

1                                   AGREEMENT FOR PROVISION OF  
2                                   RECOVERY MAINTENANCE SERVICES

3                                   BETWEEN

4                                   COUNTY OF ORANGE

5                                   AND

6                                   PHOENIX HOUSE ORANGE COUNTY, INC.

7                                   JULY 1, 2016 THROUGH JUNE 30, 2017

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9           THIS AGREEMENT entered into this 1st day of July 2016, which date is enumerated for purposes  
10 of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and PHOENIX HOUSE  
11 ORANGE COUNTY, INC., a California nonprofit corporation (CONTRACTOR). This Agreement  
12 shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

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

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16           WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Recovery  
17 Maintenance Services described herein to the residents of Orange County; and

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

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

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**REFERENCED CONTRACT PROVISIONS**

**Term:** July 1, 2016 through June 30, 2017

**Maximum Obligation:** \$200,000

**Basis for Reimbursement:** Actual Cost

**Payment Method:** In Arrears

**CONTRACTOR DUNS Number:** 07-023-1878

**CONTRACTOR TAX ID Number:** 22-2268070

**Notices to COUNTY and CONTRACTOR:**

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

**CONTRACTOR:** Phoenix House Orange County, Inc.  
Interim Executive Director  
1600 Eldridge Ave.  
Lake View Terrace, CA 91342  
Contact name: Daniel McCormick  
Contact Email: DMcCormick@phoenixhouse.org

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## **I. ACRONYMS**

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

A.	ARRA	American Recovery and Reinvestment Act
B.	ASAM	American Society of Addiction Medicine
C.	ASRS	Alcohol and Drug Programs Reporting System
D.	CalOMS	California Outcomes Measurement System
E.	CAP	Corrective Action Plan
F.	CCC	California Civil Code
G.	CCR	California Code of Regulations
H.	CEO	County Executive Office
I.	CESI	Client Evaluation of Self at Intake
J.	CEST	Client Evaluation of Self and Treatment
K.	CFR	Code of Federal Regulations
L.	CHPP	COUNTY HIPAA Policies and Procedures
M.	CHS	Correctional Health Services
N.	COI	Certificate of Insurance
O.	DATAR	Drug Abuse Treatment Access Report
P.	D/MC	Drug/Medi-Cal
Q.	DHCS	Department of Health Care Services
R.	DMV	Department of Motor Vehicles
S.	DPFS	Drug Program Fiscal Systems
T.	DRS	Designated Record Set
U.	ePHI	Electronic Protected Health Information
V.	FTE	Full Time Equivalent
W.	GAAP	Generally Accepted Accounting Principles
X.	HCA	Health Care Agency
Y.	HHS	Health and Human Services
Z.	HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
AA.	HSC	California Health and Safety Code
AB.	IRIS	Integrated Records and Information System
AC.	ISO	Insurance Services Office
AD.	MHP	Mental Health Plan
AE.	NIATx	Network for Improvement of Addiction Treatment
AF.	OCJS	Orange County Jail System
AG.	OCPD	Orange County Probation Department

1	AH. OCR	Office for Civil Rights
2	AI. OCS	Orange County Sheriff's Department
3	AJ. OIG	Office of Inspector General
4	AK. OMB	Office of Management and Budget
5	AL. OPM	Federal Office of Personnel Management
6	AM. P&P	Policy and Procedure
7	AN. PA DSS	Payment Application Data Security Standard
8	AO. PC	State of California Penal Code
9	AP. PCI DSS	Payment Card Industry Data Security Standard
10	AQ. PHI	Protected Health Information
11	AR. PII	Personally Identifiable Information
12	AS. PRA	Public Record Act
13	AT. SIR	Self-Insured Retention
14	AU. TB	Tuberculosis
15	AV. HITECH Act	The Health Information Technology for Economic and Clinical Health
16		Act, Public Law 111-005
17	AW. USC	United States Code
18	AX. WIC	State of California Welfare and Institutions Code

## 19 20 **II. ALTERATION OF TERMS**

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

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

## 28 29 **III. ASSIGNMENT OF DEBTS**

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

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#### **IV. COMPLIANCE**

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

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

2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as described in subparagraphs below.

3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct; the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement. ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain all required elements.

