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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2019 through June 30, 2022

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

Period Two means the period from July 1, 2020 through June 30, 2021

Period Three means the period from July 1, 2021 through June 30, 2022

Aggregate Maximum Obligation:

Period One Aggregate Maximum Obligation: \$ 11,913,726

Period Two Aggregate Maximum Obligation: 12,330,706

Period Three Aggregate Maximum Obligation 12,762,281

TOTAL AGGREGATE MAXIMUM OBLIGATION: \$37,006,713

Basis for Reimbursement: Fee for Service

Payment Method: Monthly in Arrears

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: [Name of Organization]
[address line 1]
[address line 2]
[name of person who will sign agreement]
[contact e-mail]

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

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

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

10
11 **II. ALTERATION OF TERMS**

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

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

19
20 **III. ASSIGNMENT OF DEBTS**

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

28
29 **IV. COMPLIANCE**

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

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

36 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
37 compliance program, code of conduct and any compliance related policies and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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V. CONFIDENTIALITY

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

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 files, or to exchange information regarding specific Clients 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 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. CONFLICT OF INTEREST

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their duties.

VII. COST REPORT

A. CONTRACTOR shall submit a Cost Report to COUNTY no later than **sixty (60)** calendar days following termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance

1 with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions
2 Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between
3 programs, cost centers, services, and funding sources in accordance with such requirements and
4 consistent with prudent business practice, which costs and allocations shall be supported by source
5 documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon
6 reasonable notice.

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

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

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

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

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

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

1 calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed
2 CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

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

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

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

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

25
26 Signed _____
27 Name _____
28 Title _____
29 Date _____"

30
31
32 **VIII. 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 agrees that if there is a change or transfer in ownership of CONTRACTOR's
2 business prior to completion of this Agreement, and COUNTY agrees to an assignment of the
3 Agreement, the new owners shall be required under the terms of sale or other instruments of transfer to
4 assume CONTRACTOR's duties and obligations contained in this Agreement and complete them to the
5 satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in
6 part, without the prior written consent of COUNTY.

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

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

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

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

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

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

35 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
36 means of subcontracts, provided such subcontractors are approved in advance by ADMINISTRATOR,
37 meet the requirements of this Agreement as they relate to the service or activity under subcontract,

1 include any provisions that ADMINISTRATOR may require, and are authorized in writing by
2 ADMINISTRATOR prior to the beginning of service delivery.

3 1. After approval of the subcontractor, ADMNISTRATOR may revoke the approval of the
4 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor
5 subsequently fails to meet the requirements of this Agreement or any provisions that
6 ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported
7 by CONTRACTOR.

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

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

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

15 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's
16 status with respect to name changes that do not require an assignment of the Agreement.
17 CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party
18 to any litigation against COUNTY, or a party to litigation that may reasonably affect the
19 CONTRACTOR's performance under the Contract, as well as any potential conflicts of interest between
20 CONTRACTOR and County that may arise prior to or during the period of Agreement performance.
21 While CONTRACTOR will be required to provide this information without prompting from COUNTY
22 any time there is a change in CONTRACTOR's name, conflict of interest or litigation status,
23 CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever
24 requested by COUNTY.

25
26 **IX. DISPUTE RESOLUTION**

27 A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the
28 dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a
29 reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be
30 brought to the attention of the COUNTY Purchasing Agency by way of the following process:

31 1. CONTRACTOR shall submit to the COUNTY Purchasing Agency a written demand for a
32 final decision regarding the disposition of any dispute between the Parties arising under, related to, or
33 involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final
34 decision.

35 2. CONTRACTOR's written demand shall be fully supported by factual information, and, if
36 such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the
37 demand a written statement signed by an authorized representative indicating that the demand is made in

1 | good faith, that the supporting data are accurate and complete, and that the amount requested accurately
2 | reflects the Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

3 | B. Pending the final resolution of any dispute arising under, related to, or involving this
4 | Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via
5 | this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR's failure
6 | to proceed diligently shall be considered a material breach of this Agreement.

7 | C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and
8 | shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a
9 | decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed
10 | a final decision adverse to CONTRACTOR's contentions.

