, Cost Principles for Nonprofit Organizations~~
16 2. ~~2 CFR 376, Nonprocurement, Debarment and Suspension.~~
17 ~~3. 21 CFR, Chapter 2, Part 1300 through 1399, Drug Enforcement Administration.~~
18 ~~4. 21 USC §§355, and 505, Manufacture of Drugs.~~
19 ~~5. 21 USC §§812, 823, and 958, Controlled Substances.~~
20 ~~6. 21 USC 300x-27(a) and 300y-11.~~
21 ~~7. 31 USC §1352, Limitation on Use of Appropriated Funds to Influence Certain Federal~~
22 ~~Contracting and Financial Transactions.~~
23 ~~8. 31 USC 7501-7507, as well as its implementing regulations under 2 CFR Part 200, Uniform~~
24 ~~Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.~~
25 9. ~~41 CFR 50, Public Contracts and Property Management.~~
26 10. ~~42 CFR 2, Confidentiality of Alcohol and Drug Abuse Patient Records.~~
27 11. ~~42 CFR 54, Charitable choice regulations applicable to states receiving substance abuse~~
28 ~~prevention and treatment block grants and/or projects for assistance in transition from~~
29 ~~homelessness grants.~~
30 ~~12. 42 CFR, Public Health, Part 8 – Certification of Opioid Treatment Programs.~~
31 ~~13. 42 USC §§1320d through 1320d-9, Administrative Simplification.~~
32 6. 14. ~~42 USC §§285n through 285o, National Institute on Alcohol Abuse and~~
33 ~~Alcoholism; National Institute on Drug Abuse.~~
34 15. ~~42 USC §§290aa through 290kk-3, Substance Abuse and Mental Health Services~~
35 ~~Administration.~~
36 16. ~~42 USC §12101 et seq., The Americans with Disabilities Act of 1990 as amended.~~
37 17. ~~42 USC §1320(a), Uniform reporting systems for health services facilities and organizations.~~

- 1 18. ~~42 USC §2000d, Civil Rights Act of 1964.~~
- 2 19. ~~42 USC §290dd-2, Confidentiality of Records.~~
- 3 20. ~~42 USC §6101 et seq., Age Discrimination Act of 1975.~~
- 4 21. ~~45 CFR 160, General Administrative Requirements.~~
- 5 ~~22. 45 CFR 162, Administrative Requirements.~~
- 6 ~~23. 45 CFR 164, Security and Privacy.~~
- 7 ~~24. 45 CFR 93, New Restrictions on Lobbying.~~
- 8 ~~25. 45 CFR 96.127, Requirements regarding Tuberculosis.~~
- 9 ~~26. 45 CFR 96.132, Additional Agreements.~~
- 10 ~~27. 45 CFR 96.135, Restrictions on Expenditure of Grant.~~
- 11 ~~28. 48 CFR 9.4, Debarment, Suspension, and Ineligibility.~~
- 12 ~~29. 8 USC §1324 et seq., Immigration Reform and Control Act of 1986.~~
- 13 ~~30. ARRA of 2009.~~
- 14 31. ~~CCC §§1798.80 through 1798.84, Customer Records.~~
- 15 ~~32. CCC §§56 through 56.37,7. California Welfare and Institutions Code, §14100.2,~~
- 16 **Medicaid Confidentiality of Medical Information.**
- 17 ~~33. CCC §1798.85, Confidentiality of Social Security Numbers.~~
- 18 ~~34. 8. CCR Title 9, Division 4, Chapter 4, Subchapters 1 through 6, Narcotic Treatment~~
- 19 **Programs.**
- 20 9. ~~35. CCR, Title 9, Rehabilitative and Developmental Services, Division 4; and Title~~
- 21 ~~22 Social Security.~~
- 22 ~~36. CFR, Title 42, Public Health.~~
- 23 ~~37. Fact Sheet Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for Co-~~
- 24 ~~Occurring Disorders, Mental Health Services Oversight and Accountability Commission,~~
- 25 ~~1/17/08.~~
- 26 ~~38. D/MC Billing Manual (March 23, 2010).~~
- 27 10. D/MC Certification Standards for Substance Abuse Clinics, July 2004.
- 28 11. Federal Medicare Cost reimbursement principles and cost reporting standards.
- 29 12. HSC, §§11758.40 through 11758.47, Medi-Cal Drug Treatment Program.
- 30 ~~39. 13. HSC, §§11839 through 11839.22, Narcotic Treatment Programs.~~
- 31 ~~40. HSC, §§123110 through 123149.5, Patient Access to Health Records.~~
- 32 ~~41. 14. HSC, §11876, Narcotic Treatment Programs (inspections).~~
- 33 ~~42. HSC, Divisions 10.5 Alcohol and Drug Programs and 10.6. Drug and Alcohol Abuse Master~~
- 34 ~~Plans.~~
- 35 ~~43. State of California, Department of Alcohol and Drug Programs Audit Assistance Guide~~
- 36 ~~Manual.~~
- 37 ~~44. 15. Orange County Medi-Cal Mental Health Managed Care Plan.~~

1 16. ~~Short Doyle/Medi-Cal Manual for the Rehabilitation Option and Targeted Case~~
 2 Management.