5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the CONTRACTOR's Compliance Program and Code of Conduct contains all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of CONTRACTOR's Compliance Program, Code of Conduct and related policies and procedures.

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

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

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1           1. Covered Individuals includes all contractors, subcontractors, agents, and other persons who  
2 provide health care items or services or who perform billing or coding functions on behalf of  
3 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem  
4 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to  
5 work more than one hundred sixty (160) hours per year; except that any such individuals shall become  
6 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the  
7 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are  
8 made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and  
9 procedures.

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

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

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

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

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

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

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

36           7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or  
37 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.



Such individual or entity shall be immediately removed from participating in any activity associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.

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

1. CONTRACTOR shall use its best efforts to encourage completion by Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete all Compliance Trainings when offered.

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

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

4. Each Covered Individual attending training shall certify, in writing, attendance at compliance training. CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

## **V. CONFIDENTIALITY**

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

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

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

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

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

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

## **VI. COST REPORT**

A. CONTRACTOR shall submit a Cost Report to COUNTY no later than forty-five (45) calendar days following termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.

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

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

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

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

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

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1 B. The Cost Report shall be the final financial and statistical report submitted by CONTRACTOR  
2 to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR. CONTRACTOR shall  
3 document that costs are reasonable and allowable and directly or indirectly related to the services to be  
4 provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if any.

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

14 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to  
15 this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim  
16 monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such  
17 reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the  
18 Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days  
19 after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any  
20 amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

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

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

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

Signed \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_"

## **VII. DEBARMENT AND SUSPENSION CERTIFICATION**

### **A. CONTRACTOR certifies that it and its principals:**

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

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

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

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

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

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

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

### **VIII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

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

## 16 17 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

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

## 27 28 **X. EQUIPMENT**

29 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all  
 30 property of a Relatively Permanent nature with significant value, purchased in whole or in part by  
 31 ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively  
 32 Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or  
 33 over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital  
 34 Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and  
 35 other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained  
 36 PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to  
 37 phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of

Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated according to GAAP.

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

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

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

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

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

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

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

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

## **XI. FACILITIES, PAYMENTS AND SERVICES**

A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the

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1 minimum number and type of staff which meet applicable federal and state requirements, and which are  
2 necessary for the provision of the services hereunder.

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

## 7 8 **XII. INDEMNIFICATION AND INSURANCE**

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

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

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

35 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,  
36 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an  
37 amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the



CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

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

F. QUALIFIED INSURER

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

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

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

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

H. REQUIRED COVERAGE FORMS

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

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

1 I. REQUIRED ENDORSEMENTS

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

4 a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at  
5 least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and  
6 agents as Additional Insureds.

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

10 2. The Network Security and Privacy Liability policy shall contain the following endorsements  
11 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 and members of the Board of Supervisors, its elected and appointed officials,  
19 officers, agents and employees when acting 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, and members of the Board of Supervisors, its  
22 elected and appointed officials, officers, agents and employees.

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

27 M. If CONTRACTOR's Professional Liability policy is a "claims made" policy, CONTRACTOR  
28 shall agree to maintain Professional Liability coverage for two (2) years following completion of  
29 Agreement.

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

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

36 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
37 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY

1 incorporating such changes within thirty (30) calendar days of receipt of such notice, this Agreement  
 2 may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal  
 3 remedies.

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

7 **R. SUBMISSION OF INSURANCE DOCUMENTS**

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

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

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

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

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

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

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

31  
 32 **XIII. INSPECTIONS AND AUDITS**

33 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative  
 34 of the State of California, the Secretary of the United States Department of Health and Human Services,  
 35 the Comptroller General of the United States, or any other of their authorized representatives, shall have  
 36 access to any books, documents, and records, including but not limited to, financial statements, general  
 37 ledgers, relevant accounting systems, medical and Participant records, of CONTRACTOR that are

1 directly pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or  
 2 conducting an audit, review, evaluation, or examination, or making transcripts during the periods of  
 3 retention set forth in the Records Management and Maintenance Paragraph of this Agreement. Such  
 4 persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this  
 5 Agreement, and the premises in which they are provided.

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

#### 10 C. AUDIT RESPONSE

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

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

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

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

### 31 **XIV. LICENSES AND LAWS**

32 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout  
 33 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,  
 34 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and  
 35 required by the laws, regulations and requirements of the United States, the State of California,  
 36 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify  
 37

ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Agreement.

