

1 AGREEMENT FOR PROVISION OF
2 SHORT TERM HOUSING SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 «NAME1»
7 JULY 1, 2019 THROUGH JUNE 30, 2020

8
9 THIS AGREEMENT entered into this 1st day of July 2019 (effective date), is by and between the
10 COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and «NAME1», a
11 _____ (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred
12 to herein individually as “Party” or collectively as “Parties.” This Agreement shall be administered by
13 the Director of the COUNTY’s Health Care Agency or an authorized designee (“ADMINISTRATOR”).
14

15 **W I T N E S S E T H:**

16
17 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of
18 Short Term Housing services described herein to the residents of Orange County; and

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

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

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2019 through June 30, 2020

Aggregate Maximum Obligation:

TOTAL AGGREGATE MAXIMUM OBLIGATION: \$300,000

Basis for Reimbursement: Negotiated Rate

Payment Method: Fee for Service

CONTRACTOR DUNS Number: «DUNS_NUMB»

CONTRACTOR TAX ID Number: «TAX_ID»

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: «NAME2»
«ADDRESS»
«CITYSTATEZIP»
«ATTN»
«EMAIL»

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I. ACRONYMS

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

- 1 A. AB 109 Assembly Bill 109, 2011 Public Safety Realignment
- 2 B. AES Advanced Encryption Standard
- 3 C. AIDS Acquired Immune Deficiency Syndrome
- 4 D. ARRA American Recovery and Reinvestment Act of 2009
- 5 E. ASAM PPC American Society of Addiction Medicine Patient Placement Criteria
- 6 F. ASI Addiction Severity Index
- 7 G. ASRS Alcohol and Drug Programs Reporting System
- 8 H. BCP Business Continuity Plan
- 9 I. BHS Behavioral Health Services
- 10 J. CalOMS California Outcomes Measurement System
- 11 K. CalWORKs California Work Opportunity and Responsibility for Kids
- 12 L. CAP Corrective Action Plan
- 13 M. CCC California Civil Code
- 14 N. CD/DVD Compact Disc/Digital Video or Versatile Disc
- 15 O. CEO County Executive Office
- 16 P. CCR California Code of Regulations
- 17 Q. CESI Client Evaluation of Self at Intake
- 18 R. CEST Client Evaluation of Self and Treatment
- 19 S. CFDA Catalog of Federal Domestic Assistance
- 20 T. CFR Code of Federal Regulations
- 21 U. CHPP COUNTY HIPAA Policies and Procedures
- 22 V. CHS Correctional Health Services
- 23 W. COI Certificate of Insurance
- 24 X. CPA Certified Public Accountant
- 25 Y. CSW Clinical Social Worker
- 26 Z. DHCS California Department of Health Care Services
- 27 AA. D/MC Drug/Medi-Cal
- 28 AB. DPFS Drug Program Fiscal Systems
- 29 AC. DRS Designated Record Set
- 30 AD. EEOC Equal Employment Opportunity Commission
- 31 AE. EHR Electronic Health Records
- 32 AF. EOC Equal Opportunity Clause
- 33 AG. ePHI Electronic Protected Health Information
- 34 AH. EPSDT Early and Periodic Screening, Diagnosis, and Treatment

1	AI. FFS	Fee For Service
2	AJ. FSP	Full Service Partnership
3	AK. FTE	Full Time Equivalent
4	AL. GAAP	Generally Accepted Accounting Principles
5	AM. HCA	County of Orange Health Care Agency
6	AN. HHS	Federal Health and Human Services Agency
7	AO. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
8		Law 104-191
9	AP. HITECH	Health Information Technology for Economic and Clinical Health
10		Act, Public Law 111-005
11	AQ. HIV	Human Immunodeficiency Virus
12	AR. HSC	California Health and Safety Code
13	AS. IRIS	Integrated Records and Information System
14	AT. ITC	Indigent Trauma Care
15	AU. LCSW	Licensed Clinical Social Worker
16	AV. MAT	Medication Assisted Treatment
17	AW. MFT	Marriage and Family Therapist
18	AX. MH	Mental Health
19	AY. MHP	Mental Health Plan
20	AZ. MHS	Mental Health Specialist
21	BA. MHSA	Mental Health Services Act
22	BB. MSN	Medical Safety Net
23	BC. NIH	National Institutes of Health
24	BD. NPI	National Provider Identifier
25	BE. NPPES	National Plan and Provider Enumeration System
26	BF. OCR	Federal Office for Civil Rights
27	BG. OIG	Federal Office of Inspector General
28	BH. OMB	Federal Office of Management and Budget
29	BI. OPM	Federal Office of Personnel Management
30	BJ. P&P	Policy and Procedure
31	BK. PA DSS	Payment Application Data Security Standard
32	BL. PATH	Projects for Assistance in Transition from Homelessness
33	BM. PC	California Penal Code
34	BN. PCI DSS	Payment Card Industry Data Security Standards
35	BO. PCS	Post-Release Community Supervision
36	BP. PHI	Protected Health Information
37	BQ. PII	Personally Identifiable Information