11 | D. This Agreement has been negotiated and executed in the State of California and shall be
12 | governed by and construed under the laws of the State of California. In the event of any legal action to
13 | enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent
14 | jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit
15 | to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the
16 | Parties specifically agree to waive any and all rights to request that an action be transferred for
17 | adjudication to another county.

18 |
19 | **X. EMPLOYEE ELIGIBILITY VERIFICATION**

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

29 |
30 | **XI. FACILITIES, PAYMENTS AND SERVICES**

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

36 | B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
37 | supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Total Maximum

1 Obligation for the appropriate Period as well as the Aggregate Maximum Obligation. The reduction to
2 the Maximum Obligation shall be in an amount proportionate to the number of days in which
3 CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.
4 CONTRACTOR shall, at its own expense, provide and maintain the organizational and administrative
5 capabilities required to carry out its duties and responsibilities under this Agreement and in accordance
6 with all the applicable statutes and regulations pertaining to Short Doyle Providers.

7
8 **XII. INDEMNIFICATION AND INSURANCE**

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

19 B. COUNTY agrees to indemnify, defend and hold CONTRACTOR, its officers, employees,
20 agents, directors, members, shareholders and/or affiliates harmless from any claims, demands, including
21 defense costs, or liability of any kind or nature, including but not limited to personal injury or property
22 damage, arising from or related to the services, products or other performance provided by COUNTY
23 pursuant to this Agreement. If judgment is entered against COUNTY and CONTRACTOR by a court of
24 competent jurisdiction because of the concurrent active negligence of CONTRACTOR, COUNTY and
25 CONTRACTOR agree that liability will be apportioned as determined by the court. Neither party shall
26 request a jury apportionment. Prior to the provision of services under this Agreement, CONTRACTOR
27 agrees to purchase all required insurance at CONTRACTOR’s expense, including all endorsements
28 required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have
29 been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance,
30 and endorsements on deposit with COUNTY during the entire term of this Agreement. In addition, all
31 subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain
32 insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

33 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
34 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR’s insurance as an
35 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
36 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
37 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the

1 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
2 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
3 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
4 by COUNTY representative(s) at any reasonable time.

5 D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand
6 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of
7 CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved,
8 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this
9 Agreement, agrees to all of the following:

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

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

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

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

21 F. QUALIFIED INSURER

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

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

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

32 **Coverage**

Minimum Limits

33
34 Commercial General Liability

\$5,000,000 per occurrence

\$5,000,000 aggregate

35
36
37 //

1	Automobile Liability including coverage	\$1,000,000 per occurrence
2	for owned, non-owned and hired vehicles	
3		
4	Workers' Compensation	Statutory
5		
6	Employers' Liability Insurance	\$1,000,000 per occurrence
7		
8	Professional Liability Insurance	\$2,000,000 per claims-made
9		\$4,000,000 aggregate
10		
11	Network Security & Privacy Liability	\$1,000,000 per claims-made
12		
13	Sexual Misconduct Liability	\$1,000,000 per occurrence
14		

15 H. REQUIRED COVERAGE FORMS

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

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

20 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

37 //

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

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

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

11 M. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
12 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
13 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
14 breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate this
15 Agreement.

16 N. If CONTRACTOR's Professional Liability, and Network Security & Privacy Liability are
17 "Claims -Made" policies, CONTRACTOR shall agree to maintain coverage for two (2) years following
18 the completion of the Agreement.

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

21 P. Insurance certificates should be forwarded to the agency/department address listed on the
22 solicitation.

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

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

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

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

1 U. SUBMISSION OF INSURANCE DOCUMENTS

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

3 a. Prior to the start date of this Agreement.

4 b. No later than the expiration date for each policy.

5 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
6 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

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

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

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

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

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

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

25 //

26 **XIII. INSPECTIONS AND AUDITS**

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

37 //

1 1. These audits, reviews, evaluations, or examinations may include, but are not limited to, the
2 following:

- 3 a. Level and quality of care, including the necessity and appropriateness of the services
4 provided.
- 5 b. Internal procedures for assuring efficiency, economy, and quality of care.
- 6 c. Compliance with COUNTY Client Grievances Procedures.
- 7 d. Financial records when determined necessary to protect public funds.