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

6 18. State of California, ~~Department of Alcohol and Drug Programs, Alcohol and/or Other Drug~~
 7 Program Certification Standards, March 2004.

8 ~~45. U.S. Department of Health and Human Services, National Institutes Agency, Department of~~
 9 ~~Health (NIH), Grants Policy Statement (10/13). Care~~

10 ~~46. Services, Mental Health Services Division (MHSD), Medi-Cal Billing Manual,~~
 11 ~~October~~

12 2013

13 19. Title 22, CCR, §51009, Confidentiality of Records.

14 20. US Department of Justice, Drug Enforcement Administration.

15 21. Trafficking Victims Protection Act of 2000, specifically section 106(g) of the Trafficking
 16 Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as amended by section 1702.

17
 18 **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA LITERATURE.**

19 **ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

37 D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by

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COUNTY, unless ADMINISTRATOR consents thereto in writing.

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

XVI. ~~MAXIMUM OBLIGATION~~ MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Agreement, and the separate Maximum Obligations for ~~Period one and Period Two~~ 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.

XVII. ~~MINIMUM WAGE LAWS~~ NONDISCRIMINATION

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

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

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

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

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

1 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
2 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
3 orientation, or military and veteran status.

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

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

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

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

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

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

1 Denying a ParticipantClient or potential ParticipantClient any service, benefit, or
2 accommodation.

3 2. Providing any service or benefit to a ParticipantClient which is different or is provided in a
4 different manner or at a different time from that provided to other ParticipantsClients.

5 3. Restricting a ParticipantClient in any way in the enjoyment of any advantage or privilege
6 enjoyed by others receiving any service or benefit.

7 4. Treating a ParticipantClient differently from others in satisfying any admission requirement
8 or condition, or eligibility requirement or condition, which individuals must meet in order to be provided
9 any service or benefit.

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

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

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

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

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

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

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

36 XIX. NOTICESNOTICES

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

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

6 2. When faxed, transmission confirmed;

7 3. When sent by Email; or

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

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

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

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

20 **XX. NOTIFICATION OF DEATH**

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

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

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

31 2. WRITTEN NOTIFICATION

32 a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send via
33 encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware
34 of the death due to non-terminal illness of any person served pursuant to this Agreement.
35

36 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
37 report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within

28 of ~~34~~35

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

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

7 **XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

15 **XXII. ~~RECORDS MANAGEMENT AND MAINTENANCE~~, RECORDS MANAGEMENT** 16 **AND MAINTENANCE**

17 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of
18 this Agreement, prepare, maintain and manage records appropriate to the services provided and in
19 accordance with this Agreement and all applicable requirements, which include but are not limited to:

- 20 1. California Code of Regulations Title 22, §§70751(c), 71551(c), 73543(a), 74731(d),
21 75055(a), 75343(a), and 77143(a).
- 22 2. State of California, Department of Health Care Services ASRS Manual.
- 23 3. State of California, Department of Health Care Services DPFS Manual.
- 24 4. California Health and Safety Code §123145.
- 25 5. Title 45 CFR, §164.501; §164.524; §164.526; §164.530(c) and (j).

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

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

34 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the
35
36
37

1 commencement of the contract, unless a longer period is required due to legal proceedings such as
2 litigations and/or settlement of claims.

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

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

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

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

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

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

17 1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit or
18 site visit.

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

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

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

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

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

32 ~~XXIII. RESEARCH AND PUBLICATION~~

33 RESEARCH AND PUBLICATION

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

XXIV. ~~REVENUE~~ REVENUE

A. ~~PARTICIPANT~~ CLIENT FEES – CONTRACTOR shall charge a fee to ~~Participants~~ Clients to whom services are provided pursuant to this Agreement, their estates and responsible relatives, in accordance with the fee system designated by ADMINISTRATOR. This fee shall be based upon the person's ability to pay for services, but it shall not exceed the actual cost of services provided. No person shall be denied services because of an inability to pay.

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

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

XXV. ~~RIGHT TO WORK AND~~ SEVERABILITY MINIMUM WAGE LAWS

~~—A. In accordance with the United States Immigration Reform and Control Act of 1986, CONTRACTOR shall require its employees directly or indirectly providing services pursuant to this Agreement, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. CONTRACTOR shall also require and verify that its contractors, subcontractors, or any other persons providing services pursuant to this Agreement, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.~~

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

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

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

XXV. SEVERABILITY

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

XXVI. SPECIAL PROVISIONS

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

1. Making cash payments to intended recipients of services through this Agreement.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.
9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
10. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
11. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).
12. Contracting or subcontracting with any entity other than an individual or nonprofit entity.
13. Producing any information that promotes responsible use, if the use is unlawful, of drugs or alcohol.
14. Promoting the legalization of any drug or other substance included in Schedule 1 of the Controlled Substance Act (21 USC 812).

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

3 16. Assisting, promoting, or deterring union organizing.