1	BR. PRA	California Public Records Act
2	BS. PSC	Professional Services Contract System
3	BT. SAPTBG	Substance Abuse Prevention and Treatment Block Grant
4	BU. SIR	Self-Insured Retention
5	BV. SMA	Statewide Maximum Allowable (rate)
6	BW. SOW	Scope of Work
7	BX. SUD	Substance Use Disorder
8	BY. UMDAP	Uniform Method of Determining Ability to Pay
9	BZ. UOS	Units of Service
10	CA. USC	United States Code
11	CB. WIC	Women, Infants and Children

12
13 **II. ALTERATION OF TERMS**

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

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

21
22 **III. ASSIGNMENT OF DEBTS**

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

30
31 **IV. COMPLIANCE**

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

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

1 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
2 compliance program, code of conduct and any compliance related policies and procedures.
3 CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall
4 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required
5 elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to
6 this Agreement. These elements include:

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

14 3. If CONTRACTOR does not provide proof of its own compliance program to
15 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
16 Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within
17 thirty (30) calendar days of execution of this Agreement a signed acknowledgement that
18 CONTRACTOR will internally comply with ADMINISTRATOR's Compliance Program and Code of
19 Conduct. CONTRACTOR shall have as many Covered Individuals it determines necessary complete
20 ADMINISTRATOR's annual compliance training to ensure proper compliance.

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

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

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

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

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

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

24 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors monthly to
25 ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its
26 subcontractors use their best efforts to verify that they are eligible to participate in all federal and State
27 of California health programs and have not been excluded or debarred from participation in any federal
28 or state health care programs, and to further represent to CONTRACTOR that they do not have any
29 Ineligible Person in their employ or under contract.

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

35 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
36 federal and state funded health care services by contract with COUNTY in the event that they are
37 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.

1 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
2 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
3 business operations related to this Agreement.

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

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

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

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

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

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

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

26 D. SPECIALIZED PROVIDER TRAINING - ADMINISTRATOR shall make Specialized
27 Provider Training, where appropriate, available to Covered Individuals.

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

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

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

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

37 //

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

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

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

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

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

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

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

22 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and
23 participate in the quality improvement activities developed in the implementation of the Quality
24 Management Program.

25 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural
26 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural
27 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
28 §1810.410.subds.(c)-(d).

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

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V. CONFIDENTIALITY

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

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

VI. 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 agrees that if there is a change or transfer in ownership of CONTRACTOR’s business prior to completion of this Agreement, and COUNTY agrees to an assignment of the Agreement, the new owners shall be required under the terms of sale or other instruments of transfer to assume CONTRACTOR’s duties and obligations contained in this Agreement and complete them to the satisfaction of COUNTY. 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 delegation in derogation of this subparagraph shall be void.

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

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

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

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

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

22 1. After approval of the subcontractor, ADMNISTRATOR may revoke the approval of the
23 subcontractor upon five (5) calendar days’ written notice to CONTRACTOR if the subcontractor
24 subsequently fails to meet the requirements of this Agreement or any provisions that
25 ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported
26 by CONTRACTOR.

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

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

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

34 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR’s
35 status with respect to name changes that do not require an assignment of the Agreement.
36 CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party
37 to any litigation against COUNTY, or a party to litigation that may reasonably affect the

1 CONTRACTOR’s performance under the Contract, as well as any potential conflicts of interest between
2 CONTRACTOR and County that may arise prior to or during the period of Agreement performance.
3 While CONTRACTOR will be required to provide this information without prompting from COUNTY
4 any time there is a change in CONTRACTOR’s name, conflict of interest or litigation status,
5 CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever
6 requested by COUNTY.

7
8 **VII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

18
19 **VIII. EQUIPMENT**

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

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

37 //

1 C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to
2 COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in
3 relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it
4 is purchased. Title of expensed Equipment shall be vested with COUNTY.

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

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

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

17 G. Unless this Agreement is followed without interruption by another agreement between the
18 Parties for substantially the same type and scope of services, at the termination of this Agreement for
19 any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through
20 this Agreement.