#### B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

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

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

1. ARRA of 2009.

2. CCC §§56 through 56.37, Confidentiality of Medical Information.

3. CCC §§1798.80 through 1798.84, Customer Records.

4. CCC §1798.85, Confidentiality of Social Security Numbers.

5. CCR, Title 9, Rehabilitative and Developmental Services, Division 4; and Title 22 Social Security.

6. HSC, Divisions 10.5 Alcohol and Drug Programs and 10.6. Drug and Alcohol Abuse Master Plans.

7. HSC, §§11839 through 11839.22, Narcotic Treatment Programs.

8. HSC, §11876, Narcotic Treatment Programs.



9. HSC, §§123110 through 123149.5, Patient Access to Health Records.
10. Code of Federal Regulations, Title 42, Public Health.
11. 2 CFR 230, Cost Principles for Nonprofit Organizations.
12. 2 CFR 376, Nonprocurement, Debarment and Suspension.
13. 41 CFR 50, Public Contracts and Property Management.
14. 42 CFR 2, Confidentiality of Alcohol and Drug Abuse Patient Records.
15. 42 CFR 54, Charitable choice regulations applicable to states receiving substance abuse prevention and treatment block grants and/or projects for assistance in transition from homelessness grants.
16. 45 CFR 93, New Restrictions on Lobbying.
17. 45 CFR 96.127, Requirements regarding Tuberculosis.
18. 45 CFR 96.132, Additional Agreements.
19. 45 CFR 96.135, Restrictions on Expenditure of Grant.
20. 45 CFR 160, General Administrative Requirements.
21. 45 CFR 162, Administrative Requirements.
22. 45 CFR 164, Security and Privacy.
23. 48 CFR 9.4, Debarment, Suspension, and Ineligibility.
24. 8 USC §1324 et seq., Immigration Reform and Control Act of 1986.
25. 31 USC §1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions.
26. 42 USC §§285n through 285o, National Institute on Alcohol Abuse and Alcoholism; National Institute on Drug Abuse.
27. 42 USC §§290aa through 290kk-3, Substance Abuse and Mental Health Services Administration.
28. 42 USC §290dd-2, Confidentiality of Records.
29. 42 USC §1320(a), Uniform reporting systems for health services facilities and organizations.
30. 42 USC §§1320d through 1320d-9, Administrative Simplification.
31. 42 USC §12101 et seq., The Americans with Disabilities Act of 1990 as amended.
32. 42 USC §6101 et seq., Age Discrimination Act of 1975.
33. 42 USC §2000d, Civil Rights Act of 1964.
34. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
35. U.S. Department of Health and Human Services, National Institutes of Health (NIH), Grants Policy Statement (10/13).
36. Fact Sheet Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for Co-Occurring Disorders, Mental Health Services Oversight and Accountability Commission, 1/17/08.
37. State of California, Department of Alcohol and Drug Programs Audit Assistance Guide Manual

38. State of California, Department of Alcohol and Drug Programs, Alcohol and/or Other Drug Program Certification Standards, March 2004.

#### **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

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

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

#### **XVI. MAXIMUM OBLIGATION**

A. The Maximum Obligation of COUNTY for services provided in accordance with this Agreement is as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

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

#### **XVII. MINIMUM WAGE LAWS**

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and

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

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

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

## **XVIII. NONDISCRIMINATION**

### **A. EMPLOYMENT**

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

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

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

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

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR



1 and/or subcontractor shall state that all qualified applicants will receive consideration for employment  
 2 without regard to race, religious creed, color, national origin, ancestry, physical disability, mental  
 3 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender  
 4 expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed  
 5 fulfilled by use of the term EOE.

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

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

- 24 1. Denying a Participant or potential Participant any service, benefit, or accommodation.
- 25 2. Providing any service or benefit to a Participant which is different or is provided in a  
 26 different manner or at a different time from that provided to other Participants.
- 27 3. Restricting a Participant in any way in the enjoyment of any advantage or privilege enjoyed  
 28 by others receiving any service or benefit.
- 29 4. Treating a Participant differently from others in satisfying any admission requirement or  
 30 condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
 31 any service or benefit.
- 32 5. Assignment of times or places for the provision of services.

