

1 AGREEMENT FOR PROVISION OF
2 TARGETED CASE MANAGEMENT SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 «CONTRACT_LEGAL_NAMES_UC»
7 JULY 1, 2018 THROUGH JUNE 30, 2020
8

9 THIS AGREEMENT entered into this 1st day of July 2018, which date is enumerated for purposes
10 of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and
11 «CONTRACT_LEGAL_NAMES_UC», a California «Corp_Stat» (CONTRACTOR). This
12 Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).
13

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

15 WHEREAS, COUNTY has a Memorandum of Understanding (MOU) for Fiscal Leveraging and
16 Support Services with the Children and Families Commission of Orange County (Commission); and

17 WHEREAS, the MOU between COUNTY and Commission outlines responsibilities of COUNTY
18 regarding funds to be paid to CONTRACTOR; and

19 WHEREAS, it is necessary for COUNTY to establish a means for CONTRACTOR claiming
20 Title XIX Federal Financial Participation (FFP) for Targeted Case Management (TCM) expenses
21 necessary for the proper and efficient administration of the Medi-Cal program as set forth in Welfare
22 and Institutions Code described herein; and

23 WHEREAS, COUNTY has entered into agreement with the Department of Health Care Services
24 (DHCS) relative to the provision of TCM services to eligible Medi-Cal beneficiaries. The mutual
25 objectives of COUNTY and DHCS for TCM services are to assist eligible individuals in gaining access
26 to needed medical, social, educational, and other services in accordance with the Social Security Act,
27 Title XIX, Section 1915(g) (2); Title 42 USC, Section 1396n(g) (2), as it exists now or may hereafter be
28 amended; and

29 WHEREAS, COUNTY recognizes the unique relationship that the CONTRACTOR has with
30 Medi-Cal eligible individuals and the expertise of CONTRACTOR in identifying and assessing the
31 needs of Medi-Cal eligible individuals it serves; and

32 WHEREAS, COUNTY is agreeable to working with CONTRACTOR to provide the appropriate
33 claiming procedures, and a mechanism for reimbursement; and

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

36 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

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Term: July 1, 2018 through June 30, 2020
 Period One means the period from July 1, 2018 through June 30, 2019
 Period Two means the period from July 1, 2019 through June 30, 2020

CONTRACTOR DUNS Number: «DUNS»

CONTRACTOR TAX ID Number: «TAX_ID»

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
 Health Care Agency
 Contract Development and Management
 405 West 5th Street, Suite 600
 Santa Ana, CA 92701
 and
 LGA MAA/TCM Coordinator
 County of Orange/HCA Accounting
 200 W. Santa Ana Blvd., Suite 800
 Santa Ana, CA 92701

CONTRACTOR: «Contract_Legal_Names_LC»
 «MAILING_ADDRESS»
 «CITY_State_Zip»
 Attn: «Salutation» «First_Name»«Last_Name», «POSITION_TITLE»

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I. ACRONYMS

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

3	A. ARRA	American Recovery and Reinvestment Act
4	B. ASRS	Alcohol and Drug Programs Reporting System
5	C. BIC	Beneficiary Identification Code
6	D. CCC	California Civil Code
7	E. CCR	California Code of Regulations
8	F. CMS	Centers for Medicare and Medicaid Services
9	G. CFR	Code of Federal Regulations
10	H. CHPP	COUNTY HIPAA Policies and Procedures
11	I. CHS	Correctional Health Services
12	J. D/MC	Drug/Medi-Cal
13	K. DHCS	Department of Health Care Services
14	L. DMH	Department of Mental Health
15	M. DPFS	Drug Program Fiscal Systems
16	N. DRS	Designated Record Set
17	O. FFP	Federal Financial Participation
18	P. FLMG	Fiscal Leveraging Management Group
19	Q. HCA	Health Care Agency
20	R. HHS	Health and Human Services
21	S. HIPAA	Health Insurance Portability and Accountability Act
22	T. HSC	California Health and Safety Code
23	U. LGA	Local Government Agency
24	V. MAA	Medi-Cal Administrative Activities
25	W. MHP	Mental Health Plan
26	X. MOU	Memorandum of Understanding
27	Y. OCJS	Orange County Jail System
28	Z. OCPD	Orange County Probation Department
29	AA. OCR	Office for Civil Rights
30	AB. OCSD	Orange County Sheriff's Department
31	AC. OIG	Office of Inspector General
32	AD. OMB	Office of Management and Budget
33	AE. OPM	Federal Office of Personnel Management
34	AF. PADSS	Payment Application Data Security Standard
35	AG. PC	State of California Penal Code
36	AH. PCI DSS	Payment Card Industry Data Security Standard
37	AI. PHI	Protected Health Information