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

23 24 **IX. EXPENDITURE AND REVENUE REPORT**

25 A. No later than sixty (60) calendar days following termination of this Agreement,
26 CONTRACTOR shall submit to ADMINISTRATOR, for informational purposes only, an Expenditure
27 Report for the preceding fiscal year, or portion thereof. Such report shall be prepared in accordance
28 with the procedure that is provided by ADMINISTRATOR and GAAP.

29 B. CONTRACTOR may be required to submit periodic Expenditure Reports throughout the term
30 of this Agreement.

31 32 **X. FACILITIES, PAYMENTS AND SERVICES**

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

1 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
2 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation
3 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum
4 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount
5 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide
6 services, staffing, facilities or supplies.

7
8 **XI. INDEMNIFICATION AND INSURANCE**

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

19 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
20 required insurance at CONTRACTOR’s expense, including all endorsements required herein, necessary
21 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
22 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
23 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
24 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
25 subject to the same terms and conditions as set forth herein for CONTRACTOR.

26 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
27 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR’s insurance as an
28 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
29 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
30 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
31 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
32 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
33 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
34 by COUNTY representative(s) at any reasonable time.

35 D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand
36 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of
37 CONTRACTOR’s current audited financial report. If CONTRACTOR’s SIR is approved,

1 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this
2 Agreement, agrees to all of the following:

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

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

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

12 E. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of
13 this Agreement, the COUNTY may terminate this Agreement.

14 F. QUALIFIED INSURER

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

37 //

1 Network Security & Privacy Liability \$1,000,000 per claims made

2
3 Sexual Misconduct Liability \$1,000,000 per occurrence

4
5 H. REQUIRED COVERAGE FORMS

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

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

10 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

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

37 //

1 M. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
2 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
3 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
4 breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to suspend or terminate
5 this Agreement.

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

8 O. Insurance certificates should be forwarded to the agency/department address listed on the
9 solicitation.

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

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

17 R. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
18 CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with
19 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice,
20 this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be
21 entitled to all legal remedies.

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

25 T. SUBMISSION OF INSURANCE DOCUMENTS

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

- 27 a. Prior to the start date of this Agreement.
- 28 b. No later than the expiration date for each policy.
- 29 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
30 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

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

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

- 36 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
37 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the

1 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
2 submitted to ADMINISTRATOR.

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

7 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
8 CONTRACTOR’s monthly invoice.

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

12
13 **XII. INSPECTIONS AND AUDITS**

14 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
15 of the State of California, the Secretary of the United States Department of Health and Human Services,
16 the Comptroller General of the United States, or any other of their authorized representatives, shall to
17 the extent permissible under applicable law have access to any books, documents, and records, including
18 but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client
19 records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding
20 to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making
21 transcripts during the periods of retention set forth in the Records Management and Maintenance
22 Paragraph of this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate
23 the services provided pursuant to this Agreement, and the premises in which they are provided.

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

28 C. AUDIT RESPONSE

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

34 2. If the audit reveals that money is payable from one Party to the other, that is,
35 reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to
36 CONTRACTOR, said funds shall be due and payable from one Party to the other within sixty (60)
37 calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to

COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as may be required during the term of this Agreement.

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

XIII. LICENSES AND LAWS

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

B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

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

27
28 **XIV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

29 A. COUNTY owns all rights to the name, logos, and symbols of COUNTY. The use and/or
30 reproduction of COUNTY’s name, logos, or symbols for any purpose, including commercial
31 advertisement, promotional purposes, announcements, displays, or press releases, without COUNTY’s
32 prior written consent is expressly prohibited.

33 B. CONTRACTOR may develop and publish information related to this Agreement where all of
34 the following conditions are satisfied:

- 35 1. ADMINISTRATOR provides its written approval of the content and publication of the
36 information at least 30 days prior to CONTRACTOR publishing the information, unless a difference
37 timeframe for approval is agreed upon by the ADMINISTRATOR;

1 2. Unless directed otherwise by ADMINISTRATOR, the information includes a statement
2 that the program, wholly or in part, is funded through COUNTY, State and Federal government funds
3 [funds identified as applicable];

4 3. The information does not give the appearance that the COUNTY, its officers, employees, or
5 agencies endorse:

6 a. any commercial product or service; and,

7 b. any product or service provided by CONTRACTOR, unless approved in writing by
8 ADMINISTRATOR; and,

9 4. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other
10 publicly available social media sites) to publish information related to this Agreement, CONTRACTOR
11 shall develop social media policies and procedures and have them available to ADMINISTRATOR.
12 CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain
13 to any social media developed in support of the services described within this Agreement. The policy is
14 available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies>.

