

1 AGREEMENT FOR PROVISION OF  
2 SCHOOL-BASED BEHAVIORAL HEALTH INTERVENTION AND SUPPORT SERVICES  
3 BETWEEN  
4 COUNTY OF ORANGE  
5 AND  
6 PHOENIX HOUSE ORANGE COUNTY, INC.  
7 ~~AUGUST~~ JULY 1, ~~2013~~ 2015 THROUGH JUNE 30, ~~2015~~ 2016

8  
9 THIS AGREEMENT entered into this 1st day of ~~August 2013~~ July 2015, which date is enumerated  
10 for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and  
11 PHOENIX HOUSE ORANGE COUNTY, INC., a California nonprofit corporation (CONTRACTOR).  
12 This Agreement shall be administered by the County of Orange Health Care Agency  
13 (ADMINISTRATOR).

14  
15 WITNESSETH:

16  
17 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of  
18 School-Based Behavioral Health Intervention and Support Services described herein to the residents of  
19 Orange County; and

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

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

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**REFERENCED CONTRACT PROVISIONS**

**Term:** ~~August~~ July 1, 2013 through June 30, 2015

~~Period One means the period from August 1, 2013 through June 30, 2014~~

~~Period Two means the period from July 1, 2014 through June 30, 2015~~

**Maximum Obligation:**

~~Period One Maximum Obligation: \$1,685,163~~

~~Period Two Maximum Obligation: \$1,742,834~~

~~TOTAL MAXIMUM OBLIGATION: \$3,427,997~~

**Basis for Reimbursement:** Actual Cost

**Payment Method:** ~~Provisional Amount~~ Monthly 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 ~~Development and Management~~ Services  
405 West 5th Street, Suite 600  
Santa Ana, CA 92701-4637

CONTRACTOR: Phoenix House Orange County, Inc.  
11600 Eldridge Avenue  
Lake View Terrace, CA 91342  
Elizabeth Stanley-Salazar, VP and Director of Clinical Services  
lsalazar@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:

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4	A. ARRA	American Recovery and Reinvestment Act
5	B. <del>BHIS</del>	<del>Behavioral Health Intervention and Support</del>
6	<del>C.</del> CCC	California Civil Code
7	<del>DC.</del> CCR	California Code of Regulations
8	<del>ED.</del> CEO	County Executive Office
9	<del>FE.</del> CFR	Code of Federal Regulations
10	<del>G.F.</del> CHPP	COUNTY HIPAA Policies and Procedures
11	<del>HG.</del> COI	Certificate of Insurance
12	<u>H. CRN</u>	<u>Crisis Response Network</u>
13	I. DHCS	Department of Health Care Services
14	J. DRS	Designated Record Set
15	K. GAAP	General Accepted Accounting Principles
16	L. HCA	Health Care Agency
17	M. HHS	Health and Human Services
18	N. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
19	O. HSC	California Health and Safety Code
20	P. ISO	Insurance Services Office
21	Q. MHSA	Mental Health Services Act
22	R. NPP	Notice of Privacy Practices
23	S. OIG	Office of Inspector General
24	T. OMB	Office of Management and Budget
25	U. OPM	Federal Office of Personnel Management
26	V. PC	State of California Penal Code
27	W. PEI	Prevention and Early Intervention
28	X. PHI	Protected Health Information
29	Y. PII	Personally Identifiable Information
30	Z. P&P	Policy and Procedure
31	AA. PRA	Public Record Act
32	AB. SIR	Self-Insured Retention
33	AC. <u>SFTS</u>	<u>Safe from the Start</u>
34	<u>AD. TOT</u>	<u>Train the Trainer</u>
35	<u>AE. USC</u>	<u>United States Code</u>
36	<del>AD.</del> <u>AF. VPE</u>	<u>Violence Prevention Education</u>
37	<u>AG. WIC</u>	<u>State of California Welfare and Institutions Code</u>

## II. ALTERATION OF TERMS

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

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

## III. ASSIGNMENT OF DEBTS

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

## IV. COMPLIANCE

A. 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 ~~P&P~~ 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 ~~P&P~~ policies and procedures to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement. ADMINISTRATOR's Compliance Officer shall determine if ~~CONTRACTOR~~ CONTRACTOR's Compliance Program and Code of Conduct contains all required elements. CONTRACTOR shall take

1 necessary action to meet said standards or shall be asked to acknowledge and agree to ~~the~~ HCA's  
 2 Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of  
 3 Conduct does not contain all required elements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## V. CONFIDENTIALITY

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

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

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

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

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

## VI. COST REPORT

A. CONTRACTOR shall submit separate Cost Reports ~~for Period One and Period Two, or for a portion thereof,~~ to COUNTY no later than sixty (60) calendar days following the period for which they are prepared or termination of this Agreement. CONTRACTOR shall prepare the individual and/or consolidated 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. In the event CONTRACTOR has multiple Agreements for mental health services that are administered by HCA, consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as stipulated by ADMINISTRATOR.

1 CONTRACTOR shall submit a consolidated Cost  
 2 Report to COUNTY no later than five (5) business days following approval by ADMINSTRATOR of  
 3 all individual Cost Reports to be incorporated into a consolidated Cost Report.

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

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

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

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

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

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

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

1 to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due  
2 COUNTY.

3 D. If the ~~individual and/or consolidated~~ Cost Report indicates the actual and reimbursable costs of  
4 services provided pursuant to this Agreement, less applicable revenues and late penalty, are lower than  
5 the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the  
6 difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of  
7 payment, with the submission of the ~~individual and/or consolidated~~ Cost Report. If such reimbursement  
8 is not made by CONTRACTOR within thirty (30) calendar days after submission of the ~~individual  
9 and/or consolidated~~ Cost Report, COUNTY may, in addition to any other remedies, reduce any amount  
10 owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

11 E. If the ~~individual and/or consolidated~~ Cost Report indicates the actual and reimbursable costs of  
12 services provided pursuant to this Agreement, less applicable revenues and late penalty, are higher than  
13 the aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR  
14 the difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

15 F. ~~All individual and/or consolidated~~ All Cost Reports shall contain the following attestation,  
16 which may be typed directly on or attached to the Cost Report:

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

26  
27 Signed \_\_\_\_\_  
28 Name \_\_\_\_\_  
29 Title \_\_\_\_\_  
30 Date \_\_\_\_\_"

31  
32 **VII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

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

### 6 7 **VIII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

### 17 18 **IX. EQUIPMENT**

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

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

36 C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to  
37 COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in

1 relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it  
2 is purchased. Title of expensed Equipment shall be vested with COUNTY.

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

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

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

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

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

## 21 22 **X. FACILITIES, PAYMENTS AND SERVICES**

23 **A.** CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance  
24 with ~~Exhibit A to~~ this Agreement. COUNTY shall compensate, and authorize, when applicable, said  
25 services. CONTRACTOR shall operate continuously throughout the term of this Agreement with at  
26 least the minimum number and type of staff which meet applicable federal and state requirements, and  
27 which are necessary for the provision of the services hereunder.