1	AJ. PII	Personally Identifiable Information
2	AK. PMP	Performance Monitoring Plan
3	AL. PRA	Public Record Act
4	AM. TCM	Targeted Case Management
5	AN. USC	United States Code
6	AO. WIC	State of California Welfare and Institutions Code

8 **II. ALTERATION OF TERMS**

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

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

16 **III. COMPLIANCE**

17
18 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for
19 the purpose of ensuring adherence to all rules and regulations related to federal and state health care
20 programs.

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

24 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
25 Compliance Program, Code of Conduct and any Compliance related policies and procedures.
26 CONTRACTOR's Compliance Program, Code of Conduct and any related policies and procedures shall
27 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required
28 elements by ADMINISTRATOR's Compliance Officer as described in this Paragraph IV
29 (COMPLIANCE). These elements include:

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

37 3. If CONTRACTOR does not provide proof of its own Compliance program to

1 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's
2 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the
3 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed
4 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program
5 and Code of Conduct.

6 4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any
7 Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall
8 submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to
9 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
10 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
11 reasonable time, which shall not exceed forty five (45) calendar days, and determine if
12 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to
13 the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
14 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
15 CONTRACTOR shall revise its compliance program and code of conduct to meet
16 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
17 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

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

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

31 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
32 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide
33 health care items or services or who perform billing or coding functions on behalf of
34 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
35 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to
36 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
37 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the

1 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
2 made aware of ADMINISTRATOR’s Compliance Program, Code of Conduct and related policies and
3 procedures (or CONTRACTOR’s own compliance program, code of conduct and related policies and
4 procedures if CONTRACTOR has elected to use its own).

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

6 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
7 federal and state health care programs; or

8 b. has been convicted of a criminal offense related to the provision of health care items or
9 services and has not been reinstated in the federal and state health care programs after a period of
10 exclusion, suspension, debarment, or ineligibility.

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

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

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

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

31 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
32 entity is currently excluded, suspended or debarred, or is identified as such after being sanction
33 screened. Such individual or entity shall be immediately removed from participating in any activity
34 associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or
35 sanction(s) to CONTRACTOR for services provided by ineligible person or individual.

36 //

37 CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the

1 overpayment is verified by ADMINISTRATOR.

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

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

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

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

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

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

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

19 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
20 Individuals relative to this Agreement. This includes compliance with federal and state health care
21 program regulations and procedures or instructions otherwise communicated by regulatory agencies
22 including the Centers for Medicare and Medicaid Services or their agents.

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

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

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

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

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

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

1 their agents.

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

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

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

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

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

18
19 **IV. CONFIDENTIALITY**

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

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

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

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

35 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
36 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
37 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the

1 confidentiality of any and all information and records which may be obtained in the course of providing
 2 such services. This Agreement shall specify that it is effective irrespective of all subsequent
 3 resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or
 4 authorized agent, employees, consultants, subcontractors, volunteers and interns.

5 C. CONTRACTOR shall have in effect a system to protect patient records from inappropriate
 6 disclosure in connection with activity funded under this Agreement. This system shall include
 7 provisions for employee education on the confidentiality requirements, and the fact that disciplinary
 8 action may occur upon inappropriate disclosure. CONTRACTOR agrees to implement administrative,
 9 physical, and technical safeguards that reasonably and appropriately protect the confidentiality,
 10 integrity, and availability of all confidential information that it creates, receives, maintains or transmits.
 11 CONTRACTOR shall provide ADMINISTRATOR with information concerning such safeguards.