15
16 **XV. MAXIMUM OBLIGATION**

17 A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all
18 agreements for Short Term Housing Services is as specified in the Referenced Contract Provisions of
19 this Agreement. This specific Agreement with CONTRACTOR is only one of several agreements to
20 which this Aggregate Maximum Obligation applies. It therefore is understood by the Parties that
21 reimbursement to CONTRACTOR will be only a fraction of these Aggregate Maximum Obligations.

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

24
25 **XVI. MINIMUM WAGE LAWS**

26 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
27 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
28 federal or California Minimum Wage to all its Covered Individuals (as defined within the “Compliance”
29 paragraph of this Agreement) that directly or indirectly provide services pursuant to this Agreement, in
30 any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals
31 providing services pursuant to this Agreement be paid no less than the greater of the federal or
32 California Minimum Wage.

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

36 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
37 where applicable, shall comply with the prevailing wage and related requirements, as provided for in

1 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
2 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

3
4 **XVII. NONDISCRIMINATION**

5 **A. EMPLOYMENT**

6 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals (as
7 defined in the “Compliance” paragraph of this Agreement) shall not unlawfully discriminate against any
8 employee or applicant for employment because of his/her race, religious creed, color, national origin,
9 ancestry, physical disability, mental disability, medical condition, genetic information, marital status,
10 sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
11 Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall
12 require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or
13 applicant for employment because of his/her race, religious creed, color, national origin, ancestry,
14 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,
15 gender identity, gender expression, age, sexual orientation, or military and veteran status.

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

20
21 **XVIII. NOTICES**

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

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

27 2. When faxed, transmission confirmed;

28 3. When sent by Email; or

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

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

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

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

7
8 **XIX NOTIFICATION OF DEATH**

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

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

14 1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by
15 telephone immediately upon becoming aware of the death due to non-terminal illness of any person
16 served pursuant to this Agreement; notice need only be given during normal business hours.

17 2. WRITTEN NOTIFICATION

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

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

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

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

30
31 **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

35 //

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1 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
2 of any applicable public event or meeting. The notification must include the date, time, duration,
3 location and purpose of the public event or meeting. Any promotional materials or event related flyers
4 must be approved by ADMINISTRATOR prior to distribution.
5

6 **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

35 E. CONTRACTOR shall retain all client and/or patient medical records for seven (7) years
36 following discharge of the participant, client and/or patient.

37 //

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

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

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

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

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

- 21 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit
22 or site visit.
- 23 2. Provide auditor or other authorized individuals access to documents via a computer
24 terminal.
- 25 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
26 requested.

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

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

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

36 //
37 //

XXII. RESEARCH AND PUBLICATION

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

XXIII. REVENUE

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

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

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

XXIV. 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.

XXV. SPECIAL PROVISIONS

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

- 1 1. Making cash payments to intended recipients of services through this Agreement.
- 2 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
- 3 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on
- 4 use of appropriated funds to influence certain federal contracting and financial transactions).
- 5 3. Fundraising.
- 6 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
- 7 CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of
- 8 Directors or governing body.
- 9 5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing
- 10 body for expenses or services.
- 11 6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants,
- 12 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
- 13 agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
- 14 7. Paying an individual salary or compensation for services at a rate in excess of the current
- 15 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
- 16 Schedule may be found at www.opm.gov.
- 17 8. Severance pay for separating employees.
- 18 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
- 19 codes and obtaining all necessary building permits for any associated construction.
- 20 10. Supplanting current funding for existing services.
- 21 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR
- 22 shall not use the funds provided by means of this Agreement for the following purposes:
- 23 1. Funding travel or training (excluding mileage or parking).
- 24 2. Making phone calls outside of the local area unless documented to be directly for the
- 25 purpose of Client care.
- 26 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 27 4. Purchase of artwork or other items that are for decorative purposes and do not directly
- 28 contribute to the quality of services to be provided pursuant to this Agreement.
- 29 5. Purchasing or improving land, including constructing or permanently improving any
- 30 building or facility, except for tenant improvements.
- 31 6. Providing inpatient hospital services or purchasing major medical equipment.
- 32 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
- 33 funds (matching).
- 34 8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
- 35 CONTRACTOR’s Clients.
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- 37 //

XXVI. STATUS OF CONTRACTOR

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

XXVII. TERM

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

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

XXVIII. TERMINATION

A. Either party may terminate this Agreement, without cause, upon ninety (90), calendar days’ written notice given the other party.