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

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

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

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

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

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

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

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

19
20 **XXVII. ~~STATUS OF CONTRACTOR~~ STATUS OF CONTRACTOR**

21 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
22 wholly responsible for the manner in which it performs the services required of it by the terms of this
23 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
24 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
25 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
26 or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes
27 exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they
28 relate to the services to be provided during the course and scope of their employment. CONTRACTOR,
29 its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of
30 COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

31
32 **XXVIII. ~~TERM~~ TERM**

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

1 confidentiality, indemnification, audits, reporting and accounting.

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

4 **XXIX. ~~TERMINATION~~ TERMINATION**

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

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

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

13 1. The loss by CONTRACTOR of legal capacity.
14 2. Cessation of services.
15 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
16 another entity without the prior written consent of COUNTY.

17 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
18 required pursuant to this Agreement.

19 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this
20 Agreement.

21 6. The continued incapacity of any physician or licensed person to perform duties required
22 pursuant to this Agreement.

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

27 D. CONTINGENT FUNDING

28 1. Any obligation of COUNTY under this Agreement is contingent upon the following:

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

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

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

37 E. In the event this Agreement is suspended or terminated prior to the completion of the term as

1 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole
 2 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced
 3 term of the Agreement.

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

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

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

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

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

15 5. Assist ADMINISTRATOR in effecting the transfer of ~~clients~~ Clients in a manner consistent
 16 with ~~client's~~ Client's best interests.

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

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

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

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

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

33
 34 **XXX. ~~THIRD PARTY BENEFICIARY~~ THIRD PARTY BENEFICIARY**

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

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

3
4
5 WESTERN PACIFIC RE-HAB

6
7
8 BY: - _____ DATED: _____

9
10 TITLE: _____

11
12
13 BY: _____ DATED: _____

14
15 TITLE: _____

16
17
18
19 COUNTY OF ORANGE

20
21
22 BY: - _____ DATED: _____

23 HEALTH CARE AGENCY

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

29
30 BY: - _____ DATED: _____

31 DEPUTY

32
33
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or
36 any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or
37 by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her signature
alone is required by ADMINISTRATOR.

EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES
 WITH
 WESTERN PACIFIC RE-HAB
 JULY 1, ~~2015~~2017 THROUGH JUNE 30, ~~2017~~2020

I. COMMON TERMS AND DEFINITIONS

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

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

C. Counselor means a staff ~~enrolled and/or member~~ who ~~have completed~~is registered or certified by one of the state approved Counseling Certification programs ~~or who is a registered intern or licensed by the Board of Behavioral Sciences.~~ A Counselor must ~~be remain~~remain in good standing with the certification or licensing process.

D. Diagnosis means the identification of the nature of the ~~Participant's~~Client's substance use disorder. When formulating the diagnosis of ~~Participant,~~a Client, the CONTRACTOR shall ~~use~~use the diagnosis codes and axes as specified in the most current edition of the DSM published by the American Psychiatric Association. The Contractor shall record all DSM diagnoses ~~shall be recorded~~ on all IRIS documents and in the ~~Participant~~Client files as appropriate.

E. Dose means the administration of a specific amount of methadone prescribed by a physician for the ~~Participant's~~Client's care along with medical care and individual and/or group counseling.

F. Dual Diagnosed ~~Participant~~Client means a ~~Participant~~Client having co-occurring mental illness and substance abuse diagnosis, irrespective of which is the primary diagnosis.

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

H. Gatekeeper means ADMINISTRATOR staff responsible for all initial referrals to CONTRACTOR for methadone maintenance treatment or detoxification therapy.

I. Group Counseling means a face-to-face contact between a Counselor and each ~~Participant~~Client involved in a group counseling session. A group session is a ninety (90) minute session with more than one (1) person in an encounter with a Counselor.

J. Individual Counseling means a face-to-face contact, between a Counselor and an individual ~~Participant~~Client resulting in a record of therapeutic experience in a ~~Participant's~~Client's chart. An individual session is with one (1) ~~participant~~Client in an encounter with a Counselor.

1 K. Intake means the initial face-to-face meeting between a ParticipantClient and CONTRACTOR
2 staff in which specific information about the ParticipantClient is gathered including the ability to pay and
3 standard admission forms pursuant to the Agreement, post Gatekeeper approval.

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

8 M. Linkage means connecting ParticipantsClients to ancillary services such as outpatient treatment
9 and supportive services which may include self-help groups, social services, rehabilitation services,
10 vocational services, job training services or other appropriate services.

11 N. Maintenance ParticipantClient means a male or female aged 18 and over residing in COUNTY
12 who has a primary problem of opiate addiction and is currently recovering through Narcotic Replacement
13 Maintenance Therapy.

14 O. Medical Director means the physician licensed to practice medicine in California who is
15 responsible for medical services provided by CONTRACTOR.

16 P. Medical Necessity means the decision by Contractor's Medical Director that a ParticipantClient
17 meets admission criteria and continuing care justification pursuant to CCR, Title 22 and Title 9, Section
18 10270.

19 Q. Narcotic Replacement Maintenance Therapy means the medically supervised use of an opiate
20 agonist medication to provide a means whereby the patient may be rehabilitated from opiate substance
21 use disorders.