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

## 34 35 **XI. INDEMNIFICATION AND INSURANCE**

36 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,  
37 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special

1 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board  
 2 (~~"COUNTY INDEMNITEES"~~) harmless from any claims, demands or liability of any kind or nature,  
 3 including but not limited to personal injury or property damage, arising from or related to the services,  
 4 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is  
 5 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the  
 6 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and  
 7 COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request  
 8 a jury apportionment.

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

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

25 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,  
 26 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an  
 27 amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the  
 28 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

29 ~~DE.~~ DE. If ~~CONTRACTOR~~ CONTRACTOR fails to maintain insurance acceptable to COUNTY for the  
 30 full term of this Agreement, COUNTY may terminate this Agreement.

31 EF. QUALIFIED INSURER

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

37 2. If the insurance carrier ~~is not an admitted carrier in the state of California and~~ 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.

**F.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 <del>or per occurrence</del> <u>\$1,000,000</u>
<u>aggregate</u>	
Sexual Misconduct Liability	\$1,000,000 per occurrence

#

~~G~~

**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 ~~Auto~~ 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.

**H.I. REQUIRED ENDORSEMENTS** – The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:

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

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



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

4 ~~J.~~

5 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving  
 6 all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its  
 7 elected and appointed officials, officers, agents and employees.

8 ~~K. All insurance policies required by this Agreement~~ L. CONTRACTOR shall ~~give~~ notify  
 9 COUNTY in writing within thirty (30) ~~calendar days' notice in the event~~ days of any policy cancellation  
 10 and ten (10) ~~calendar days' notice~~ days for non-payment of premium. ~~This shall be evidenced by policy~~  
 11 ~~provisions or an endorsement separate from~~ and provide a copy of the cancellation notice to COUNTY.  
 12 Failure to provide written notice of cancellation may constitute a material breach of the COI Agreement,  
 13 upon which the COUNTY may suspend or terminate this Agreement.

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

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

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

23 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
 24 CONTRACTOR does not deposit copies of acceptable ~~COI's~~ COIs and endorsements with COUNTY  
 25 incorporating such changes within thirty (30) calendar days  
 26 of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR,  
 27 and COUNTY shall be entitled to all legal remedies.

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

#### 32 Q. SUBMISSION OF INSURANCE DOCUMENTS

- 33 1. The COI and endorsements shall be provided to COUNTY as follows:
  - 34 a. Prior to the start date of this Agreement.
  - 35 b. No later than the expiration date for each policy.
  - 36 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
  - 37 changes to any of the insurance types as set forth in Subparagraph ~~F. of the Indemnification and~~

1 ~~Insurance Paragraph of the~~ G. of this Agreement.

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

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

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

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

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

17 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any  
18 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid  
19 ~~COI's~~ COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance  
20 coverage.

## 21 **XII. INSPECTIONS AND AUDITS**

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

32 B. CONTRACTOR shall actively participate and cooperate with any person specified in  
33 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this  
34 Agreement, and shall provide the above-~~m~~entioned persons adequate office space to conduct such  
35 evaluation or monitoring.

36 C. AUDIT RESPONSE  
37

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

6 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement  
 7 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said  
 8 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of  
 9 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement  
 10 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies  
 11 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the  
 12 reimbursement due COUNTY.

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

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

### 20 **XIII. LICENSES AND LAWS**

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

#### 29 **B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

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

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

34 b. In the case of a contractor doing business in a form other than as an individual, the  
 35 name, date of birth, social security number, and residence address of each individual who owns an  
 36 interest of ten percent (10%) or more in the contracting entity;  
 37

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

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

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

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

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

17 1. ARRA of 2009.

18 2. WIC, ~~Divisions 5, 6 and 9~~ Division 5, Community Mental Health Services.

19 3. ~~State of~~ WIC, Division 6, Admissions and Judicial Commitments.

20 4. WIC, Division 7, Mental Institutions.

21 5. HSC, §§1250 et seq., Health Facilities.

22 6. ~~PC, Part 4, Title 1, Chapter 2, Article 2.5 relating to~~ §§11164-11174.3, Child Abuse and  
23 Neglect Reporting Act.

24 7. CCR, Title 9, Rehabilitative and Developmental Services.

25 8. CCR, Title 17, Public Health.

26 9. CCR, Title ~~17, and Title~~ 22, Social Security.

27 10. CFR, Title 42 ~~and~~, Public Health.

28 11. CFR, Title 45, Public Welfare.

29 12. USC Title 42, Public Health and Welfare.

30 13. Federal Social Security Act, Title XVIII and Title XIX, Medicare and Medicaid.

31 14. 42 USC, ~~Chapter 126,~~ §12101, et seq., the Americans with Disabilities Act of 1990.

32 15. 42 USC, ~~§114 and §§~~ §1857, et seq., the Clean Air Act.

33 16. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.

34 17. 31 USC 7501.70, Federal Single Audit Act of 1984.

35 18. Policies and procedures set forth in ~~MHSA~~ Mental Health Services Act.

36 19. Policies and procedures set forth in DHCS Letters.

37 20. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.

~~16. OMB Circulars A-87, A-89, A-110, A-122.~~

21. 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.

#### **XIV. 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 P&Ps policy 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.

#### **XV. MAXIMUM OBLIGATION**

The ~~Total~~ Maximum ~~Obligations~~ Obligation of COUNTY for services provided in accordance with this Agreement and ~~the separate Maximum Obligations for Period One and Period Two are~~ is as specified in the Referenced Contract Provisions of this Agreement.

#### **XVI. 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 ~~ethnic group identification~~, race, ~~religion~~, ~~ancestry~~, religious creed, color, ~~creed~~, ~~sex~~, ~~marital status~~, national

1 origin, ~~age (40 and over), sexual orientation, medical condition, or~~ ancestry, physical ~~or~~ disability,  
 2 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,  
 3 gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term  
 4 of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts that  
 5 subcontractors shall not unlawfully discriminate against any employee or applicant for employment  
 6 because of his/her ~~ethnic group identification, race, religion, ancestry,~~ religious creed, color, ~~creed, sex,~~  
 7 ~~marital status,~~ national origin, ~~age (40 and over), sexual orientation, medical condition, or~~ ancestry,  
 8 physical ~~or~~ disability, mental disability, medical condition, genetic information, marital status, sex,  
 9 gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

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

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

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

20 5. All solicitations or advertisements for employees placed by or on behalf of  
 21 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration  
 22 for employment without regard to ~~ethnic group identification, race, religion, ancestry,~~ religious creed,  
 23 color, ~~creed, sex, marital status,~~ national origin, ~~age (40 and over), sexual orientation, medical condition,~~  
 24 ~~or~~ ancestry, physical ~~or~~ disability, mental disability, medical condition, genetic information, marital  
 25 status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran  
 26 status. Such requirements shall be deemed fulfilled by use of the term EOE.