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

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

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

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

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

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

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

11 D. CONTINGENT FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14 **XXIX. THIRD PARTY BENEFICIARY**

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

18
19 **XXX. WAIVER OF DEFAULT OR BREACH**

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

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

3 <<CONTRACTOR NAME>>
4

5 BY: _____ DATED: _____
6

7 TITLE: _____
8

9
10 BY: _____ DATED: _____
11

12 TITLE: _____
13

14
15
16 COUNTY OF ORANGE
17

18
19 BY: _____ DATED: _____
20

21 HEALTH CARE AGENCY
22

23
24 APPROVED AS TO FORM
25 OFFICE OF THE COUNTY COUNSEL
26 ORANGE COUNTY, CALIFORNIA
27

28
29 BY:  _____ DATED: 3/19/2019
30
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
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
37 or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her
signature alone is required by ADMINISTRATOR.

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
SHORT TERM HOUSING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
XXXXXXXXXX
JULY 1, 2019 THROUGH JUNE 30, 2020

I. COMMON TERMS AND DEFINITIONS

A. The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout the Agreement. The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement.

1. Admission means documentation, by CONTRACTOR, of completion of the entry and evaluation documents into IRIS.

2. Data Collection System means software designed for collection, tracking and reporting outcomes data for Resident enrolled in the FSP Programs.

a. 3 M's means the Quarterly Assessment Form that is completed for each Resident every three months in the approved data collection system.

b. Data Mining and Analysis Specialist means a person who is responsible for ensuring the program maintains a focus on outcomes, by reviewing outcomes, and analyzing data as well as working on strategies for gathering new data from the Resident' perspective which will improve understanding of Resident' needs and desires towards furthering their recovery. This individual will provide feedback to the program and work collaboratively with the employment specialist, education specialist, benefits specialist, and other staff in the program in strategizing improved outcomes in these areas. This position will be responsible for attending all data and outcome related meetings and ensuring that program is being proactive in all data collection requirements and changes at the local and state level.

c. Data Certification means the process of reviewing State and COUNTY mandated outcome data for accuracy and signing the Certification of Accuracy of Data form indicating that the data is accurate.

3. Care Coordinator is a MHS, CSW, or MFT that provides mental health, crisis intervention and case management services to those Residents who seek services in the COUNTY operated outpatient programs.

4. Case Management Linkage Brokerage means a process of identification, assessment of need, planning, coordination and linking, monitoring and continuous evaluation of Residents and of available resources and advocacy through a process of casework activities in order to achieve the best

1 possible resolution to individual needs in the most effective way possible. This includes supportive
2 assistance to the Resident in the assessment, determination of need and securing of adequate and
3 appropriate living arrangements.

4 5. Client or Resident means an individual, referred by COUNTY or enrolled in
5 CONTRACTOR's program for services under the Agreement, who experiences chronic mental illness.

6 6. CSW means an individual who meets the minimum professional and licensure requirements
7 set forth in CCR, Title 9, Section 625, and has two (2) years of post-master's clinical experience in a
8 mental health setting.

9 7. Diagnosis means the definition of the nature of the Resident's disorder. When formulating
10 the diagnosis of Resident, CONTRACTOR shall use the diagnostic codes and axes as specified in the
11 most current edition of the DSM published by the American Psychiatric Association (APA). DSM
12 diagnoses will be recorded on all IRIS documents, as appropriate.

13 8. FSPs

14 a. A FSP means a type of program described by the State in the requirements for the
15 COUNTY plan for use of MHSA funds and which includes Residents being a full partner in the
16 development and implementation of their treatment plan. A FSP is an evidence-based and strength-
17 based model, with the focus on the individual rather than the disease. Multi-disciplinary teams will be
18 established including the Resident, Psychiatrist, and PSC. Whenever possible, these multi-disciplinary
19 teams will include a mental health nurse, marriage and family therapist, clinical social worker, peer
20 specialist, and family members. The ideal Resident to staff ratio will be in the range of fifteen to twenty
21 (15-20) to one (1), ensuring relationship building and intense service delivery. Services will include, but
22 not be limited to, the following:

- 23 1) Crisis management;
- 24 2) Housing Services;
- 25 3) Twenty-four (24)-hours per day, seven (7) days per week intensive case
26 management;
- 27 4) Community-based Wraparound Recovery Services;
- 28 5) Vocational and Educational services;
- 29 6) Job Coaching/Developing;
- 30 7) Resident employment;
- 31 8) Money management/Representative Payee support;
- 32 9) Flexible Fund account for immediate needs;
- 33 10) Transportation;
- 34 11) Illness education and self-management;
- 35 12) Medication Support;
- 36 13) Co-occurring Services;
- 37 14) Linkage to financial benefits/entitlements;

1 15) Family and Peer Support; and

2 16) Supportive socialization and meaningful community roles.

3 b. Resident services are focused on recovery and harm reduction to encourage the highest
4 level of Resident empowerment and independence achievable. PSC’s will meet with the Resident in
5 their current community setting and will develop a supportive relationship with the individual served.
6 Substance abuse treatment will be integrated into services and provided by the Resident’s team to
7 individuals with a co-occurring disorder.