8 2. COUNTY shall provide CONTRACTOR with at least seventy-two (72) hours' notice of
9 such inspections or evaluations. Unannounced inspections, evaluations, or requests for information may
10 be made in those situations where arrangement of an appointment beforehand is not possible or is
11 inappropriate due to the nature of the inspection or evaluation.

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

16 C. AUDIT RESPONSE

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

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

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

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

36 //

37 //

XIV. LICENSES AND LAWS

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

B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

1. ARRA of 2009.
2. Trafficking Victims Protection Act of 2000.
3. WIC, Division 5, Community Mental Health Services.
4. WIC, Division 6, Admissions and Judicial Commitments.
5. WIC, Division 7, Mental Institutions.
6. HSC, §§1250 et seq., Health Facilities.
7. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
8. CCR, Title 9, Rehabilitative and Developmental Services.

- 1 9. CCR, Title 17, Public Health.
- 2 10. CCR, Title 22, Social Security.
- 3 11. CFR, Title 42, Public Health.
- 4 12. CFR, Title 45, Public Welfare.
- 5 13. USC Title 42. Public Health and Welfare.
- 6 14. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 7 15. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 8 16. 42 USC §1857, et seq., Clean Air Act.
- 9 17. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 10 18. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 11 19. Policies and procedures set forth in Mental Health Services Act.
- 12 20. Policies and procedures set forth in DHCS Letters.
- 13 21. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable.
- 14 22. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
- 15 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

16
17 **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

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

XVI. MAXIMUM OBLIGATION

A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all agreements for Mental Health Inpatient Services during Period One, Period Two and Period Three are as specified in the Referenced Contract Provisions of this Agreement. This specific Agreement with CONTRACTOR is only one of several agreements to which this Aggregate Maximum Obligation applies. It therefore is understood by the Parties that reimbursement to CONTRACTOR will be only a fraction of these Aggregate Maximum Obligations.

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

XVII. MINIMUM WAGE LAWS

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

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

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

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

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

//

1 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,
2 gender identity, gender expression, age, sexual orientation, or military and veteran status.

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

5
6 **XIX. NOTICES**

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

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

12 2. When faxed, transmission confirmed;

13 3. When sent by Email; or

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

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

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

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

26
27 **XX. NOTIFICATION OF DEATH**

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

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

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

36 2. WRITTEN NOTIFICATION

37 a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send

1 via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming
2 aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

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

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

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

12
13 **XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

21
22 **XXII. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

36 4. CONTRACTOR shall ensure the maintenance of medical records required by §70747
37 through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical

1 necessity of the service, and the quality of care provided. Records shall be maintained in accordance
2 with §51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.

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

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

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

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

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

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

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

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

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

- 36 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit
37 or site visit.

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

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

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

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

12
13 **XXIII. RESEARCH AND PUBLICATION**

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

17
18 **XXIV. REVENUE**

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

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

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

37 //

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

3
4 **XXV. SEVERABILITY**

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

10
11 **XXVI. SPECIAL PROVISIONS**

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

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

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

- 35 1. Funding travel or training (excluding mileage or parking).
- 36 2. Making phone calls outside of the local area unless documented to be directly for the
37 purpose of Client care.

- 1 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 2 4. Purchase of artwork or other items that are for decorative purposes and do not directly
- 3 contribute to the quality of services to be provided pursuant to this.

4
5 **XXVII. STATUS OF CONTRACTOR**

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

17
18 **XXVIII. TERM**

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

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

28
29 **XXIX. TERMINATION**

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

32 B. CONTRACTOR shall be responsible for meeting all programmatic and administrative
33 contracted objectives and requirements as indicated in this Agreement. CONTRACTOR shall be subject
34 to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not
35 meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe
36 as determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is
37 resolved and/or the Agreement could be terminated.

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

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

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

21 E. CONTINGENT FUNDING

- 22 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
23 a. The continued availability of federal, state and county funds for reimbursement of
24 COUNTY's expenditures, and
25 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
26 approved by the Board of Supervisors.
- 27 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
28 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
29 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
30 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

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

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

37 //

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

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

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

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

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

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

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

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

22 9. Provide written notice of termination of services to each Client being served under this
23 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
24 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars
25 day period.