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

32 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not  
 33 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities  
 34 on the basis of ~~ethnic group identification, race, religion, ancestry,~~ religious creed, color, ~~creed, sex,~~  
 35 ~~marital status,~~ national origin, ~~age (40 and over), sexual orientation, medical condition, or~~ ancestry,  
 36 physical ~~or~~ disability, mental disability, medical condition, genetic information, marital status, sex,  
 37 gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in

1 accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 -  
 2 §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975  
 3 (42 USC §6101); ~~and~~ Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of  
 4 Regulations; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et  
 5 seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as  
 6 otherwise provided by state law and regulations, as all may now exist or be hereafter amended or  
 7 changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not  
 8 limited to the following based on one or more of the factors identified above:

9 1. Denying a client participant or potential client participant any service, benefit, or  
 10 accommodation.

11 2. Providing any service or benefit to a client participant which is different or is provided in a  
 12 different manner or at a different time from that provided to other clients participants.

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

15 4. Treating a client participant differently from others in satisfying any admission requirement  
 16 or condition, or eligibility requirement or condition, which individuals must meet in order to be  
 17 provided any service or benefit.

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

19 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all  
 20 clients participants through a written statement that ~~CONTRACTOR~~ CONTRACTOR's and/or  
 21 subcontractor's clients participants may file all complaints alleging discrimination in the delivery of  
 22 services with CONTRACTOR, subcontractor, and ADMINISTRATOR or COUNTY's Patient's Patient  
 23 Rights Office.

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

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

30 b. Throughout the problem resolution and grievance process, client participant rights shall  
 31 be maintained, including access to the Patients' Rights Office at any point in the process. Clients shall  
 32 be informed of their right to access the Patients' Rights Office at any time.

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

35 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply  
 36 with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as  
 37 implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 (42 USC 12101

1 et seq.), as applicable, pertaining to the prohibition of discrimination against qualified persons with  
 2 disabilities in all programs or activities; and if applicable, as implemented in Title 45, CFR, §84.1 et  
 3 seq., as they exist now or may be hereafter amended together with succeeding legislation.

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

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

### 13 **XVII. NOTICES**

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

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

19 2. When faxed, transmission confirmed;

20 3. When sent by Email; or

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

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

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

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

### 33 **XVIII. NOTIFICATION OF DEATH**

34 A. Upon becoming aware of the death of any person served pursuant to this Agreement,  
 35 CONTRACTOR shall immediately notify ADMINISTRATOR.  
 36  
 37



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

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

9 2. WRITTEN NOTIFICATION

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

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

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

21  
22 **XIX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

30  
31 **XX. RECORDS MANAGEMENT AND MAINTENANCE**

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

35 B. CONTRACTOR shall implement and maintain administrative, technical and physical  
36 safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of  
37 PHI in violation of the HIPAA, federal and state regulations and/or CHPP. CONTRACTOR shall

1 mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in  
2 violation of federal or state regulations and/or COUNTY policies.

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

6 D. CONTRACTOR shall ~~ensure appropriate~~ retain all financial records ~~related to cost reporting,~~  
7 ~~expenditure, revenue, billings, etc., are prepared and maintained accurately and appropriately.~~

8 ~~E. CONTRACTOR shall ensure all appropriate state and federal standards~~ for a minimum of  
9 ~~documentation, preparation, and confidentiality~~ seven (7) years from the commencement of records  
10 ~~related to participant, client~~ the contract, unless a longer period is required due to legal proceedings such  
11 ~~as litigations~~ and/or ~~patient records are met at all times~~ settlement of claims.

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

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

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

- 24 1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit  
25 or site visit.
- 26 2. Provide auditor or other authorized individuals access to documents via a computer  
27 terminal.
- 28 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if  
29 requested.

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

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

36 J. CONTRACTOR shall retain all participant, client, and/or patient medical records for seven (7)  
37 years following discharge of the participant, client and/or patient, with the exception of non-

1 emancipated minors for whom records must be kept for at least one (1) year after such minors have  
2 reached the age of eighteen (18) years, or for seven (7) years after the last date of service, whichever is  
3 longer.

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

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

9 MK. If CONTRACTOR is unable to meet the record location criteria above,  
10 ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single  
11 location, identified by CONTRACTOR.

12 NL. CONTRACTOR may be required to retain all records involving litigation proceedings and  
13 settlement of claims for a longer term which will be directed by the ADMINISTRATOR.

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

17 //

18 **XXI. RESEARCH AND PUBLICATION**

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

22  
23 **XXII. RIGHT TO WORK AND MINIMUM WAGE LAWS**

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

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

37 CB. CONTRACTOR shall comply and verify that its contractors comply with all other federal and

1 State of California laws for minimum wage, overtime pay, record keeping, and child labor standards  
2 pursuant to providing services pursuant to this Agreement.

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

### 7 8 **XXIII. SEVERABILITY**

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

### 14 15 **XXIV. SPECIAL PROVISIONS**

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

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

37 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR

1 shall not use the funds provided by means of this Agreement for the following purposes:

- 2 1. Funding travel or training (excluding mileage or parking).
- 3 2. Making phone calls outside of the local area unless documented to be directly for the
- 4 purpose of ~~client~~ participant care.
- 5 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 6 4. Purchase of artwork or other items that are for decorative purposes and do not directly
- 7 contribute to the quality of services to be provided pursuant to this Agreement.
- 8 5. Purchasing or improving land, including constructing or permanently improving any
- 9 building or facility, except for tenant improvements.
- 10 ~~6. Providing inpatient hospital services or purchasing major medical equipment.~~
- 11 ~~7. Satisfying any expenditure of non federal funds as a condition for the receipt of federal~~
- 12 ~~funds (matching).~~
- 13 ~~8. 6. Purchase of gifts, meals, entertainment, awards, or other personal expenses for~~
- 14 CONTRACTOR's ~~clients~~ participants.

## 16 **XXV. STATUS OF CONTRACTOR**

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

## 29 **XXVI. TERM**

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

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

## XXVII. TERMINATION

1  
2 A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar ~~days~~ days?  
3 written notice given the other party.

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

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

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

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

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

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

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

### D. CONTINGENT FUNDING

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

25 a. The continued availability of federal, state and county funds for reimbursement of  
26 COUNTY's expenditures, and  
27

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

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

34 E. In the event this Agreement is suspended or terminated prior to the completion of the term as  
35 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole  
36 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced  
37 term of ~~this~~ 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 clients participants are to be transferred to another facility for services, furnish  
10 ADMINISTRATOR, upon request, all client participant information and records deemed necessary by  
11 ADMINISTRATOR to effect an orderly transfer.

12 5. Assist ADMINISTRATOR in effecting the transfer of clients participants in a manner  
13 consistent with client's participant's best interests.

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

### 27 **XXVIII. 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 clients participants provided services pursuant to  
30 this Agreement.

### 32 **XXIX. 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,  
2 State of California.

3  
4 PHOENIX HOUSE ORANGE COUNTY, INC.

5  
6 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

7  
8  
9 TITLE: \_\_\_\_\_

10  
11  
12 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

13  
14 TITLE: \_\_\_\_\_

15  
16  
17  
18 COUNTY OF ORANGE

19  
20  
21 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

22 HEALTH CARE AGENCY

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

29  
30  
31 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

32 DEPUTY

33  
34  
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the  
36 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer  
37 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution  
signature alone is required by ADMINISTRATOR.