22 R. Narcotic Replacement Detoxification means narcotic therapy used in decreasing medically
23 determined dosage levels for a period of not more than twenty-one (21) calendar days, to reduce or
24 eliminate opiate addiction.

25 S. ParticipantClient means a male or female aged 18 and over residing in the COUNTY who has a
26 primary problem of opiate addiction and also qualifies for admission as per Title 9 and contractual
27 eligibility requirements.

28 T. Program Protocol means the written program description, goals, objectives, and policies
29 established by CONTRACTOR for the methadone therapy program provided pursuant to the Agreement.

30 U. Ryan White Funding means specific funding for ParticipantsClients with HIV disease as may be
31 awarded by the COUNTY HIV Planning Council.

32 V. Screening means the process by which the program obtains information about the individual
33 seeking admission for methadone therapy services.

34 W. Token means the security device which allows an individual user to access the HCA computer
35 based IRIS.

36 //

37 X. Unit of Service means a calendar month of treatment services at a Narcotic Treatment Program

1 provided pursuant to Title 22 and Title 9. Dosing and counseling services may be provided on the same
2 day to a single ~~Participant~~Client.

3
4 **II. PAYMENTS**

5 A. BASIS FOR REIMBURSEMENT – As compensation to CONTRACTOR for services provided
6 pursuant to the Agreement, COUNTY shall pay CONTRACTOR monthly in arrears at the following all
7 inclusive rates of reimbursement: \$17.38 daily per Maintenance ~~Participant~~Client served at
8 CONTRACTOR’s facility, \$12.00 per dose for Detoxification ~~Participants~~Clients at CONTRACTOR’s
9 facility, and \$26.07 per dose for Maintenance ~~Participants~~Clients at other locations as approved by
10 ADMINISTRATOR; however, the total of monthly payments to CONTRACTOR shall not exceed
11 COUNTY’s Maximum Obligation set forth in the Referenced Contract Provisions of the Agreement and
12 provided further, that CONTRACTOR’s costs are allowable pursuant to applicable COUNTY, federal
13 and state regulations. Non-compliance will require the completion of a CAP by CONTRACTOR. If CAPs
14 are not completed within timeframes approved by ADMINISTRATOR, payments may be reduced
15 accordingly.

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

19 C. CONTRACTOR's invoices are due the tenth (10th) day of the month. Invoices received after the
20 due date may not be paid within the same month.

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

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

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

28 G. In conjunction with Payments Paragraph, Subparagraph A, Units of Service shall not be entered
29 in the IRIS system for services not rendered. If information has been entered, corrections will be made
30 within ten (10) business days from notification of ADMINISTRATOR.

31 H. The Agreement includes federal funds paid to CONTRACTOR. The CFDA number(s) and
32 associated information for federal funds paid through the Agreement are specified below:

33 ~~CFDA Year: 2013~~

34 //
35 //

36 CFDA Year: 2013

37 CFDA#: 93.959

1 Program Title: Block Grants for Prevention and Treatment of Substance Abuse

2 Federal Agency: Department of Health Care Services

3 Award Name: Negotiated Net Amount/Drug ~~MediCal~~ Medi-Cal Contract

4
5 I. CONTRACTOR may be required to have an audit conducted in accordance with federal OMB
6 Circular A-133. CONTRACTOR shall be responsible for complying with any federal audit requirements
7 within the reporting period specified by OMB Circular A-133.

8 J. ADMINISTRATOR may revise the CFDA information listed above, and shall notify
9 CONTRACTOR in writing of said revisions.

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

12 **III. RECORDS**

13 A. ~~PARTICIPANT~~ CLIENT RECORDS — CONTRACTOR shall maintain adequate records in
14 accordance with the ADMINISTRATOR Alcohol and Drug Abuse Services Guidelines on each individual
15 ~~Participant~~ Client in sufficient detail to permit an evaluation of services, which shall include, but need not
16 be limited to unless otherwise approved by ADMINISTRATOR:

- 17 1. ADMINISTRATOR's Treatment Authorization Form
- 18 2. Substance abuse history
- 19 3. Case Manager's name and telephone number
- 20 4. Tuberculosis clearance
- 21 5. Emergency notification information
- 22 6. Record of any funds collected from, or on behalf of, the ~~Participant~~ Client
- 23 7. Treatment Plan

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

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

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

33 3. The ~~Participant~~ Client eligibility determination and fee charged to and collected from
34 ~~Participants~~ Clients, together with a record of all billings rendered and revenues received from any source,
35 on behalf of ~~Participants~~ Clients treated pursuant to the Agreement, must be reflected in CONTRACTOR's
36 financial records.
37

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

3 4 **IV. REPORTS**

5 **A. MONTHLY PROGRAMMATIC**

6 1. CONTRACTOR shall submit a monthly programmatic report to ADMINISTRATOR,
7 including information required and on a form approved or provided by ADMINISTRATOR, in
8 conjunction with the billing described in the Payments paragraph of this Exhibit A of the Agreement.
9 These monthly programmatic reports should be received by ADMINISTRATOR no later than the tenth
10 (10th) business day of the month following the report month.