8 c. The FSP shall offer “whatever it takes” to engage seriously mentally ill adults,
9 including those who are dually diagnosed, in a partnership to achieve the individual’s wellness and
10 recovery goals. Services shall be non-coercive and focused on engaging people in the field. The goal of
11 FSP Programs is to assist the Resident’s progress through pre-determined quality of life outcome
12 domains (housing, decreased jail, decreased hospitalization, increased education involvement, increased
13 employment opportunities and retention, linkage to medical providers, etc.) and become more
14 independent and self-sufficient as Residents move through the continuum of recovery and evidence by
15 progressing to lower level of care or out of the “intensive case management need” category.

16 9. Intern means an individual enrolled in an accredited graduate program accumulating
17 clinically supervised work experience hours as part of field work, internship, or practicum requirements.
18 Acceptable graduate programs include all programs that assist the student in meeting the educational
19 requirements in becoming a MFT, a Licensed CSW, or a licensed Clinical Psychologist.

20 10. MFT means an individual who meets the minimum professional and licensure requirements
21 set forth in CCR, Title 9, Section 625.

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

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

28 b. Collateral means a significant support person in a beneficiary’s life and is used to
29 define services provided to them with the intent of improving or maintaining the mental health status of
30 the Resident. The beneficiary may or may not be present for this service activity.

31 c. Co-Occurring Integrated Treatment Model. In evidence-based Integrated Treatment
32 programs, Residents receive combined treatment for mental illnesses and substance use disorders from
33 the same practitioner or treatment team.

34 d. Crisis Intervention means a service, lasting less than twenty-four (24) hours, to or on
35 behalf of a Resident for a condition which requires more timely response than a regularly scheduled
36 visit. Service activities may include, but are not limited to, assessment, collateral and therapy.

37 //

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

8 f. Rehabilitation Service means an activity which includes assistance in improving,
 9 maintaining, or restoring a Resident's or group of Residents' functional skills, daily living skills, social
 10 and leisure skill, grooming and personal hygiene skills, meal preparation skills, support resources and/or
 11 medication education.

12 g. Targeted Case Management means services that assist a beneficiary to access needed
 13 medical, educational, social, prevocational, vocational, rehabilitative, or other community services. The
 14 service activities may include, but are not limited to, communication, coordination and referral;
 15 monitoring service delivery to ensure beneficiary access to service and the service delivery system;
 16 monitoring of the beneficiary's progress; and plan development.

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

21 12. MHSA means the law that provides funding for expanded community Mental Health
 22 Services. It is also known as "Proposition 63."

23 13. PSC means an individual who will be part of a multi-disciplinary team that will provide
 24 community based Mental Health Services to adults that are struggling with persistent and severe mental
 25 illness as well as homelessness, rehabilitation and recovery principles. The PSC is responsible for
 26 clinical care and case management of assigned Resident and families in a community, home, or program
 27 setting. This includes assisting Residents with mental health, housing, vocational and educational
 28 needs. The position is also responsible for administrative and clinical documentation as well as
 29 participating in trainings and team meetings. The PSC shall be active in supporting and implementing
 30 the program's philosophy and its individualized, strength-based, culturally/linguistically competent and
 31 Resident-centered approach.

32 14. Pre-Licensed Psychologist means an individual who has obtained a Ph.D. or Psy.D. in
 33 Clinical Psychology and is registered with the Board of Psychology as a registered Psychology Intern or
 34 Psychological Assistant, acquiring hours for licensing and waived in accordance with WIC Section
 35 575.2. The waiver may not exceed five (5) years.

36 15. Psychiatrist means an individual who meets the minimum professional and licensure
 37 requirements set forth in CCR, Title 9, Section 623.

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

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

6 18. Bed Day means one (1) calendar day which CONTRACTOR provides residential treatment
7 services as described in Exhibit A of the Agreement. A Bed Day will include the day of admission; but
8 not the day of discharge. If admission and discharge occur on the same day, one (1) Bed Day will be
9 charged.

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

12
13 **II. PAYMENTS**

14 A. For all services provided pursuant to the Agreement, COUNTY shall pay CONTRACTOR
15 monthly, in arrears at the rate of \$ _____ (number) per person per bed day for services provided to
16 Residents who were approved by ADMINISTRATOR as eligible to receive Short Term Housing
17 Services in accordance with WIC, Section 4075 and at a lower rate of \$ _____ (number) per bed day
18 for designated beds for Short Term Housing Services that are not in use.