EXHIBIT A  
 TO AGREEMENT FOR PROVISION OF  
 SCHOOL-BASED BEHAVIORAL HEALTH INTERVENTION AND SUPPORT SERVICES  
 WITH  
 PHOENIX HOUSE ORANGE COUNTY, INC.  
 AUGUST ~~JULY~~ 1, 2013 ~~2015~~ THROUGH JUNE 30, 2015 ~~2016~~

**I. COMMON TERMS AND DEFINITIONS**

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.

A. Assessment means a professional review and Evaluation of an individual's behavioral health and conditions in order to determine the most appropriate course of services.

B. At Risk means a state of high stressor and low protective factor that would increase likelihood of development of a behavioral health condition.

C. Behavioral Health Conditions means diminished cognitive, emotional, or social abilities, but not to the extent that the criteria for a mental disorder are met.

D. Educational Activities means school activities and support that provides wrap-around coverage to create a prevention-prepared school environment that fosters student development and decreases the incidence of Behavioral Health Conditions. Activities include, but are not limited to: student/peer support, parent education, and school-wide fairs/projects.

E. Engagement means the process by which a trusting relationship between a worker and participant is established with the goal to link the participant to appropriate services.

F. Enrollment means the data entry of a Participant's program information into CONTRACTOR's database for purposes of recording and tracking a Participant's involvement in the program.

G. Evaluation means the systematic investigation of the value and impact of an intervention or program.

H. Evidence-Based Practice means the range of prevention and intervention services of well documented effectiveness. An evidence-based practice has quantitative and qualitative data showing positive outcomes and has been subject to expert/peer review that has determined that a particular approach or strategy has a significant level of evidence of effectiveness.

I. Family Member means any traditional and/or non-traditional support system, significant other, or natural support designated by the Participant.

J. Follow-up means ensuring that the Participant has linked to the referred service and/or successfully transitioned from one service to another.

K. Group Intervention means the delivery of services to more than one individual or family.

L. Intake means the initial meeting between a Participant and a worker to evaluate a Participant's issue of concern and determine how a program could best meet his/her needs.

1 M. Linkage means when an individual is connected to programs or services through warm hand-off  
2 or Follow-up to ensure connection is made.

3 N. MHSA means the law that provides funding for expanded community mental health services,  
4 also known as “Proposition 63.

5 O. NPP means a document that notifies individuals of uses and disclosures of PHI that may be  
6 made by or on behalf of the health plan or health care provider as set forth in the Health Insurance  
7 Portability and Accountability Act of 1996 (HIPAA).

8 P. Outreach means contact with potential Participants to link them to appropriate behavioral health  
9 and supportive services; which may include media-based activities that educate the community about  
10 services offered and requirements for participation in the program.

11 Q. Positive Action means an evidence-based curriculum that uses a cognitive-behavioral approach,  
12 to teach positive development for the physical, intellectual, social, and emotional areas of the individual.

13 R. Participant means an individual enrolled in a program who engages in activities aimed at  
14 preventing and/or eliminating the development of Behavioral Health Conditions.

15 S. PHI means individually identifiable health information usually transmitted by electronic media  
16 maintained in any medium as defined in the regulations or for an entity, such as a health plan,  
17 transmitted or maintained in any other medium. It is created or received by a covered entity and related  
18 to the past, present, or future physical or behavioral health condition of an individual, provision of  
19 health care to an individual, or the past, present, or future payment for health care provided to an  
20 individual.

21 T. PII means any information that could be readily used to identify a specific person, including but  
22 not limited to: name, address, telephone number, email address, driver’s license number, Social  
23 Security number, bank account information, credit card information, or any combination of data that  
24 could be used to identify a specific person, such as a birth date, zip code, mother’s maiden name and  
25 gender.

26 U. Prevention means the group or individual interventions that occur before the initial onset of a  
27 behavioral health condition. Prevention promotes positive cognitive, social and emotional development  
28 and encourages a state of well-being that allows the individuals to function well in the face of changing  
29 and sometimes challenging circumstances.

30 V. Referral means the process of sending an individual from one service to another for health care,  
31 mental health, and/or other support services, or an unsuccessful linkage attempt.

32 W. Strengthening Families Program (SFP) means an evidence-based curriculum that provides  
33 family skills training which includes, but is not limited to: appropriate developmental expectations,  
34 parent/children communication skills, and skill practice sessions.

35 X. Training means the action or method used to transfer skills and/or knowledge to a target  
36 audience.

37 //

1 Y. Unduplicated Participant means an individual who is counted only once, despite how many  
 2 services the individual is enrolled during the term of the Agreement.

3 Z. Units of Service mean the number and/or type of activities the CONTRACTOR will fulfill  
 4 during the term of the Agreement.

5  
 6 **II. BUDGET**

7 A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph in this  
 8 Exhibit A to the Agreement and the following budgets, which are set forth for informational purposes  
 9 only and may be adjusted by mutual agreement, in writing, ~~of~~ by ADMINISTRATOR and  
 10 CONTRACTOR.

	<u>PE</u>	<u>PE</u>	<u>TOTAL</u>
	<u>RIQ</u>	<u>RIQ</u>	
	<u>D</u>	<u>D</u>	
	<u>ON</u>	<u>TW</u>	
	<u>E</u>	<u>Q</u>	
ADMINISTRATIVE			
COST			
Indirect <del>Cost</del> <u>Costs</u>	\$	\$	\$
	<u>15</u>	<u>15</u>	<u>30</u>
	<u>0</u>	<u>5</u>	<u>6</u>
	<u>54</u>	<u>69</u>	<u>24</u>
	<u>62</u>	<u>8</u>	<u>4</u>
	<u>27</u>		
	<u>.3</u>		
	<u>26</u>		
SUBTOTAL	\$	\$	\$
ADMINISTRATIVE	<u>15</u>	<u>15</u>	<u>30</u>
COST	<u>0</u>	<u>5</u>	<u>6</u>
	<u>54</u>	<u>69</u>	<u>24</u>
	<u>62</u>	<u>8</u>	<u>4</u>
	<u>27</u>		
	<u>.3</u>		
	<u>26</u>		
PROGRAM COST			

1		Salaries	\$	\$	\$1
2			81	88	,6
3			1,	4,	96
4			22	97	,2
5			99	8	07
6			<u>16</u>		
7			<u>.0</u>		
8			<u>89</u>		
9		Benefits	24	27	51
10			7,	0,	8,
11			99	53	53
12			<u>32</u>	7	0
13			<u>65</u>		
14			<u>.6</u>		
15			<u>66</u>		
16		Services and Supplies	36	40	76
17			8,	1,	9,
18			15	62	77
19			<u>32</u>	1	4
20			<u>93</u>		
21			<u>.2</u>		
22			<u>53</u>		
23		<del>Subcontractor</del> <u>Subc</u>	27	30	57
24		<u>ontractors</u>	40	,0	,5
25			.5	00	00
26			<u>00</u>		
27		<del>Start Up</del>			
28			<u>79</u>	0	<u>79</u>
29			<u>.7</u>		<u>.7</u>
30			<u>42</u>		<u>42</u>
31					
32					
33					
34					
35					
36					
37					