33 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all  
 34 Participants through a written statement that CONTRACTOR's and/or subcontractor's Participants may  
 35 file all complaints alleging discrimination in the delivery of services with CONTRACTOR,  
 36 subcontractor, and ADMINISTRATOR or the U.S. Department of Health and Human Services' OCR.

- 37 1. Whenever possible, problems shall be resolved informally and at the point of service.

1 CONTRACTOR shall establish an internal informal problem resolution process for Participants not able  
2 to resolve such problems at the point of service. Participants may initiate a grievance or complaint  
3 directly with CONTRACTOR either orally or in writing.

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

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

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

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

## 21 22 **XIX. NOTICES**

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

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

28 2. When faxed, transmission confirmed;

29 3. When sent by Email; or

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

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

36 C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of  
37 becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such

occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

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

## **XX. NOTIFICATION OF DEATH**

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

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

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

### **2. WRITTEN NOTIFICATION**

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

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

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

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

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

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

## **XXII. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **XXIII. RESEARCH AND PUBLICATION**

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

### **XXIV. REVENUE**

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

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

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

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**XXV. SEVERABILITY**

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

**XXVI. SPECIAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

### 13 **XXVII. STATUS OF CONTRACTOR**

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

### 26 **XXVIII. TERM**

27  
28 A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions  
29 of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified  
30 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided  
31 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as  
32 would normally extend beyond this term, including but not limited to, obligations with respect to  
33 confidentiality, indemnification, audits, reporting and accounting.

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

36 //

37 //

**XXIX. TERMINATION**

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

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

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

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

**D. CONTINGENT FUNDING**

1. Any obligation of COUNTY under this Agreement is contingent upon the following:
  - a. The continued availability of federal, state and county funds for reimbursement of COUNTY's expenditures, and
  - b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.

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

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



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

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

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

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

9 4. If Participants are to be transferred to another facility for services, furnish  
10 ADMINISTRATOR, upon request, all Participant information and records deemed necessary by  
11 ADMINISTRATOR to effect an orderly transfer.

12 5. Assist ADMINISTRATOR in effecting the transfer of Participants in a manner consistent  
13 with Participant's best interests.

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

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

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

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

### 26 27 **XXX. THIRD PARTY BENEFICIARY**

28 Neither party hereto intends that this Agreement shall create rights hereunder in third parties  
29 including, but not limited to, any subcontractors or any Participants provided services pursuant to this  
30 Agreement.

### 31 32 **XXXI. WAIVER OF DEFAULT OR BREACH**

33 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any  
34 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this  
35 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any  
36 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this  
37 Agreement.

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

3  
4 PHOENIX HOUSE ORANGE COUNTY, INC.

5  
6 BY: <sup>DocuSigned by:</sup> Daniel McCormick  
7 <sub>1E2035CC9DF24B4...</sub>

DATED: 4/7/2016


8 TITLE: Interim Executive Director  
9

10  
11  
12  
13 COUNTY OF ORANGE

14  
15  
16 BY: \_\_\_\_\_  
17 HEALTH CARE AGENCY

DATED: \_\_\_\_\_

18  
19  
20  
21 APPROVED AS TO FORM  
22 OFFICE OF THE COUNTY COUNSEL  
23 ORANGE COUNTY, CALIFORNIA

24  
25 BY:   
26 DEPUTY

DATED: 4/1/16

27  
28  
29  
30  
31  
32  
33  
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the  
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer  
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution  
37 or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her  
signature alone is required by ADMINISTRATOR.

EXHIBIT A  
TO AGREEMENT FOR PROVISION OF  
RECOVERY MAINTENANCE SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
PHOENIX HOUSE ORANGE COUNTY, INC.  
JULY 1, 2016 THROUGH JUNE 30, 2017

**I. COMMON TERMS AND DEFINITIONS**

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

1. Capacity Building means linkage/collaboration with community organizations to establish partnerships to increase awareness of services and participation in services offered by the program.

2. Case Management means problem identification, assessment of need, planning, coordination, linkage, monitoring and continuous evaluation of Participants and available resources, and advocacy, through a process of casework activities in order to achieve the best possible resolution to individual needs in the most effective way possible.