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

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

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

19 20 **V. COST REPORT**

21 CONTRACTOR shall submit a Cost Report to COUNTY no later than ninety (90) calendar days
 22 following the end of Period One and Period Two of this Agreement. CONTRACTOR shall prepare the
 23 Cost Reports in accordance with all applicable federal, state and county requirements and generally
 24 accepted accounting principles. CONTRACTOR shall allocate direct and indirect costs to and between
 25 programs, cost centers, services, and funding sources in accordance with such requirements and
 26 consistent with prudent business practice, which costs and allocations shall be supported by source
 27 documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon
 28 reasonable notice.

29 30 **VI. DELEGATION AND ASSIGNMENT**

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

36 //

37 B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the

1 prior written consent of COUNTY.

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

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

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

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

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

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

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

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

37 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,

1 amounts claimed for subcontracts not approved in accordance with this paragraph.

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

5
6 **VII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

16
17 **VIII. FACILITIES, PAYMENTS AND SERVICES**

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

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

29
30 **IX. INDEMNIFICATION AND INSURANCE**

31 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
32 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
33 districts and agencies for which COUNTY’s Board of Supervisors acts as the governing Board
34 (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature,
35 including but not limited to personal injury or property damage, arising from or related to the services,
36 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
37 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the

1 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
2 COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request
3 a jury apportionment.

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

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

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

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

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

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

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

1 this Agreement.

2 F. QUALIFIED INSURER

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

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

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

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

31 H. REQUIRED COVERAGE FORMS

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

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

36 //

37 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

24 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
25 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
26 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
27 breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to terminate this
28 Agreement.

29 M. If CONTRACTOR’s Professional Liability and Network Security & Privacy Liability are
30 “Claims Made” policy(ies), CONTRACTOR shall agree to maintain coverage for two (2) years
31 following the completion of the Agreement.

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

34 O. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
35 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
36 //

37 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to

1 adequately protect COUNTY.

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

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

10 R. SUBMISSION OF INSURANCE DOCUMENTS

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

- 12 a. Prior to the start date of this Agreement.
- 13 b. No later than the expiration date for each policy.
- 14 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding

15 changes to any of the insurance types as set forth in Subparagraph G, above.

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

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

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

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

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

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

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37 **X. INSPECTIONS AND AUDITS**

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

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

15 C. AUDIT RESPONSE

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

21 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
 22 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
 23 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
 24 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
 25 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
 26 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
 27 reimbursement due COUNTY.

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

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

37 **XI. LICENSES AND LAWS**

1 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
2 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
3 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
4 required by the laws, regulations and requirements of the United States, the State of California,
5 COUNTY, and all other applicable governmental agencies.

6 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

26 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform
27 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

28
29 **XII. NONDISCRIMINATION**

30 A. EMPLOYMENT

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

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

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

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

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

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

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

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

37 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one

1 or more of the factors identified above:

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

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

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

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

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

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

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

37 **XIII. NOTICES**

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

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

6 2. When faxed, transmission confirmed;

7 3. When sent by Email; or

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

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

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

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

20
21 **XIV. RECORDS MANAGEMENT AND MAINTENANCE**

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

25 B. CONTRACTOR shall ensure appropriate financial records related to cost reporting,
26 expenditure, revenue, billings, etc., are prepared and maintained accurately and appropriately.

27 C. CONTRACTOR shall ensure all appropriate state and federal standards of documentation,
28 preparation, and confidentiality of records related to participant, client and/or patient records are met at
29 all times.

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

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

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37 F. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR

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

3 G. CONTRACTOR may be required to retain all records involving litigation proceedings and
4 settlement of claims for a longer term as directed by ADMINISTRATOR.

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

8 9 **XV. SEVERABILITY**

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

15 16 **XVI. STATUS OF CONTRACTOR**

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

28 29 **XVII. TERM**

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

37 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a

1 weekend or holiday may be performed on the next regular business day.

2
3 **XVIII. TERMINATION**

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

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

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

12 1. The loss by CONTRACTOR of legal capacity.