1	SUBTOTAL PROGRAM	\$1	\$1	\$3
2	COST	,5	,5	,1
3		34	87	21
4		,6	,1	,7
5		17	36	53
6		<u>51</u>		
7		<u>5</u>		
8		<u>50</u>		
9		<u>8</u>		
10				
11	TOTAL GROSS	\$1	\$1	\$3,427,99
12	COST	,6	,7	7
13		85	42	
14		,1	,8	
15		63	34	
16				
17	REVENUE			
18	MHSA	<u>\$1</u>	<u>\$1</u>	<u>\$3,427,99</u>
19		<u>,6</u>	<u>,7</u>	<u>7</u>
20		<u>85</u>	<u>42</u>	
21		<u>,1</u>	<u>,8</u>	
22		<u>63</u>	<u>34</u>	
23	TOTAL	\$1	\$1	\$3,427,99
24	REVENUE	,6	,7	7
25		85	42	
26		,1	,8	
27		63	34	
28				
29	TOTAL	\$1	\$1	\$3,427,99
30	MAXIMUM	,6	,7	7
31	OBLIGATION	85	42	
32		,1	,8	
33		63	34	
34				

B. 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

1 by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing  
 2 Modification Request to ADMINISTRATOR for consideration, in advance, which shall include a  
 3 justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and  
 4 the sustaining annual impact of the shift as may be applicable to the current contract period and/or future  
 5 contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification  
 6 Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of  
 7 CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing  
 8 Modification Request(s) may result in disallowance of those costs.

9 C. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete  
 10 financial records of its cost and operating expenses. Such records will reflect the actual cost of the type  
 11 of service for which payment is claimed. Any apportionment of or distribution of costs, including  
 12 indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and will  
 13 be made in accordance with GAAP. ~~The client eligibility determination and the fee charged to and~~  
 14 ~~collected from clients, if applicable, together with a record of all billings rendered and revenues received~~  
 15 ~~from any source, on behalf of clients treated pursuant to the Agreement, must be reflected in~~  
 16 ~~CONTRACTOR's financial records.~~

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

### 20 III. PAYMENTS

21 A. COUNTY shall pay CONTRACTOR monthly, in arrears, the provisional amount of  
 22 \$~~153,197~~ 145,236 per month for ~~Period One; and \$145,237 per month for Period Two; provided,~~  
 23 ~~however, that the total of such payments does not exceed the Maximum Obligations~~ each period as set  
 24 forth specified in the Referenced Contract Provisions of the Agreement.

25 ~~— B. Monthly~~ All payments are interim payments only, and subject to Final Settlement in  
 26 accordance with the Cost Report Paragraph of the Agreement; for which CONTRACTOR shall be  
 27 reimbursed for the actual cost of providing the services hereunder; provided, however, the total of such  
 28 payments does not exceed COUNTY's Maximum Obligation as specified in the Referenced Contract  
 29 Provisions of the Agreement and, provided further, CONTRACTOR's costs are reimbursable pursuant  
 30 to COUNTY, state, and federal regulations. ADMINISTRATOR may, at its discretion, pay  
 31 supplemental invoices for any month for which the provisional amount specified above has not been  
 32 fully paid.

33 1. In support of the monthly invoice, CONTRACTOR shall submit an Expenditure and  
 34 Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement.  
 35 ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to  
 36 CONTRACTOR as specified in Subparagraphs ~~B~~A.2. and ~~B~~A.3., below.

37 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the

1 provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may  
 2 reduce payments to CONTRACTOR by an amount not to exceed the difference between the  
 3 year-to-date provisional amount payments to CONTRACTOR's and the year-to-date actual cost  
 4 incurred by CONTRACTOR.

5 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 6 provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR  
 7 may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to  
 8 exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and  
 9 the year-to-date actual cost incurred by CONTRACTOR.

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

15 ~~D~~C. All invoices to COUNTY shall be supported at CONTRACTOR's facility, by source  
 16 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements,  
 17 canceled checks, receipts, receiving records, and records of services provided.

18 ~~E~~D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply  
 19 with any provision of the Agreement.

20 ~~F~~E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration  
 21 and/or termination of the Agreement, except as may otherwise be provided under the Agreement, or  
 22 specifically agreed upon in a subsequent Agreement.

23 ~~G~~F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 24 Payments Paragraph of this Exhibit A to the Agreement.

#### 25 26 **IV. SERVICES REPORTS**

##### 27 **A. FISCAL**

28 1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to  
 29 ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by,  
 30 ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR's program described  
 31 in the Services Paragraph of this Exhibit A to the Agreement. Any changes, modifications, or  
 32 deviations to any approved budget line item must be approved in advance and in writing by  
 33 ADMINISTRATOR and annotated on the monthly Expenditure and Revenue Report, or said cost  
 34 deviations may be subject to disallowance. Such reports shall be received by ADMINISTRATOR no  
 35 later than twenty (20) calendar days following the end of the month being reported.

36 2. CONTRACTOR shall submit Year-End Projection Reports to ADMINISTRATOR. These  
 37 reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report

1 anticipated year-end actual costs and revenues for CONTRACTOR's program described in the Services  
 2 Paragraph of this Exhibit A to the Agreement. Such reports shall include actual monthly costs and  
 3 revenue to date and anticipated monthly costs and revenue to the end of the fiscal year, and shall include  
 4 a projection narrative justifying the year-end projections. Year-End Projection Reports shall be  
 5 submitted in conjunction with the Monthly Expenditure and Revenue Reports.

6 B. STAFFING REPORT – CONTRACTOR shall submit monthly Staffing Reports to  
 7 ADMINISTRATOR. CONTRACTOR's reports shall contain required information, and be on a form  
 8 acceptable to, or provided by ADMINISTRATOR. CONTRACTOR shall submit these reports no later  
 9 than twenty (20) calendar days following the end of the month being reported.

10 C. PROGRAMMATIC – CONTRACTOR shall submit monthly Programmatic reports to  
 11 ADMINISTRATOR. These reports shall be in a format approved by ADMINISTRATOR and shall  
 12 include but not limited to, descriptions of any performance objectives, outcomes, and or interim findings  
 13 as directed by ADMINISTRATOR. CONTRACTOR shall be prepared to present and discuss the  
 14 programmatic reports at the monthly meetings with ADMINISTRATOR, to include whether or not  
 15 CONTRACTOR is progressing satisfactorily and if not, specify what steps are being taken to achieve  
 16 satisfactory progress. Such reports shall be received by ADMINISTRATOR no later than twentieth  
 17 (20th) calendar day following the end of the month being reported.

18 D. ADDITIONAL REPORTS – Upon ADMINISTRATOR's request, CONTRACTOR shall make  
 19 such additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as  
 20 they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information  
 21 requested and allow thirty (30) calendar days for CONTRACTOR to respond.

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

## V. SERVICES

### A. FACILITIES

27 1. CONTRACTOR shall maintain ~~a~~-facility(~~ies~~) for the provision of School-Based ~~BHIS~~  
 28 services described herein at the following location(s), or any other location approved, in advance, in  
 29 writing, by ADMINISTRATOR. The facility(~~ies~~) shall include space to support the services  
 30 ~~provided~~ identified within the Agreement.