19 Reimbursement shall be based upon bed days authorized by ADMINISTRATOR, the total of all such
20 payments to CONTRACTOR during Period One and Period Two shall not exceed the Aggregate
21 Maximum Obligation for each Period as specified in the Referenced Contract Provisions of the
22 Agreement.

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

28 C. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
29 with any provision of the Agreement.

30 D. CONTRACTOR's invoices shall be supported, at CONTRACTOR'S facility, by source
31 documentation including an invoice record for each Resident bed day billed to the ADMINISTRATOR.

32 E. ADMINISTRATOR shall not reimburse CONTRACTOR for services provided beyond the
33 expiration and/or termination of this Agreement, except as may otherwise be provided for under this
34 Agreement, or specifically agreed upon in a subsequent Agreement.

35 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the
36 Payments Paragraph of this Exhibit A to the Agreement.

37 //

III. REPORTS

A. PROGRAMMATIC – CONTRACTOR shall submit weekly and monthly census reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR. ADMINISTRATOR may request additional program reports of CONTRACTOR in order to determine the quality and nature of services provided hereunder. ADMINISTRATOR will be specific as to the nature of information requested, and may allow up to thirty (30) calendar days for CONTRACTOR to respond to request.

B. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as reasonably required by ADMINISTRATOR concerning CONTRACTOR’s activities as they affect the duties and purposes contained in the Agreement. ADMINISTRATOR will provide CONTRACTOR with at least thirty (30) calendar days notice if such additional reports are required, and shall explain any procedures for reporting the required information.

C. CONTRACTOR shall report all special incidents to ADMINISTRATOR and shall submit a written Special Incident Report in accordance with the Notices Paragraph of the Agreement. Special incidents shall include, but are not limited to, Resident's suicide or attempted suicide, elopement or absence without leave, serious injury, death, criminal behavior including arrests with or without conviction, positive test results for substance abuse from urine screenings, or any other incident which may expose COUNTY or CONTRACTOR to liability.

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

IV. SERVICES

A. FACILITY

1. CONTRACTOR shall provide Short Term Housing facilities located at the following addresses:

Address
, State, Zip Code

2. CONTRACTOR shall maintain the Short Term Housing facility as an alcohol and drug-free, supervised living environment. CONTRACTOR must ensure that the facility is in safe and sanitary condition at all times and includes, at minimum, the following:

- a. Separate and safe same sex sleeping quarters, as well as separate beds for each Resident;
- b. Lounge area for all Residents;
- c. No more than six (6) Residents per bathroom.

//

1 B. PERSONS SERVED - CONTRACTOR shall provide Short Term Housing Services on a
2 temporary and/or emergency basis for indigent Residents eighteen (18) years of age and older, who are
3 diagnosed with a serious and persistent mental illness or a serious psychiatric diagnosis and who may
4 also have co-morbid substance abuse disorder, and who are receiving services from a COUNTY clinic
5 or a COUNTY contracted mental health program, and are homeless and without funding to secure
6 housing. Short Term Housing Services are limited to a maximum stay of one hundred twenty (120)
7 days while permanent housing is established for the Resident. Prior authorization from
8 ADMINSITRATOR is required for any extension requests. Residents served under the Agreement must
9 be referred and approved for admission to the program by the ADMINISTRATOR.

10 C. SERVICES PROVIDED

11 1. CONTRACTOR shall provide supervision and other services during regularly scheduled
12 service hours, seven (7) days per week, twenty-four (24) hours per day throughout the year. Overnight
13 supervision will require one staff member per site.

14 2. CONTRACTOR shall provide Residents with three (3) nutritiously balanced meals and
15 snacks per day.

16 3. CONTRACTOR shall provide laundry facilities including supplies such as detergent,
17 bleach, and softening products, for Residents.

18 4. CONTRACTOR shall provide toilet tissue, soap, shampoo, sanitary, and toiletry articles
19 appropriate to the health and grooming needs of Residents.

20 5. CONTRACTOR shall comply with the ADMINISTRATOR's written policies regarding
21 admissions and discharges of Residents including maintaining the confidentiality of any and all
22 Residents' information and records which may be obtained in the course of providing services.

23 6. CONTRACTOR shall collaborate with the ADMINISTRATOR in meeting the specialized
24 needs of mentally disabled adults, as specified in the Resident's housing plan. CONTRACTOR shall
25 assist Residents with housing search activities such as locating potential leasing opportunities, assisting
26 with transportation arrangement, and teaching appropriate housing application and interviewing skills.

27 7. CONTRACTOR shall encourage Residents to take increasing responsibility for their own
28 treatment by supporting the goal(s) identified in the housing plan developed by the Resident in
29 conjunction with the ADMINISTRATOR or Plan Coordinators.