13 2. Cessation of services.

14 3. The delegation or assignment of CONTRACTOR’s services, operation or administration to
15 another entity without the prior written consent of COUNTY.

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

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

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

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

26 **D. CONTINGENT FUNDING**

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

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

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

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

36 //

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

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

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

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

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

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

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

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

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

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

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

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

30 **XIX. THIRD PARTY BENEFICIARY**

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

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37 **XX. WAIVER OF DEFAULT OR BREACH**

1 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
2 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
3 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
4 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
5 Agreement.

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

3
4 «CONTRACT_LEGAL_NAMES__UCTITLE_PG»

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7 BY: _____ DATED: _____

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9 TITLE: _____

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12 BY: _____ DATED: _____

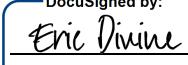
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18 COUNTY OF ORANGE

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21 BY: _____ DATED: _____

22 HEALTH CARE AGENCY

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

29
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31 BY:  _____ DATED: 3/27/2018

32 DEPUTY

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

1 EXHIBIT A
2 TO AGREEMENT FOR PROVISION OF
3 TARGETED CASE MANAGEMENT SERVICES
4 WITH
5 «CONTRACT_LEGAL_NAMES_UC»
6 JULY 1, 2018 THROUGH JUNE 30, 2020
7

8 **I. DEFINITIONS**

9 A. DHCS means a branch of the California Health and Human Services Agency which administers
10 state and federal programs for health care, social services, public assistance, job training, and
11 rehabilitation.

12 B. FFP means the proportion of allowable cost to be reimbursed by the federal government.

13 C. MAA means a program or set of activities that allows Local Governmental Agencies to claim
14 federal reimbursement for activities necessary for the proper and efficient administration of the
15 Medi-Cal State Plan.

16 D. Quarter means a three (3) month period, beginning July 1st. For the purposes of this
17 Agreement, the first quarter is the combined months of July, August and September; the second quarter
18 is October, November, and December; the third quarter is January, February, and March; and the fourth
19 quarter is April, May, and June.

20 E. TCM means services which assist Medi-Cal eligible individuals in a defined target population
21 to gain access to needed medical, social, educational, and other services.

22 F. TCM Summary Invoice means a summary of claims submitted to CDHCS for TCM encounters
23 prepared by the LGA on behalf of a claiming program that includes service dates by Quarter within the
24 date range, and is created and printed from the online TCM claiming system by LGA staff.

25 G. TCM Time Survey means the approved methodology to determine the percentage of allocable
26 employee costs spent providing TCM related services.

27
28 **II. PAYMENTS**

29 A. In compliance with all provisions pursuant to this Agreement, COUNTY shall claim
30 reimbursement to the State’s Medi-Cal program for COUNTY’S expenses paid to CONTRACTOR for
31 TCM to the extent which these services are eligible.

32 1. CONTRACTOR shall submit TCM encounter data through the State on-line TCM claiming
33 system as directed by ADMINISTRATOR and in accordance with established State procedures.
34 ADMINISTRATOR will use the data to create a TCM Summary Invoice on the State prescribed format
35 for submission to the State. The Summary Invoice will identify the number of TCM encounters deemed
36 claimable by the State on-line TCM claiming system, and shall be submitted by ADMINISTRATOR in
37 order to claim TCM encounters pursuant to this Agreement.

1 2. CONTRACTOR shall attend trainings provided by the ADMINISTRATOR on the State
2 on-line TCM claiming system and cost report preparation, and any additional trainings as required by
3 ADMINISTRATOR.

4 3. CONTRACTOR shall complete and submit to ADMINISTRATOR an annual TCM cost
5 report in accordance with the Cost Report Paragraph of the Agreement. The TCM cost report shall
6 include all direct and indirect salaries, benefits, and operating costs for individuals in the TCM budget
7 unit. The cost report must be in compliance with TCM cost report instructions and other requirements
8 specified by the State on a form approved by ADMINISTRATOR and State. The cost report shall be
9 prepared in a standardized format specified by the State and provided by ADMINISTRATOR.