3. Participant means a person who has an alcohol and/or other drug problem, who meets the criteria to participate in services, as described under subparagraph VI, D.1. of this Exhibit A to the Agreement.

4. Peer Support Group means a support group facilitated by peer leaders. These groups may include: families; women; men; young adult; LGBT focused; and self-help meetings; among others.

5. RMS means services provided to adult men and women, eighteen (18) years or older, residing in Orange County, who are living in recovery from substance abuse disorders; and who may require a support system and assistance with maintaining their recovery.

6. Unit of Service means any activity as described, or otherwise further defined, in Subparagraph VI.C., of this Exhibit A.

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

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**II. BUDGET**

A. The following budget is set forth for informational purposes only:

**PROGRAM COST**

Salaries	\$114,300
Benefits	34,290
Services and Supplies	<u>25,323</u>
<b>SUBTOTAL</b>	<b>\$173,913</b>

**INDIRECT COST**                      \$ 26,087

**GROSS COST**                              \$200,000

**MAXIMUM OBLIGATION**      \$200,000

B. Any increases and decreases in budget must be approved, in advance and in writing, by ADMINISTRATOR.

C. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds between budgeted line items for the purpose of meeting specific program needs or for providing continuity of care to its Participants, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing Modification Request to ADMINISTRATOR for consideration, in advance, which will include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.

**D. CFDA Information**

1. The Agreement includes federal funds paid to CONTRACTOR. The CFDA number and associated information for federal funds paid through the Agreement are specified below:

CFDA No.:	93.959
Program Title:	Substance Abuse Prevention and Treatment Block Grant
Federal Agency:	Department of Health and Human Services
Award Name:	Standard Agreement for Substance Use Disorder

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

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

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

### **III. PAYMENTS**

A. BASIS FOR REIMBURSEMENT – COUNTY shall pay CONTRACTOR for the actual costs of providing the services described hereunder, less revenues which are actually received by CONTRACTOR; provided, however, that CONTRACTOR's costs are allowable pursuant to county, state, and federal regulations. Non-compliance will require the completion of CAPs by CONTRACTOR. If CAPs are not completed within timeframes as determined by ADMINISTRATOR, payments may be reduced accordingly. Furthermore, if CONTRACTOR is ineligible to provide services due to non-compliance with licensure and/or certification standards of the State, County or Probation, ADMINISTRATOR may elect to reduce COUNTY's maximum obligation proportionate to the length of time that CONTRACTOR is ineligible to provide services.

B. PAYMENT METHOD – COUNTY shall pay CONTRACTOR monthly in arrears the actual cost of the services, less revenues that are actually received by CONTRACTOR provided, however, that the total of such payments shall not exceed the COUNTY's Maximum Obligation. CONTRACTOR's invoices shall be on a form approved or provided by ADMINISTRATOR and shall provide such information as is required by ADMINISTRATOR. Invoices are due by the twentieth (20th) calendar day of each month, and payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after receipt of the correctly completed invoice.

C. Monthly payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of the Agreement. Invoices received after the due date may not be paid in accordance with Subparagraph III.B.

D. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, appointment schedules, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

E. In support of the monthly invoice, CONTRACTOR shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement. ADMINISTRATOR may use the Expenditure and Revenue Report to determine payment to CONTRACTOR.

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



1 G. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration  
2 and/or termination of the Agreement.

#### 3 4 **IV. RECORDS**

5 A. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete  
6 financial records of its costs and operating expenses. Such records shall reflect the actual costs of the  
7 type of service for which payment is claimed in accordance with generally accepted accounting  
8 principles, the ASRS Manual, and the DPFS Manual.

9 B. Any apportionment of or distribution of costs, including indirect costs, to or between programs  
10 or cost centers of CONTRACTOR shall be documented, and shall be made in accordance with generally  
11 accepted accounting principles, the ASRS Manual, and the DPFS Manual.

12 C. CONTRACTOR shall account for funds provided through the Agreement separately from other  
13 funds, and maintain a clear audit trail for the expenditure of funds.

14 D. The Participant eligibility determination and fee charged to and collected from Participants,  
15 together with a record of all invoices rendered and revenues received from any source on behalf of  
16 Participants treated pursuant to the Agreement, must be reflected in CONTRACTOR's financial records.