30 8. CONTRACTOR shall encourage Residents to use leisure time in a constructive manner,
31 and to maintain adequate grooming.

32 9. CONTRACTOR shall assist Residents to engage in appropriate social relationship
33 behaviors, such as appropriate communication with others.

34 10. CONTRACTOR shall educate Residents in becoming responsible in self-management,
35 storage of prescribed medication and participation in treatment.

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1 11. CONTRACTOR shall educate Residents in the responsibility for daily household duties,
2 which may include food preparation, house cleaning, and basic household operations. Resident are
3 required to complete one household task per day.

4 12. CONTRACTOR shall maintain copies of the shelter referral and updates in the Residents'
5 records.

6 13. CONTRACTOR shall participate with ADMINISTRATOR in meetings and relevant
7 trainings.

8 14. CONTRACTOR shall establish a written Housing Resource Guide for standards of conduct
9 for all Residents.

10 15. CONTRACTOR shall establish a written smoking policy.

11 16. CONTRACTOR shall establish a written visitation policy that includes:

- 12 a. Sign-in logs;
- 13 b. Visitation hours; and
- 14 c. Designated visiting areas at the facility.

15 17. CONTRACTOR shall establish a written Good Neighbor Policy that includes, but is not
16 limited to the following:

- 17 a. Training of staff on how to manage neighbor complaints; and
- 18 b. Neighbor complaint procedures.

19 18. CONTRACTOR shall maintain a daily roster of Residents that includes:

- 20 a. Names of current shelter Residents and date of entry;
- 21 b. Names of Residents exiting from shelter during the previous twenty-four (24) hours,
22 and reason for exit; and

23 c. Significant information about Residents' condition and/or status, such as:

- 24 1) Mental or physical health;
- 25 2) Observed behavior;
- 26 3) Medication use;
- 27 4) Compliance with facility rules;
- 28 5) Job search activity;
- 29 6) Application for benefits;
- 30 7) Income received;
- 31 8) Substance use; and
- 32 9) Disposition of Resident's housing information upon discharge.

33 19. CONTRACTOR shall provide staff training on how to de-escalate conflicts between
34 residents before they become serious, and know what resources are appropriate and available and how to
35 access them in the event of a psychiatric or other emergency.

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1 D. PERFORMANCE OUTCOMES – CONTRACTOR shall ensure that a minimum of twenty-five
2 percent (25%) of homeless, mentally ill Residents placed in their short term housing facility will move
3 to transitional or permanent housing.

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

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

11
12 **V. STAFFING**

13 A. CONTRACTOR shall provide effective administrative management of the budget, staffing,
14 recording, and reporting portion of the agreement with the COUNTY. If administrative responsibilities
15 are delegated to subcontractors, the Contractor must ensure that any subcontractor(s) possess the
16 qualifications and capacity to perform all delegated responsibilities. Responsibilities include but are not
17 limited to the following:

- 18 1. Designate the responsible position(s) in your organization for managing the funds allocated
- 19 to this program;
- 20 2. Maximize the use of the allocated funds;
- 21 3. Ensure timely and accurate reporting of weekly and monthly reports;
- 22 4. Maintain appropriate staffing levels;
- 23 5. Effectively communicate and monitor the program for its success;
- 24 6. Maintain electronic and telephone communication between key staff and the Contract and
- 25 Program Administrators; and
- 26 7. Act quickly to identify and solve problems.

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

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EXHIBIT B
TO AGREEMENT FOR PROVISION OF
SHORT TERM HOUSING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
XXXXXXX
JULY 1, 2019 THROUGH JUNE 30, 2020

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined in the Common Terms and Definitions Paragraph of Exhibit A, B, and C 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 HIPAA regulations as they may exist now or be hereafter amended.

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

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

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

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

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

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

3 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

37 //

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

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

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

9 D. SECURITY RULE

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

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

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

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

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

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

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

37 //

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

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

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

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

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

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

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

34 2. Technical Security Controls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

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

3 3. Audit Controls

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

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

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

17 4. Business Continuity/Disaster Recovery Control

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

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

30 5. Paper Document Controls

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

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

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

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

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

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

22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

13 1) The Disclosure is required by law; or

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

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

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

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

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

28 H. PROHIBITED USES AND DISCLOSURES

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

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

1 I. OBLIGATIONS OF COUNTY

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

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

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

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

13 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 SHORT TERM HOUSING SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 XXXXXXXXX
 JULY 1, 2019 THROUGH JUNE 30, 2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

7. "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 California Civil Code § 1798.3(a).

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

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

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

7 B. TERMS OF AGREEMENT

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

12 2. Responsibilities of CONTRACTOR

13 CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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