10 B. COUNTY shall distribute to CONTRACTOR funds received from State for Medi-Cal
11 reimbursement claimed for TCM activities on behalf of CONTRACTOR in accordance with the MOU
12 for Fiscal Leveraging and Support Services between COUNTY and Commission.

13 1. Reimbursements shall be reduced by an amount determined by ADMINISTRATOR to
14 cover program administration costs and risk mitigation. The percentage to be withheld shall be twenty
15 percent (20%) of the reimbursement upon commencement of this Agreement. ADMINISTRATOR
16 shall provide CONTRACTOR thirty (30) calendar day written notice of any change in this
17 administrative percentage.

18 2. If at the time of distribution CONTRACTOR does not hold a current signed Agreement
19 with the Commission for the provision of MAA, TCM, or other health access related activities,
20 distributions shall be withheld pending the following:

21 a. Commission has notified ADMINISTRATOR and CONTRACTOR within 3 months of
22 the withholding to distribute funds.

23 b. ADMINISTRATOR has reviewed and determined funds may be dispersed as allowed
24 by pertinent regulations, agreements, and policies.

25 c. CONTRACTOR's status as a legal entity remains in existence at the time of
26 disbursement.

27 3. COUNTY agrees to remit to CONTRACTOR any such reimbursement due, less the
28 percentage referenced in Subparagraph B.1. of this Exhibit A to the Agreement and any other applicable
29 reduction, provided all the requirements for the expenditure of public funds eligible for federal
30 reimbursement and of this Agreement are met.

31 C. All payments to CONTRACTOR are subject to final approval by ADMINISTRATOR and
32 State, of CONTRACTOR's claims. Approval will also be based on the amount of available funding and
33 compliance with state, federal and county regulations. COUNTY shall reconcile any interim remittance
34 funding to CONTRACTOR after final settlement reimbursement from the TCM cost report
35 reconciliation received by the State. Remittance to CONTRACTOR shall be made by COUNTY once
36 all funds are received from the State, reconciled, and approved for distribution.

37 //

1 D. CONTRACTOR shall ensure COUNTY of one hundred percent (100%) of the cost for the
2 provision of TCM services are allowed under federal law and regulation, for Title XIX funds claimed
3 for TCM performed pursuant to WIC Code Section 141321.47. A certification statement, prescribed by
4 the state and issued by ADMINISTRATOR shall be a requirement on the annual TCM cost report
5 submitted to the COUNTY. The State and/or COUNTY shall deny payment of any claim submitted
6 under this Agreement if it is determined that the certification is not adequately supported for purposes of
7 FFP.

8 E. CONTRACTOR shall assume responsibility for any audit disallowances or penalties imposed
9 on COUNTY by the State related to amount of services claimed by COUNTY on behalf of
10 CONTRACTOR. CONTRACTOR shall reimburse COUNTY for any such disallowances or penalties
11 within thirty (30) calendar days of written notification by ADMINISTRATOR.

12 F. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
13 with any provision of this Agreement.

14 1. If CONTRACTOR does not respond within ninety (90) days of ADMINISTRATOR's
15 notification of CONTRACTOR's non-compliance, CONTRACTOR forfeits any disbursement due to
16 CONTRACTOR for period in which CONTRACTOR is non-compliant.

17 G. CONTRACTOR may not claim reimbursement for TCM beyond the expiration and/or
18 termination of this Agreement.

19
20 **III. REPORTS**

21 CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial
22 and/or programmatic reports as requested by ADMINISTRATOR concerning CONTRACTOR's
23 activities as they relate to this Agreement. ADMINISTRATOR will be specific as to the nature of the
24 information requested and allow thirty (30) calendar days for CONTRACTOR to respond unless
25 required sooner by the DHCS or CMS.