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

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

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

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

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

29 30 **V. SERVICES**

31 A. CONTRACTOR shall operate a licensed accredited and certified alcohol and drug abuse Narcotic
32 Replacement Therapy program, in accordance with the standards established by COUNTY and under
33 Title 9, Division 4, Chapter 4 of the CCR by the State of California, DHCS, and shall administer or
34 dispense methadone as a maintenance substitute narcotic drug or for detoxification for ~~Participants~~ Clients
35 who are dependent on heroin or other morphine-like drugs at the following locations unless otherwise
36 approved in advance and in writing by ADMINISTRATOR:
37

218 E. Commonwealth Avenue
Fullerton, CA

10751 Dale Street
Stanton, CA

1 B. PERSONS TO BE SERVED – CONTRACTOR shall provide services to Maintenance
2 ~~Participants~~ Clients who are eligible for services. Maintenance ~~Participants~~ Clients are considered eligible
3 for services if they are indigent or earning up to 200% of poverty level; including those who are disabled,
4 have HIV and/or Hepatitis C, or are pregnant, and those identified in Services Paragraph, subparagraph
5 M., three hundred sixty-five (365) days per year. In addition to the above, program eligibility shall be
6 determined as per Title 9 section 10270 for Maintenance and Detoxification ~~Participants~~ Clients.
7 Detoxification services shall be provided, to those ~~Participants~~ Clients that are indigent or earning up to
8 200% of poverty level or as approved by ADMINISTRATOR. Detoxification therapy shall not include
9 pregnant women. In addition, CONTRACTOR shall provide maintenance and detoxification services to
10 persons eighteen (18) and over earning up to 200% of poverty level and/or eligible for AB109 via referral
11 from OC Probation Department assessment staff. Other eligibility may be determined by
12 ADMINISTRATOR.

13 1. CONTRACTOR shall provide individual case management, treatment planning, crisis
14 intervention, discharge planning, medication handling and dispensing, and related services as required by
15 federal, state, and COUNTY rules and regulations.

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

18 C. INTAKE/ASSESSMENT – Before admitting an applicant to Detoxification or Maintenance
19 therapy, the Medical Director shall determine ~~Medical~~ medical Necessity by either conducting a medical
20 evaluation or documenting the review in agreement with a medical evaluation conducted by the
21 physician's designee. Within seven (7) calendar days of admission, CONTRACTOR shall provide a
22 standardized, comprehensive risk and needs assessment on each Maintenance ~~Participant~~ Client to assess
23 alcohol and drug abuse history, family history, mental and emotional status, educational and vocational
24 background, as well as daily living skills, stress management, literacy, employment, education and money
25 management. Assessment tools may include Addiction Severity Index, or any other assessment tool, as
26 approved by ADMINISTRATOR. The content of ~~Participant~~ Client records shall follow Title 9, Section
27 10165 and all requirements specified by this Agreement.

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

- 31 1. Overview of program structure and schedules;
- 32 2. Program rules and regulations;
- 33 3. Effects of medication used in Narcotic Replacement Therapy and adverse effects of abrupt
34 withdrawal;

- 1 4. Policies regarding ParticipantClient fees;
- 2 5. ParticipantClient rights and responsibilities;
- 3 6. Assignment of a counselor;
- 4 7. Staff code of conduct;
- 5 8. Confidentiality Statement, and how release of information is permitted in accordance with
- 6 42 CFR Part 2 and 45 CFR (HIPAA);
- 7 9. Agreements needed to exchange appropriate information within the network of consultants
- 8 and linkage agencies in accordance with HIPAA regulations and 42 CFR Part 2; and Title 9, Division 4,
- 9 Chapter 4, Section 10290; and
- 10 10. Continuing care services.

11 E. TREATMENT PLAN

12 1. CONTRACTOR shall, within twenty-eight (28) calendar days of initiation of Narcotic
 13 Replacement Therapy for a Maintenance ParticipantClient, have a registered, certified, and/or licensed
 14 Counselor develop an individual treatment plan with each ParticipantClient per Title 9, Section 10305
 15 which shall include:

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

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

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

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

24 c. A description of the type and frequency of counseling services to be provided to the
 25 ParticipantClient;

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

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

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

33 2. CONTRACTOR's registered, certified, and/or licensed Counselor shall evaluate and update
 34 the Participant'sClient's treatment plan whenever necessary, or at a minimum once every three (3) months
 35 from the date of initiation of Narcotic Replacement Therapy. The updated treatment plan shall include:

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

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

3 3. CONTRACTOR shall develop an individualized treatment plan for each **ParticipantClient**
4 undergoing detoxification including:

5 a. Provision to educate the **ParticipantClient** on illicit drug addictions and how to deal with
6 them;

7 b. Provision for furnishing services to the **ParticipantClient** as needed when Detoxification
8 is completed;

9 c. Required treatment services and the role of the **ParticipantClient** to achieve stated goals;
10 and

11 d. The type and frequency of scheduled counseling services.