#### 17 18 **V. REPORTS**

##### 19 **A. MONTHLY PROGRAMMATIC**

20 1. CONTRACTOR shall submit a monthly programmatic report to ADMINISTRATOR,  
21 including information required and on a form approved or provided by ADMINISTRATOR, in  
22 conjunction with the invoice described in the Payments Paragraph of this Exhibit A to the Agreement.  
23 These monthly programmatic reports shall be received by ADMINISTRATOR no later than the  
24 twentieth (20th) business day of the month following the report month.

25 2. CONTRACTOR shall include in the monthly programmatic report any problems in  
26 implementing the provisions of the Agreement, pertinent facts or interim findings, staff changes, status  
27 of license(s) and/or certification(s), changes in population served, and reasons for any changes.  
28 Additionally, CONTRACTOR shall include in the monthly programmatic report if CONTRACTOR is  
29 not progressing satisfactorily in achieving all the terms of the Agreement.

##### 30 **B. FISCAL**

31 1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to  
32 ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by,  
33 ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR's program(s) or cost  
34 center(s) described in the Services Paragraph of this Exhibit A to the Agreement. Such reports shall also  
35 include units of service by service function and number of Participants by program. CONTRACTOR  
36 shall submit these reports to ADMINISTRATOR no later than twenty (20) calendar days following the  
37 end of the month reported.



2. CONTRACTOR shall submit Year-End Projection Reports to ADMINISTRATOR on a monthly basis. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report anticipated year-end actual costs and revenues for CONTRACTOR's program(s) or cost center(s) described in the Services Paragraph of this Exhibit A to the Agreement. Such reports shall include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. The reports shall also include units of service by service function and number of Participants by program. Year-End Projection Reports shall be submitted at the same time as the monthly Expenditure and Revenue Reports.

C. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder. ADMINISTRATOR will be specific as to the nature of information requested and the timeframe the information is needed.

## **VI. SERVICES**

A. FACILITY – CONTRACTOR shall provide the Recovery Maintenance Services described herein at the following facility, or at any location(s) approved in advance, in writing, by ADMINISTRATOR.

1207 East Fruit Street  
Santa Ana, California

1. The facility shall include space to support the services identified within the Agreement.

2. The facility shall operate, at least, Monday through Saturday, with morning and evening hours (before 9:00 a.m. and after 5:00 p.m.) to accommodate working Participants unable to participate during regular daytime hours, unless otherwise approved by ADMINISTRATOR.

3. At least fourteen (14) calendar days prior to the beginning of each month, CONTRACTOR shall submit the Monthly Activity Schedule to ADMINISTRATOR for approval.

4. CONTRACTOR's holiday schedule shall be consistent with COUNTY's holiday schedule; unless otherwise authorized, in writing, by ADMINISTRATOR.

B. PERSONS TO BE SERVED – CONTRACTOR shall provide alcohol and drug abuse support services to adult men and women who are eighteen (18) years or older, residing in Orange County who are living in recovery from substance abuse disorders. Services will be provided to those individuals who may require a support system and assistance with maintaining their recovery.

### **C. UNITS OF SERVICE**

1. SUPPORTIVE SERVICES – CONTRACTOR shall provide the following units of service with agencies, groups, or individuals as follows:

//

SERVICES	<u>UNITS OF SERVICE</u>
Community outreach	24
Individual recovery coaching	1,200
Screenings and referrals	150
Educational workshops	200
Self-help meetings	250
Leadership training sessions	<u>4</u>
TOTAL UNITS OF SERVICE	1,828

2. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to adjust the Units of Service set forth in Subparagraph VI.C.1., above.