Phoenix House Orange County, Inc.  
 1615 E. 17th Street, Suite # 150  
 Santa Ana, California 92705

36 2. CONTRACTOR shall maintain regularly scheduled service hours, Monday through Friday  
 37 8:00 a.m. – 5:00 p.m. throughout the year, and maintain the capability to provide services in the evening



1 hours until 8:00 p.m. and on weekends in order to accommodate Participants unable to participate  
 2 during regular business hours. CONTRACTOR's holiday schedule shall be consistent with COUNTY's  
 3 holiday schedule unless otherwise approved in writing by ADMINISTRATOR.

4 3. CONTRACTOR shall promote Participants' access and Engagement with services by  
 5 providing services throughout the community in locations beyond the designated facility. The majority  
 6 of services will be facilitated at ~~selected elementary, middle and high school sites. Locations may~~  
 7 ~~include, but not be limited to: community locations, non-traditional school sites, school district~~  
 8 ~~locations, and provider facilities, as appropriate for the provision of services provided under the~~  
 9 ~~Agreement.~~ school sites as well as CONTRACTOR facilities. Other locations may  
 10 include, but not be limited to: school district locations, local community organizations, and other sites,  
 11 as appropriate for the provision of services provided under the Agreement.

## 12 B. SCHOOL-BASED BHIS SERVICES

13 1. CONTRACTOR shall provide BHIS services to residents of Orange County for the purpose  
 14 of ~~preventing and/or interrupting the onset or progression of behavioral health conditions,~~ increasing  
 15 ~~character attributes and decreasing~~ negative social behaviors, ~~and emotional distress in youth exhibiting~~  
 16 ~~among students.~~ The service will offer a multi-tier approach to the early ~~signs~~ identification and support  
 17 of ~~problem behaviors~~ students with behavior health needs. Services shall be delivered to elementary,  
 18 middle and high schools in school districts that have the highest indicators of behavioral issues,  
 19 including dropout rates, expulsion, and suspensions. The areas selected include, but are not limited to:  
 20 Santa Ana, ~~Garden Grove, Anaheim~~ Huntington Beach, Orange, and ~~Placentia-Yorba Linda~~ Saddleback  
 21 School Districts. The program shall identify thirty (30) schools during ~~each period, for a total~~ the term  
 22 of ~~sixty (60) schools~~ the Agreement.

23 2. CONTRACTOR's program shall include, but is not limited to, provision of the following  
 24 service components:

25 a. Classroom Prevention shall be implemented at all ~~sixty (60)~~ thirty (30) selected school  
 26 sites to provide a comprehensive classroom-based prevention approach for all students using the  
 27 Positive Action evidence-based curriculum.

28 b. Student-Based Interventions shall be implemented to select students referred by  
 29 teachers, parents, and school counselors. Prevention ~~Specialists~~ staff shall be available at the school sites  
 30 to provide students with more individualized and intensive strategies, as appropriate. Prevention  
 31 ~~Specialists~~ staff shall screen all referred students to confirm individual risk factors and rule out more  
 32 severe need for intervention. Positive Action curriculum shall be used for all students at this level of  
 33 intervention.

34 c. Family Interventions shall be implemented for students who display minimal but  
 35 detectable signs or symptoms of behavioral health ~~disorders~~ needs, or for students that do not respond to  
 36 Student-Based Interventions. Students shall receive an ~~extensive~~ assessment that evaluates risk for  
 37 substance abuse, mental illness, and other behavioral health issues. Referrals shall be made to external

1 service providers that offer specialized mental health counseling and therapy. Group sessions shall be  
 2 provided to students and families utilizing the SFP evidence-based curriculum.

3 d. Educational Activities shall be implemented at all school sites to allow for an efficient  
 4 wraparound in providing needed encouragement and support for implementation of the programs.

5 3. CONTRACTOR shall incorporate applicable Evidence-Based Practices, or promising  
 6 practices, in development of curriculums and interventions for the purpose of meeting goals and  
 7 objectives.

8 4. CONTRACTOR shall make every reasonable effort to accommodate Participants'  
 9 developmental, cultural and linguistic needs. In the event that such needs cannot be immediately met,  
 10 CONTRACTOR shall seek assistance from other community resources. CONTRACTOR shall obtain  
 11 Participants' consent prior to linking or transferring Participants to another service provider or  
 12 community resources.

13 5. CONTRACTOR shall clearly establish written standards/guidelines on how inter- and intra-  
 14 agency Referrals shall be managed. These standards/guidelines shall be approved by the  
 15 ADMINISTRATOR prior to implementation.

16 ~~6~~ 6. CONTRACTOR shall develop a comprehensive and consistent methodology for  
 17 tracking, projecting, and reporting all UOS. CONTRACTOR shall be responsible for ensuring that  
 18 methodology is in place to ensure that students receive all training per the curriculum and create  
 19 appropriate and consistent methodologies to track UOS as contracted. Methodologies may include but  
 20 are not limited to: sign in sheets, teacher or school site confirmation letters/emails, sessions of  
 21 curriculum completed and documented visits. Program quality, methodology, and implementation is to  
 22 be monitored and ensured by the Program Director.

23 ~~7~~ 7. CONTRACTOR shall actively collaborate, coordinate, and integrate the services provided  
 24 under the Agreement with any of the various COUNTY or community-based programs as requested.  
 25 This includes establishing and maintaining mutually agreed upon communication deemed appropriate  
 26 by ADMINISTRATOR, to discuss standards/guidelines and planning of distribution or sites of services  
 27 provided under the Agreement.

28 ~~8~~ 8. CONTRACTOR shall achieve, track and record at a minimum, the following Annual Units  
 29 of Service as specified below. ~~FY 2013-14 shall be prorated based on start of services.~~

UNIT CATEGORIES	ANNUAL UNITS OF SERVICE
School Sites	<del>15</del> 17 Elementary Schools <del>10</del> 8 Middle Schools 5 High Schools
Classroom Prevention	<del>12</del> 10,000 Elementary Students <del>5</del> 6,000 Middle School Students <del>3,500</del> 2,700 High School Students

1	Student-Based Interventions	<del>3,000</del> 1,836 Elementary Students
2		<del>1,500</del> 960 Middle School Students
3		900 High School Students
4	Family Interventions	<del>32</del> 50 SFP Group Sessions
5		<del>300</del> 600 Students Served
6		600 Family Members Served
7	Educational Activities	<del>950</del> 990 School Staff Served
8		2,500 Parents/Caregivers Served

9 //

10 8. CONTRACTOR shall collect data including demographics such as age groups, race and  
11 ethnicity, and culture/community (e.g., veterans, deaf and hard of hearing; Lesbian, Gay, Bisexual,  
12 Transgender, Questioning, and Intersex).

13 9. CONTRACTOR shall when applicable, actively engage and promote interested Participants  
14 in becoming volunteers and provide them with necessary support and opportunities to apply knowledge  
15 and skills learned for the benefits of the Participants and the community.