12 F. COUNSELING – Upon completion of the initial treatment plan, CONTRACTOR shall arrange
13 for **ParticipantClient** to receive a minimum of fifty (50) minutes of counseling services per calendar month
14 for Maintenance, and two (2) twenty-five (25) minute counseling sessions within the 21-day period for
15 Detoxification, in accordance with the following requirements:

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

17 2. The session must be conducted in a private setting in accordance with all applicable federal,
18 state, and COUNTY regulations regarding confidentiality; and

19 3. The format of the counseling session shall be an Individual session, with face-to-face
20 discussion with the **ParticipantClient**, on a one-on-one basis, on issues identified in the
21 **Participant'sClient's** treatment plan. Counselor shall document this session in **Participant'sClient's** file.

22 G. CONTINUATION OF TREATMENT – CONTRACTOR shall provide justification for
23 treatment to **ParticipantsClients** who have been on methadone maintenance for a period of two (2) years,
24 and annually thereafter. Justification shall be provided by the Medical Director and noted in
25 **ParticipantsClients** files. CONTRACTOR shall ensure that no Maintenance **ParticipantClient** is enrolled
26 for more than one (1) year from admission date on COUNTY funding and that no Detoxification
27 **ParticipantClient** is enrolled for more than one (1) detox episode per fiscal year, unless approved by
28 ADMINISTRATOR. ~~CONTRACTOR shall provide ADMINISTRATOR with written updates for each~~
29 ~~Maintenance Participant every sixty (60) calendar days from date of admission regarding progress toward~~
30 ~~employment or obtainment of a third party payor(s) for a projected transition from COUNTY funding.~~
31 COUNTY funding is designed to be a short-term stabilizer with the **ParticipantClient** progressing to
32 longer-term self- sustainment. Only those **ParticipantsClients** with special circumstances ~~as approved by~~
33 ~~ADMINISTRATOR~~ will be allowed to remain on Maintenance funding for up to two (2) years of their
34 admission unless otherwise approved by ADMINISTRATOR.

35 H. DISCHARGE PLAN/EXIT PLANNING/TERMINATION – CONTRACTOR shall begin
36 discharge planning immediately after enrollment. CONTRACTOR shall develop a formal exit plan no
37 later than fourteen (14) calendar days prior to **Participant'sClient's** successful completion of the program

1 for a Maintenance or Detoxification ParticipantClient. The transition/exit plan shall be completed and
 2 signed by CONTRACTOR and ParticipantClient. CONTRACTOR shall establish a protocol for
 3 scheduled termination of services and document any discharge via a discharge summary.

4 1. The transition/exit plan shall include:

5 a. A strategy or strategies to assist the ParticipantClient in maintaining an alcohol and drug
 6 free lifestyle;

7 b. A continuing treatment exit plan that includes linkage and referral of the
 8 ParticipantClient to appropriate services, such as outpatient treatment, other support services such as self-
 9 help groups, social services, vocational rehabilitation, job training and other services, if needed, and
 10 document this in Participant'sClient's chart. The continuing treatment exit plan shall also include the
 11 goals identified in the Participant'sClient's treatment plan; and

12 c. Referrals to appropriate non-substance abuse resources such as continuing education and
 13 vocational rehabilitation.

14 2. Written criteria for the discharge summary shall include:

15 a. Reason for discharge;

16 b. Participant'sClient's achievements while in the Treatment Program such as meeting or
 17 progressing towards educational or vocational goals;

18 c. Description of detoxification episodes or maintenance services and ParticipantClient
 19 progress;

20 d. Current alcohol and/or drug usage at discharge;

21 e. Vocational and educational achievements;

22 f. Any outstanding legal concerns;

23 g. Linkages and referrals made;

24 h. Participant'sClient's comments; and

25 i. Prognosis.

26 I. PERFORMANCE OUTCOMES – ADMINISTRATOR shall develop and provide
 27 CONTRACTOR with performance outcome measure guidelines for the purpose of evaluating the impact
 28 or contribution of CONTRACTOR's services on the well-being of the COUNTY ParticipantsClients
 29 being served under the terms of the Agreement. At a minimum, CONTRACTOR shall implement a
 30 process improvement project as outlined in the NIATx model, targeting at least one of the following four
 31 (4) NIATx aims:

32 1. Reduce waiting times

33 2. Reduce no-shows

34 3. Increase admissions

35 4. Increase continuation in treatment

36 J. ADDITIONAL REPORTING – CONTRACTOR shall submit written report to
 37 ADMINISTRATOR on a weekly basis, or as arranged by ADMINISTRATOR, for all ParticipantsClients

1 participating in treatment as part of the Agreement. Report will note all current ~~Participants~~ Clients.
 2 ADMINISTRATOR will approve CONTRACTOR's form for report, and determine mode of transmission
 3 of said report from the CONTRACTOR to the ADMINISTRATOR.