3. CONTRACTOR shall track the number of participants accessing services each month.

#### D. SERVICES TO BE PROVIDED

1. RECOVERY MAINTENANCE SERVICES – CONTRACTOR shall provide Substance Use Disorder Recovery Maintenance Services to individuals in need. These Services will be provided in a manner that is culturally and linguistically appropriate for the population(s) served, while focusing on relapse prevention, vocational assistance, life skills, alternative alcohol and/or drug-free activities and providing a community forum for persons in recovery. The RMS shall be guided by the chronic care model and shall include the following:

a. CONTRACTOR will provide at a minimum three (3) of the following self-help programs at least once a week: traditional twelve-step programs such as AA, NA, CA, DDA, Alanon and/or Naranon. At least one of these self-help meetings will be held off-site.

b. In addition, CONTRACTOR will offer at least once a week a minimum of one non-religious/ non-spiritual alternative self-help (non 12-step) group.

c. CONTRACTOR shall offer at least one (1) self-help group, either 12-step or non-12-step, specifically geared towards veterans enrolled in the program, once per week, or as required based on veteran enrollment.

d. Case Management will be provided to link Participants to supportive services. RMS staff or volunteers will be available to help motivate, engage and support participants in their recovery. They can also provide role modeling, problem solving, and can accompany individuals to help them access services in the community.

e. Participant groups and workshops will be provided that will allow for information dissemination and peer support. Topics can include relapse prevention, smoking cessation, parenting education, life skills training; vocational and educational opportunities, and job search assistance. Peer support groups, including alumni groups, will focus on strengthening each Participant's interpersonal and social skills as well as providing each Participant with substance abuse education and resistance skills.

1 f. CONTRACTOR will offer at least two (2) social activities a month to encourage  
 2 healthy socialization. Activities shall be structured for promoting positive peer support and shall be  
 3 conducted in a safe environment, incorporating skills learned. Activities may include, but not be limited  
 4 to, drug-free dances, sporting activities, picnics, and cultural events.

5 2. CONTRACTOR shall enroll participants into the program at the earliest possible  
 6 opportunity, but no later than the second time a participant attends groups or activities offered by the  
 7 program.

8 3. COMMUNITY OUTREACH – CONTRACTOR shall build capacity to increase the  
 9 program’s effectiveness through developing collaborative efforts with treatment providers. The  
 10 Capacity task shall include, though not be limited to, the following activities:

11 a. Creation and continuation of partnerships/coalitions;

12 b. Information dissemination – CONTRACTOR shall, at least twice per month, attend and  
 13 provide education information to drug treatment facilities, churches, community centers, community  
 14 health fairs, business associations, juvenile facilities, schools, and community information outreach  
 15 events where large numbers of the target population are in attendance to increase general awareness and  
 16 knowledge of substance abuse issues and the services provided by CONTRACTOR.

17 c. Participation in substance prevention meetings and workshops with key stakeholders  
 18 and service providers.

19 E. CONTRACTOR’s Executive Director or designee shall participate, when requested, in  
 20 meetings facilitated by ADMINISTRATOR related to the provision of services pursuant to the  
 21 Agreement.

22 F. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources,  
 23 with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of  
 24 the Agreement. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to  
 25 promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian  
 26 institution, or religious belief.

## 27 G. PERFORMANCE/OUTCOME MEASURES

28 1. CONTRACTOR shall achieve performance objectives, tracking and reporting Performance  
 29 Outcome Objective information in monthly programmatic reports, as appropriate. ADMINISTRATOR  
 30 recognizes that alterations may be necessary to the following services to meet the objectives, and,  
 31 therefore, revisions to objectives and services may be implemented by mutual agreement between  
 32 CONTRACTOR and ADMINISTRATOR.

### 33 2. Performance Outcome Objectives:

34 a. Objective 1: CONTRACTOR shall provide RMS services to at least six hundred (600)  
 35 unduplicated Participants on an annual basis.

36 b. Objective 2: Eighty percent (80%) of participation satisfaction surveys will indicate  
 37 that RMS helped them in their recovery.

## **VII. STAFFING**

A. CONTRACTOR shall, at a minimum, provide the following paid staffing expressed in FTEs, which shall be equal to an average of forty (40) hours of work per week.

DIRECT PROGRAM	<u>FTEs</u>
Program Coordinator	1.0
Recovery Coach	<u>2.0</u>
TOTAL FTEs	3.0

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

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

D. CONTRACTOR and ADMINISTRATOR may mutually agree in writing to modify the staffing set forth above; provided, however, such agreement shall be made in advance of any staffing change.