#### 16 C. OUTCOME MEASURES

17 1. CONTRACTOR shall track and implement ADMINISTRATOR approved outcome  
18 measures across all services. Outcome measures shall measure program impact on individuals and  
19 system levels in respect to targeted populations. Outcomes to be measured shall include: student level  
20 emotional/academic protective factors, family improvements, and school level data.

21 2. CONTRACTOR shall be responsible for measuring and reporting outcome data on which  
22 priority populations are being reached, how the program is contributing to Participants' Behavioral  
23 Health Conditions and Referrals and Linkages to appropriate external service providers.

24 3. CONTRACTOR shall complete all surveys, tools, and pre and post tests for measurement  
25 of outcomes of services, as requested by ADMINISTRATOR. Said measurements shall include, but are  
26 not limited to, customized outcome tools, school level/district level data, curriculum surveys and pre and  
27 post-test surveys. CONTRACTOR shall measure and report on the outcomes of services in accordance  
28 with the following:

29 a. A minimum of sixty percent (60%) of classes will report that students  
30 involved improved or maintained in classroom prevention will show an improvement in two (2) or more  
31 social-emotional development as measured by pre and post test surveys outcomes.

32 b. A minimum of ~~sixty~~fifty percent (~~60~~50%) of students involved in Student Based  
33 Interventions will show a reduction in high-risk behaviors as measured by pre improve or maintain  
34 strategies for anger management and post-test surveys assertive communication.

35 c. A minimum of sixty percent (60%) of students involved in Student Based Interventions  
36 will show a reduction in school level disciplinary referrals as measured by school level data improve or  
37 maintain in positive student behaviors.

1 d. A minimum of fifty -five percent (55%) of students involved in Family Interventions  
2 will show a reduction in aggression and disruptive behaviors as measured by pre and post-test surveys.

3 e. A minimum of ~~thirty~~sixty percent (~~30~~60%) of participants will show an increase in  
4 knowledge of resource and support services.

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

7 //

## 8 VI. STAFFING

9 A. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in  
10 Full-Time Equivalents (FTEs) continuously throughout the term of the Agreement. One (1) FTE shall  
11 be equal to an average of forty (40) hours work per week.

13	PROGRAM ADMINISTRATION	FTEs
14	Program Director	1.00
15	Project Administrator/Data Analyst	2.00
16	<del>SUBTOTAL ADMINISTRATION</del>	<del>3.00</del>
17		
18	<del>DIRECT PROGRAM</del>	
19	Clinical Specialist	<del>1.00</del> 0.50
20	Prevention <del>Specialist</del> Coordinator	5.00
21	Prevention Specialist	10.00
22	<u>Early Intervention Specialist</u>	<u>0.92</u>
23	Subcontractor	<u>0.36</u> 43
24	<del>SUBTOTAL PROGRAM</del>	<del>16.36</del>
25		
26	TOTAL FTEs	19.36 <u>85</u>

28 B. CONTRACTOR shall make its best effort to include bilingual/bicultural services to meet the  
29 diverse needs of the community threshold languages as determined by ~~ADMINISTRATOR~~COUNTY.  
30 Whenever possible, bilingual/bicultural staff should be retained. Any staffing vacancies occurring at a  
31 time when bilingual and bicultural composition of the staffing does not meet the above requirement  
32 must be filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in writing, to the  
33 filling of those positions with non-bilingual staff. Salary savings resulting from such vacant positions  
34 may not be used to cover costs other than salaries and employees benefits unless otherwise authorized in  
35 writing, in advance, by ADMINISTRATOR.

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

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

5 D. CONTRACTOR is highly encouraged to augment the above paid staff with qualified and  
 6 trained volunteers and/or interns upon written approval of ADMINISTRATOR. CONTRACTOR shall  
 7 provide ongoing supervision to volunteers and/or interns consistent with the prevailing educational and  
 8 practice standards or as specified by ADMINISTRATOR.

9 E. CONTRACTOR shall maintain personnel files for each staff member, both administrative and  
 10 programmatic, both direct and indirect, which shall include, but not be limited to, an application for  
 11 employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if  
 12 applicable), pay rate and evaluations justifying pay increases.

13 F. CONTRACTOR shall establish clear P&Ps pertaining to staff's work location options (i.e.  
 14 office vs. field/home) and equipment usage (e.g., cell phones, texting devices, and computers). The  
 15 P&Ps shall address at the minimum the following:

- 16 1. Eligibility and selection criteria;
- 17 2. Staff's field/home on-duty conduct and responsibilities;
- 18 3. Supervision plan of staff and equipment including emergency procedure; and
- 19 4. Confidentiality and records keeping.

20 G. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours, of  
 21 any staffing vacancies that occur during the term of the Agreement.

22 H. CONTRACTOR shall notify ADMINISTRATOR, in writing, at least seven (7) days in  
 23 advance, of any new staffing changes; including promotions, temporary FTE changes and internal or  
 24 external temporary staffing assignment requests that occur during the term of the Agreement.

25 FI. CONTRACTOR ~~is highly encouraged to augment the above~~ shall ensure that all staff, albeit  
 26 paid ~~staff~~ or unpaid, complete necessary training prior to discharging duties associated with ~~qualified and~~  
 27 ~~trained volunteers~~ their titles and any other training necessary to assist the CONTRACTOR and/or  
 28 ~~interns.~~ COUNTY to be in compliance with prevailing standards of practice as well as State and  
 29 Federal regulatory requirements.

30 J. CONTRACTOR shall provide ongoing supervision ~~to volunteers and~~ throughout all shifts to all  
 31 staff, albeit paid or ~~interns consistent with the prevailing educational~~ unpaid, direct line staff or  
 32 supervisors/directors, to enhance service quality and ~~practice standards or as specified by~~  
 33 ~~ADMINISTRATOR~~ program effectiveness. Supervision methods should include debriefings and  
 34 consultation as needed, individual supervision or one-on-one support, and team meetings. Supervision  
 35 should be provided by a supervisor who has extensive knowledge regarding mental health issues.

36 GK. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 37 Staffing Paragraph of this Exhibit A to the Agreement.

## VI. REPORTS

### ~~A. FISCAL~~

~~1. EXPENDITURE AND REVENUE REPORT~~ CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. Any changes, modifications, or deviations to any approved budget line item must be approved in advance and in writing by ADMINISTRATOR and annotated on the monthly Expenditure and Revenue Report, or said cost deviations may be subject to disallowance. Such reports shall be submitted to ADMINISTRATOR no later than twenty (20) calendar days following the end of the month being reported.

~~2. YEAR END REPORT~~ CONTRACTOR shall submit Year End Projection Reports to ADMINISTRATOR. 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 described in the Services paragraph of 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, and shall include a projection narrative justifying the year end projections. Year End Projection Reports shall be submitted in conjunction with the Monthly Expenditure and Revenue Reports.

~~B. STAFFING REPORT~~ CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall, at a minimum, report both the budgeted and actual salaries and FTEs of the positions stipulated in the Staffing subparagraph of this Exhibit A to the Agreement, and shall include the employees' names, licensure status, and hire and/or termination date, and any other pertinent information as may be required by ADMINISTRATOR. Any changes, modifications, or deviations to any approved salary budgets/FTEs or actual salaries/FTEs exceeding approved amounts must be approved in advance and in writing by ADMINISTRATOR and annotated on the monthly Staffing Report, or said cost deviations may be subject to disallowance. CONTRACTOR shall submit these reports no later than twenty (20) calendar days following the end of the month being reported.