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

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

15 M. ALCOHOL AND/OR DRUG SCREENING – CONTRACTOR shall have a written policy and
 16 procedure regarding alcohol and/or drug testing at a minimum of one (1) time per month for all
 17 Maintenance ~~Participants~~. ~~Participants~~ Clients. Clients requiring Detoxification shall be screened for
 18 alcohol/illicit drug use at the time of admission, prior to completion, and any other time deemed necessary
 19 by the attending physician. Urine specimen collection shall be observed by same sex staff. This policy
 20 shall be approved by ADMINISTRATOR. Results of these screenings shall be documented in the
 21 ~~Participant's~~ Client's file. If any Maintenance Client's drug screen results are indicate a negative pattern of
 22 testing positive for non-opioid illegal substances more than (2) times per month for Maintenance
 23 Participants, or methadone diversion, CONTRACTOR shall submit an Incident list on the Monthly Report
 24 within two (2) business days to ADMINISTRATOR outlining a CAP to be, the corrective action taken
 25 by the Participant which shall include a "non-use contract" to refocus the ~~Participant~~. Incidents Reports,
 26 CAP's and any other type of action planning documentation shall be placed Client. The CONTRACTOR
 27 shall document this in the ~~Participant's~~ Client's file. Detoxification ~~Participants~~ Clients that produce
 28 positive drug screens for illicit substances during detoxification shall be given relapse prevention
 29 strategies during counseling sessions or moved to a higher level of service such as maintenance dosing,
 30 extended detox, with ADMINISTRATOR approval, linkages to residential treatment, or ongoing
 31 outpatient treatment services for substance use disorders. All counseling session discussions and
 32 referrals/linkages shall be documented in the ~~Participant's~~ Client's file.

33 N. IN CUSTODY SERVICES

34 1. CONTRACTOR shall provide methadone dosing to pregnant women currently on methadone
 35 and shall be responsible for coordinating care that includes a process for methadone dosing at the
 36 following COUNTY correctional facilities:

- 37 a. COUNTY's Intake and Release Center; and

- 1 b. Santa Ana City Jail.
- 2 2. Additional sites may be added by mutual agreement of ADMINISTRATOR and
- 3 CONTRACTOR.
- 4 3. Services are to be provided seven (7) calendar days per week, including COUNTY observed
- 5 holidays.
- 6 4. CONTRACTOR will have staff approved to dispense methadone carry identification this
- 7 includes at a minimum, the following:
- 8 a. persons name,
- 9 b. picture,
- 10 c. title,
- 11 d. organizational name, and
- 12 e. organizational address.
- 13 5. CONTRACTOR must submit a list of staff administering methadone to COUNTY Sheriff's
- 14 Department monthly or as any changes occur.
- 15 6. CONTRACTOR will make every effort possible to ensure that services are provided in a
- 16 timely manner to the ~~Participants~~ Clients.
- 17 7. CONTRACTOR will advise methadone treatment programs within a fifty (50)-mile radius
- 18 of their role in the COUNTY correctional facilities, and maintain collaboration with these clinics to
- 19 coordinate care of mutual ~~Participants~~ Clients.
- 20 8. CONTRACTOR will develop, and submit to ADMINISTRATOR for approval, a policy and
- 21 procedure for jail dosing by implementation of the Agreement.
- 22 9. CONTRACTOR is responsible for all costs incurred for properly disposing all methadone
- 23 that could not be administered to ~~Participants~~ Clients in custody.
- 24 O. TOKENS – ADMINISTRATOR shall provide CONTRACTOR the necessary number of Tokens
- 25 for appropriate individual staff to access the HCA IRIS at no cost to the CONTRACTOR.
- 26 1. CONTRACTOR recognizes Tokens are assigned to a specific individual staff member with
- 27 a unique password. Tokens and passwords will not be shared with anyone.
- 28 2. CONTRACTOR shall maintain an inventory of the Tokens, by serial number and the staff
- 29 member to whom each is assigned.
- 30 3. CONTRACTOR shall return to ADMINISTRATOR all Tokens under the following
- 31 conditions:
- 32 a. Token of each staff member who no longer supports the Agreement;
- 33 b. Token of each staff member who no longer requires access to the IRIS;
- 34 c. Token of each staff member who leaves employment of CONTRACTOR; or
- 35 d. Token is malfunctioning.
- 36 4. ADMINISTRATOR shall issue Tokens for CONTRACTOR's staff members who require
- 37 access to the IRIS upon initial training or as a replacement for malfunctioning Tokens.

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

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

5 VI. STAFFING

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

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

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

18 D. CONTRACTOR shall ensure that administrative staffing is sufficient to support the performance
 19 of services pursuant to the Agreement.

20 E. CONTRACTOR may augment paid staff with volunteers or part-time student interns.
 21 CONTRACTOR shall provide supervision to volunteers as specified in the respective job descriptions or
 22 work contracts.

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

33 G. CONTRACTOR shall provide pre-employment screening of any staff person providing any
 34 service pursuant to the Agreement. All new staff, volunteers, and interns shall pass a one-time “live scan”
 35 fingerprinting background check prior to such staff becoming involved with the Participants Clients.
 36 CONTRACTOR shall provide copies of the criminal record reviews to ADMINISTRATOR within ten
 37 (10) calendar days of receiving such reviews. The results of the fingerprinting will be sent directly from

1 the Department of Justice to CONTRACTOR. Results must remain in staff file. ADMINISTRATOR may
 2 change this approval mechanism at their discretion.