E. CONTRACTOR may augment the above paid staff with volunteers or part-time student interns. Unless waived by ADMINISTRATOR, prior to providing services pursuant to the Agreement, interns shall be Master's Candidates in Counseling or Social Work, have a Bachelor's Degree in a related field, or are participating in any state recognized counseling certification program. CONTRACTOR shall provide a minimum of one (1) hour supervision for each ten (10) hours of work by interns or consistent with school or licensing Board requirements. CONTRACTOR shall provide supervision to volunteers as specified in the respective job descriptions or work contracts. Volunteer or student intern services may not comprise more than twenty percent (20%) of the services provided.

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

G. All program staff having direct contact with Participants shall, within the first (1st) year of employment, be trained in infectious disease recognition, crisis intervention and to recognize physical and psychiatric symptoms that require appropriate referrals to other agencies. CONTRACTOR shall provide ongoing training in topics related to alcohol and drug use on a yearly basis.

H. CONTRACTOR shall perform a pre-employment screening of any person who will provide services pursuant to the Agreement. All staff, including volunteers and interns, must meet the following requirements prior to providing any service pursuant to the Agreement:

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

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

5 3. No person shall have been convicted of any violent felony as defined in Penal Code section  
6 667.5, which involve doing bodily harm to another person, for which the staff member was convicted  
7 within five (5) years prior to employment;

8 4. No person, within the preceding two (2) years, shall have been convicted of any criminal  
9 offense other than a traffic violation.

10 5. No person, within the preceding two (2) years, shall have been found guilty of any crime  
11 related to the use of drugs or alcohol.

12 6. No person, at any time, shall have been found guilty of any crime involving moral turpitude  
13 by a court of law.

14 7. No person shall be on parole or probation;

15 8. No person shall participate in the criminal activities of a criminal street gang and/or prison  
16 gang; and

17 9. No prior employment history of improper conduct, including but not limited to, forging or  
18 falsifying documents or drug tests, sexual assault or sexual harassment, or inappropriate behavior with  
19 staff or residents at any treatment facility.

20 I. STAFF CONDUCT – CONTRACTOR shall establish written Policies and Procedures for  
21 employees, volunteers, interns, and members of the Board of Directors which shall include, but not be  
22 limited to, standards related to the use of drugs and/or alcohol; staff-Participant relationships;  
23 prohibition of sexual conduct with Participants; prohibition of forging or falsifying documents or drug  
24 tests; and real or perceived conflict of interest. Situations that may be perceived as a conflict of interest  
25 shall be brought to Administrator's attention prior to the occurrence. Prior to providing any services  
26 pursuant to the Agreement, all employees, volunteers, and interns shall agree in writing to maintain the  
27 standards set forth in the said Policies and Procedures. The said Policies and Procedures shall be posted  
28 in writing in a prominent place in the treatment facility.

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EXHIBIT B  
TO AGREEMENT FOR PROVISION OF  
ADULT NON-MEDICAL DETOXIFICATION SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
PHOENIX HOUSE ORANGE COUNTY, INC.  
JULY 1, 2016 THROUGH JUNE 30, 2018

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

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

3 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

8. "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

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

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

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

12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

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

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

15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. "Technical safeguards" means the technology and the policy and procedures for its use that protect ePHI and control access to it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 D. SECURITY RULE

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

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

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

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

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

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

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

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

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

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

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

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

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

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

34 2. Technical Security Controls

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



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

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

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

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

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

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

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

1 1) Upper case letters (A-Z)

2 2) Lower case letters (a-z)

3 3) Arabic numerals (0-9)

4 4) Non-alphanumeric characters (punctuation symbols)

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

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

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

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

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

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

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

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

3 3. Audit Controls

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

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

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

17 4. Business Continuity/Disaster Recovery Control

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

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

30 5. Paper Document Controls

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

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

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

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

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

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

#### 22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

### 3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

13 1) The Disclosure is required by law; or

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

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

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

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

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

### 28 H. PROHIBITED USES AND DISCLOSURES

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

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



1 I. OBLIGATIONS OF COUNTY

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

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

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

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

13 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C  
TO AGREEMENT FOR PROVISION OF  
ADULT NON-MEDICAL DETOXIFICATION SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
PHOENIX HOUSE ORANGE COUNTY, INC.  
JULY 1, 2016 THROUGH JUNE 30, 2018

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

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

**A. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

#### 6 B. TERMS OF AGREEMENT

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

11 2. Responsibilities of CONTRACTOR  
12 CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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