~~C. PROGRAMMATIC~~ Throughout the term of the Agreement, CONTRACTOR shall submit monthly programmatic reports to ADMINISTRATOR, shall be submitted to ADMINISTRATOR no later than twenty (20) calendar days following the end of the month being reported. Programmatic reports shall be in a format(s) approved by ADMINISTRATOR and shall include a description of CONTRACTOR's progress in implementing the provisions of the Agreement, and any pertinent facts or interim findings, staff changes, status of licenses and/or certifications, changes in population served and reasons for any such changes. CONTRACTOR shall be prepared to present and discuss their programmatic reports at their monthly scheduled meetings with ADMINISTRATOR and shall state whether or not it is progressing satisfactorily in achieving all the terms of the Agreement, and if not,

1 ~~shall specify what steps are being taken to achieve satisfactory progress.~~

2 ~~— D. ADDITIONAL REPORTS — Upon ADMINISTRATOR’s request, CONTRACTOR shall make~~  
 3 ~~such additional reports as required by ADMINISTRATOR concerning CONTRACTOR’s activities as~~  
 4 ~~they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information~~  
 5 ~~requested and allow thirty (30) calendar days for CONTRACTOR to respond.~~

6 ~~— E. CONTRACTOR and ADMINISTRATOR — may mutually agree in writing, to modify the~~  
 7 ~~Reports Paragraph to this Exhibit A of the Agreement.~~

## 8 VII. RESPONSIBILITIES

9  
 10 ~~— A. CONTRACTOR shall ensure that all staff are trained and have a clear understanding of all~~  
 11 ~~CONTRACTOR and ADMINISTRATOR P&Ps as they pertain to the services provided in the~~  
 12 ~~Agreement. CONTRACTOR shall obtain signature confirmation of the P&P Training for each staff~~  
 13 ~~member and place in their personnel files.~~

14 ~~— B. CONTRACTOR shall ensure that Annual Compliance Training is completed as set forth in~~  
 15 ~~Subparagraph C. of the Compliance Paragraph of the Agreement.~~

16 ~~— C. CONTRACTOR shall attend regular meetings with ADMINISTRATOR to discuss contractual~~  
 17 ~~and other issues related to, but not limited to, compliance with P&P, program services, and performance~~  
 18 ~~objectives and outcomes.~~

19 ~~— D. CONTRACTOR shall provide effective administrative management of the budget, staffing,~~  
 20 ~~recording, and reporting portion of the Agreement with the COUNTY. If administrative responsibilities~~  
 21 ~~are delegated to subcontractors, CONTRACTOR must ensure that subcontractor(s) possess the~~  
 22 ~~qualifications and capacity to perform all delegated responsibilities. The responsibilities include, but are~~  
 23 ~~not limited to, the following:~~

24 ~~—— 1. Designate the responsible position(s) in your organization for managing the funds allocated~~  
 25 ~~to program;~~

26 ~~—— 2. Maximize use of allocated funds;~~

27 ~~—— 3. Ensure timely and accurate reporting of monthly expenditures;~~

28 ~~—— 4. Maintain appropriate staffing levels;~~

29 ~~—— 5. Request budget and/or staffing modifications to the Agreement;~~

30 ~~—— 6. Effectively communicate and monitor the program for its success;~~

31 ~~—— 7. Track and report expenditures electronically;~~

32 ~~—— 8. Maintain electronic and telephonic communication between key staff and the~~  
 33 ~~ADMINISTRATOR; and~~

34 ~~—— 9. Act quickly to identify and solve problems.~~

35 ~~— E. CONTRACTOR shall document all adverse incidents affecting the physical and/or emotional~~  
 36 ~~welfare of Participants, including but not limited to serious physical harm to self or others, serious~~  
 37 ~~destruction of property, developments, etc., and which may raise liability issues with COUNTY, and~~

1 shall advise ADMINISTRATOR of any special incidents, conditions, or issues that adversely affect the  
2 quality or accessibility of Participant related services provided by, or under contract with COUNTY, as  
3 set forth in Subparagraph C. of the Notices Paragraph of the Agreement.

4 ~~— F. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources,  
5 with respect to any person served under the terms of the Agreement. Further, CONTRACTOR agrees  
6 that the funds provided hereunder shall not be used to promote, directly or indirectly, any religion,  
7 religious creed or cult, denomination or sectarian institution, or religious belief.~~

8 ~~— G. CONTRACTOR shall not engage in, or permit any of its employees, subcontractors, or  
9 volunteers to conduct research activity on Participants without obtaining prior written authorization  
10 from ADMINISTRATOR.~~

11 ~~— H. ADMINISTRATOR shall assist CONTRACTOR in monitoring CONTRACTOR's program to  
12 ensure compliance with Units of Service standards, productivity, and performance measures.~~

13 ~~— I. ADMINISTRATOR shall monitor CONTRACTOR's completion of corrective action plans.~~

14 ~~— J. ADMINISTRATOR shall monitor CONTRACTOR's compliance with ADMINISTRATOR's  
15 P&Ps.~~

16 ~~— K. CONTRACTOR and ADMINISTRATOR may mutually agree in writing, to modify the  
17 Responsibilities Paragraph of this Exhibit A to the Agreement.~~

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EXHIBIT B  
TO AGREEMENT FOR PROVISION OF  
SCHOOL-BASED BEHAVIORAL HEALTH INTERVENTION AND SUPPORT SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
PHOENIX HOUSE ORANGE COUNTY, INC.  
JULY 1, 2015 THROUGH JUNE 30, 2016

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

//

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

#### 4 B. DEFINITIONS

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

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

##### 11 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

37 //

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

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

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

9 **D. SECURITY RULE**

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

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

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

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

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

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

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

37 //

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

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

7 **E. DATA SECURITY REQUIREMENTS**

8 **1. Personal Controls**

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

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

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

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

34 **2. Technical Security Controls**

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

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

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

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

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

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

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

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



1 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 DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may  
8 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 3  
25 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.

37 //

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

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

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

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

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

## 22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 1) The Disclosure is required by law; or

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

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

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

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

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

### 28 H. PROHIBITED USES AND DISCLOSURES

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

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

I. OBLIGATIONS OF COUNTY

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

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

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

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

J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

b. CONTRACTOR shall retain no copies of the PHI.

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

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

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EXHIBIT C  
TO AGREEMENT FOR PROVISION OF  
SCHOOL-BASED BEHAVIORAL HEALTH INTERVENTION AND SUPPORT SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
PHOENIX HOUSE ORANGE COUNTY, INC.  
JULY 1, 2015 THROUGH JUNE 30, 2016

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

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

**A. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

## 7 B. TERMS OF AGREEMENT

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

### 12 2. Responsibilities of CONTRACTOR

13 CONTRACTOR agrees:

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

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

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

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

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

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



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

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

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

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

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

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

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

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