3 1. All staff, prior to hiring, shall meet the following requirements:

4 a. No person shall have been convicted of a sex offense for which the person is required to
 5 register as a sex offender under California Penal Code section 290;

6 b. No person shall have been convicted of an arson offense – Violation of Penal Code
 7 sections 451, 451.1, 451.5, 452, 452.1, 453, 454, or 455;

8 c. No person shall have been convicted of any violent felony as defined in Penal Code
 9 section 667.5, which involve doing bodily harm to another person, for which the staff member was
 10 convicted within five years prior to employment;

11 d. No person shall be on parole or probation, unless approved in advance by
 12 ADMINISTRATOR; and

13 e. No prior employment history of improper conduct, including but not limited to, forging
 14 or falsifying documents or drug tests, sexual assault or sexual harassment, or inappropriate behavior with
 15 staff at another treatment facility.

16 f. No person shall participate in the criminal activities of a criminal street gang and/or
 17 prison gang.

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

21 H. CONTRACTOR shall provide ongoing training in topics related to alcohol and drug use on an
 22 annual basis including:

23 1. analysis of illicit drug use, the meaning of the analysis results, and procedures to be followed
 24 by CONTRACTOR to alleviate continued use.

25 2. confidentiality requirements.

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

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

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

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

35 M. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources,
 36 with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of the
 37 Agreement. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to

1 promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution,
2 or religious belief.

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

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EXHIBIT B
 TO AGREEMENT FOR PROVISION OF
 NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 WESTERN PACIFIC RE-HAB
 JULY 1, ~~2015~~2017 THROUGH JUNE 30, ~~2017~~2020

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

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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 of
 8 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 that
 21 an unauthorized person to whom the disclosure was made would not reasonably have been able to retain
 22 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 CFR
 35 § 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 45
4 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with
5 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 and
8 environmental hazards, and unauthorized intrusion.

9 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable
10 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 his
16 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 ePHI at
23 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 ePHI 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 methodology
30 specified by the Secretary of HHS in the guidance issued on the HHS Web site.

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

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

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

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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 through
17 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 Individual
20 in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with
21 PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall
22 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 (30)
25 calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in
26 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 CFR
36 § 164.528.

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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 obligation
 6 under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the requirements of 45
 7 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 employees,
 11 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 terminate
 19 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 no
 22 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 claimed
 24 violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves
 25 inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee,
 26 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:

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1 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
2 Associate Contract when requested by COUNTY pursuant to this Subparagraph F; 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 and
11 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 CONTRACTOR
13 or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR
14 shall develop and maintain a written information privacy and security program that includes
15 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, maintains,
25 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 security
 6 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 functions
 10 or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI COUNTY
 11 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 12 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 for
 26 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

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1 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
2 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
3 COUNTY.

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

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

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

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

22 f. Patch Management. All workstations, laptops and other systems that process and/or store
23 PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits
24 on behalf of COUNTY must have critical security patches applied, with system reboot if necessary. There
25 must be a documented patch management process which determines installation timeframe based on risk
26 assessment and vendor recommendations. At a maximum, all applicable patches must be installed within
27 thirty (30) days of vendor release. Applications and systems that cannot be patched due to operational
28 reasons must have compensatory controls 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 characters
34 and must be a non-dictionary word. Passwords must not be stored in readable format on the computer.
35 Passwords must be changed every ninety (90) days, preferably every sixty (60) days.

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37 Passwords must be changed if revealed or compromised. Passwords must be composed of characters

1 from at least three (3) of the following four (4) groups from the standard keyboard:

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

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

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

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

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

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

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

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37 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and

1 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
2 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
3 comprehensive intrusion detection and prevention solution.

4 3. Audit Controls

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

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

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

18 4. Business Continuity/Disaster Recovery Control

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

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

31 5. Paper Document Controls

32 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
33 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended
34 at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means

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37 that information is not being observed by an employee authorized to access the information. Such PHI in

1 paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
2 baggage on commercial airplanes.

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

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

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

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

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

24 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 8. CONTRACTOR shall continue to provide all additional pertinent information about the
33 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after

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36 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests
37 for further information, or follow-up information after report to COUNTY, when such request is made by

1 COUNTY.

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

6 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

16 1) The Disclosure is required by law; or

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

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

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

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

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

30 H. PROHIBITED USES AND DISCLOSURES

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

37 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI

1 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
2 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by
3 42 USC § 17935(d)(2).

4 I. OBLIGATIONS OF COUNTY

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

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

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

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

16 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

30 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
31 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
32 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,

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35 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
36 further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible,
37 for as long as CONTRACTOR maintains such PHI.

1 | 3. The obligations of this Business Associate Contract shall survive the termination of the
2 | Agreement.
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EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 NARCOTIC REPLACEMENT THERAPY TREATMENT SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 WESTERN PACIFIC RE-HAB
 JULY 1, ~~2015~~2017 THROUGH JUNE 30, ~~2017~~2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

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

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

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

1 regulations that require such information if payment is sought under a government program providing
2 public benefits.

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

6 B. TERMS OF AGREEMENT

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

11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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