26
27 **IV. SERVICES**

28 **A. CONTRACTOR RESPONSIBILITIES:**

29 1. CONTRACTOR shall provide Medi-Cal TCM services as defined in the State's TCM
30 Provider Manual consisting of case management services and related activities that assist individuals,
31 eligible under a specific targeted population, to gain access to needed medical, social, educational, and
32 other services. Allowable TCM service components and related activities include:

- 33 a. comprehensive assessment and periodic reassessment of an individual's needs;
- 34 b. development (and periodic revision) of a specific care plan;
- 35 c. referral and related activities;
- 36 d. monitoring and follow-up activities;
- 37 e. TCM encounter-related activities, such as time spent performing tasks that directly

1 support TCM face-to-face encounters for Medi-Cal and Non-Medi-Cal clients before, during, and after
2 the encounter; and

3 f. the proportionate staff travel time related to providing TCM services and any TCM
4 related activities to a TCM eligible recipient.

5 2. CONTRACTOR will be subject to, and participate in, programmatic pre-claiming and post-
6 claiming audits to be performed by ADMINISTRATOR to determine agency eligibility to participate in
7 the TCM program, and for approval to electronically enter TCM encounter information into the State
8 on-line TCM system.

9 3. CONTRACTOR shall designate an employee to act as the liaison with ADMINISTRATOR
10 for issues concerning this Agreement. Any change in designated liaison shall be communicated to
11 ADMINISTRATOR in writing by CONTRACTOR.

12 4. CONTRACTOR shall attend TCM Time Survey training as required by the State in
13 frequency, and any additional trainings determined necessary by ADMINISTRATOR; conduct TCM
14 Time Surveying as required by the State and use the Time Survey form distributed by
15 ADMINISTRATOR. The TCM Time Survey shall identify all time spent in the provision of allowable
16 TCM services; non-claimable activities, and general administration and paid time off.

17 a. CONTRACTOR shall ensure that all TCM case managers, TCM supervisors, and TCM
18 support staff attend the annual TCM Time Survey training and any additional trainings as determined
19 necessary by ADMINISTRATOR.

20 b. CONTRACTOR shall maintain an annual TCM audit file(s) containing the original
21 signed TCM Time Surveys; copies of time sheets for the TCM Time Survey periods for all staff that
22 participated in the TCM Time Survey; all agency developed TCM policies and procedures; copies of
23 Cost Report worksheets submitted to ADMINISTRATOR, including back-up fiscal documentation;
24 Cost Report Funding Schedule; Cost Report Encounter Methodology back-up documentation;
25 ADMINISTRATOR/CONTRACTOR correspondence related to Cost Report preparation; this signed
26 Agreement with COUNTY; copies of Agreement with Commission; and any other documents as
27 directed by ADMINISTRATOR.

28 5. CONTRACTOR shall comply with enabling legislation, regulations, claiming process
29 directives, policies, and procedure letters of the State, as well as directives from the County, which
30 define program specific allowable TCM services and processes for appropriate TCM claiming.
31 CONTRACTOR shall provide ADMINISTRATOR with specific data as requested and in the required
32 format on or before the dates designated by ADMINISTRATOR.

33 6. CONTRACTOR shall document TCM services provided by staff in accordance with
34 established State guidelines.

35 7. CONTRACTOR shall ensure that records fully disclose the name and Medi-Cal number or
36 BIC of the person receiving each TCM service, the name of the CONTRACTOR agency, case manager
37 providing the service, the date and place of service delivery, and the nature and extent of TCM services

1 provided. The CONTRACTOR shall furnish said records for providing TCM services, upon request, to
2 COUNTY, state, and federal government.

3 8. CONTRACTOR shall establish a PMP, including protocols and procedures to assure non-
4 duplication of services, and to ensure coordination and continuity of care among providers of case
5 management services to beneficiaries who are eligible to receive case management services from two or
6 more programs. The PMP shall specifically address non-duplication of services in relation to all other
7 Medi-Cal programs and waiver programs that provide case management services to clients.

8 9. CONTRACTOR shall establish a fee mechanism specific to the provision of TCM services.
9 This mechanism may include a sliding fee schedule based on income. CONTRACTOR shall not claim
10 federal reimbursement under this Agreement for any TCM service provided free of charge, due to the
11 lack of an appropriate fee mechanism.

12 10. CONTRACTOR shall establish a freedom of choice policy related to the provision of
13 information to a client that TCM services can be refused, a request can be made for another case
14 manager, or a request can be made for another agency or program to provide services.

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

22 12. Funds received as a result of this Agreement are intended to fund health access and related
23 activities, including TCM activities.

24 B. COUNTY RESPONSIBILITIES - COUNTY shall designate an individual who shall:

25 1. Provide, or cause to be provided, training, technical support and ongoing consultation to
26 CONTRACTOR's staff to ensure compliance with the State's TCM program.

27 2. Provide CONTRACTOR with standardized formats and instructions for TCM Cost Report
28 submittal, as provided by the State.

29 3. Review and monitor CONTRACTOR's compliance with respect to TCM service delivery
30 and documentation.

31 4. Monitor CONTRACTOR's completion of corrective action plans filed in response to
32 Medi-Cal and other State or COUNTY reviews.

33 5. COUNTY shall submit CONTRACTOR TCM Cost Report to the State for approval and
34 process claims for TCM. COUNTY will notify CONTRACTOR of any disallowed expense on the
35 TCM Cost Report with a written explanation of the basis for disallowance and/or required revisions for
36 re-submittal of Cost Report.

37 //

1 C. CONTRACTOR shall provide a Data Universal Number System (DUNS): A unique 9-digit
2 identification number required by the federal government as part of their financial request and reporting
3 process, which can be obtained free of charge from Dun and Bradstreet’s website (www.dnb.com) or by
4 calling (866) 705-5711. CONTRACTOR is required to provide a DUNS number regardless of the
5 funding source.

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

8
9 **V. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) INFORMATION**

10 A. This Agreement includes federal funds paid to CONTRACTOR. The CFDA number(s) and
11 associated information for federal funds paid through this Agreement are specified below:

12
13 CFDA Year: 2018
14 CFDA#: 93.778
15 Program Title: Medical Assistance Program
16 Federal Agency: Department of Health and Human Services
17 Award Name: Medical Assistance Program (Medicaid: Title XIX)
18 Amount: \$5,850,000 (estimated aggregate)
19

20 B. CONTRACTOR may be required to have an audit conducted in accordance with federal OMB
21 Circular Number A-133. CONTRACTOR shall be responsible for complying with any federal audit
22 requirements within the reporting period specified by OMB Circular Number A-133.

23 C. ADMINISTRATOR may revise the CFDA information listed above, and shall notify
24 CONTRACTOR in writing of said revisions.

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EXHIBIT B
TO AGREEMENT FOR PROVISION OF
TARGETED CASE MANAGEMENT SERVICES
WITH
«CONTRACT_LEGAL_NAMES_UC»
JULY 1, 2018 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 below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

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

3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“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 a covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract, as it exists now or be hereafter updated with notice to CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

1 B. DEFINITIONS

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

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

8 a. Breach excludes:

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

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

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

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

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

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

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

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

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

31 4. "Designated Record Set" shall have the meaning given to such term under the HIPAA
32 Privacy Rule in 45 CFR § 164.501.

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
17 written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by
18 COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524.

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

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

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

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

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

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

7 D. SECURITY RULE

8 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and
9 maintain appropriate Administrative, Physical and Technical Safeguards in accordance with
10 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY
11 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
12 COUNTY. CONTRACTOR shall follow generally accepted system security principles and the
13 requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

14 2. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
15 transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to
16 the same restrictions and requirements contained in this Paragraph D of this Business Associate
17 Contract.

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

21 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

19 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
20 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
21 CONTRACTOR made all notifications to COUNTY consistent with this Paragraph E and as required by
22 the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure
23 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 E.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 F. 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 G. OBLIGATIONS OF COUNTY

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

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

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

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

3 H. BUSINESS ASSOCIATE TERMINATION

4 1. Upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the
5 requirements of this Business Associate Contract, COUNTY shall:

6 a. Provide an opportunity for CONTRACTOR to cure the material breach or end the
7 violation within thirty (30) business days; or

8 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to
9 cure the material breach or end the violation within (30) days, provided termination of the Agreement is
10 feasible.

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

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

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

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

23 3. The obligations of this Business Associate Contract shall survive the termination of the
24 Agreement.

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