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

28
29 **XXX. THIRD PARTY BENEFICIARY**

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

32 //
33 //
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XXXI. WAIVER OF DEFAULT OR BREACH

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

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

3
4 PROVIDER NAME

5
6 BY: _____ DATED: _____

7
8 TITLE: _____

9
10
11 BY: _____ DATED: _____

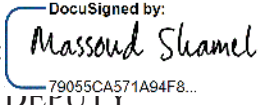
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13 TITLE: _____

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16 COUNTY OF ORANGE

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18
19 BY: _____ DATED: _____

20 HEALTH CARE AGENCY

21
22
23
24 APPROVED AS TO FORM
25 OFFICE OF THE COUNTY COUNSEL
26 ORANGE COUNTY, CALIFORNIA

27
28 BY:  _____ DATED: 4/23/2019
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DEPUTY

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

1 EXHIBIT A
2 TO AGREEMENT FOR PROVISION OF
3 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 «UC_NAME»
8 «UC_DBA»
9 JULY 1, 2017 THROUGH JUNE 30, 2019

10
11 **I. COMMON TERMS AND DEFINITIONS**

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

14 1. Additional Income Source means Additional Income Source and refers to all income other
15 than SSI and includes such sources of income as retirement income, disability income, trust fund income,
16 SSI, Veteran’s Affairs disability income, etc.

17 2. Client Day means one (1) calendar day during which CONTRACTOR provides all of the
18 services described hereunder, including the day of admission and excluding the day of discharge. If
19 admission and discharge occur on the same day, one (1) Client Day shall be charged.

20 3. Client or Consumer means an individual, referred by COUNTY or enrolled in
21 CONTRACTOR’s program for services under the Agreement, who is dealing with a chronic mental
22 illness.

23 4. Diagnosis means the definition of the nature of the Client's disorder. When formulating the
24 diagnosis of Client, CONTRACTOR shall use the diagnostic codes as specified in the most current
25 edition of the DSM published by the American Psychiatric Association.

26 5. HIPAA means Health Insurance Portability and Accountability Act and refers to the federal
27 law that establishes standards for the privacy and security of health information, as well as standards for
28 electronic data interchange of health information. HIPAA has two main goals, as its name implies:
29 making health insurance more portable when persons change employers, and making the health care
30 system more accountable for costs-trying especially to reduce waste and fraud.

31 6. LPS means Lanterman-Petris Short and refers to the Act that went into effect July 1, 1972 in
32 California. The Act in effect ended all hospital commitments by the judiciary system, except in the case
33 of criminal sentencing (e.g. convicted sexual offenders) and those who were "gravely disabled" defined
34 as unable to obtain food, clothing, or shelter. It expanded the evaluative power of psychiatrists and
35 created provisions and criteria for involuntary detentions.

36 //

37 //

1 7. Medical Necessity means the requirements as defined in the MHP Medical Necessity for
2 Medi-Cal reimbursed Specialty Mental Health Services that includes Diagnosis, Impairment Criteria and
3 Intervention Related Criteria.

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

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

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

17 9. Rehabilitation Service means an activity which includes assistance in improving,
18 maintaining, or restoring a Client’s or group of Clients’ functional skills, daily living skills, social and
19 leisure skills, grooming and personal hygiene skills, meal preparation skills, support resources and/or
20 medication education.

21 10. Therapy means a service activity which is a therapeutic intervention that focuses primarily
22 on symptom reduction as a means to improve functional impairments. Therapy may be delivered to an
23 individual or group of beneficiaries which may include family therapy in which the beneficiary is
24 present.

25 11. NPI means National Provider Identifier and refers to the standard unique health identifier
26 that was adopted by the Secretary of HHS under HIPAA for health care providers. All HIPAA covered
27 healthcare providers, individuals and organizations must obtain an NPI for use to identify themselves in
28 HIPAA standard transactions. The NPI is assigned for life.

29 12. NPP means Notice of Privacy Practices and refers to a document that notifies individuals of
30 uses and disclosures of PHI that may be made by or on behalf of the health plan or health care provider
31 as set forth in the HIPAA.

32 13. PHI means Protected Health Information and refers to individually identifiable health
33 information usually transmitted by electronic media, maintained in any medium as defined in the
34 regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is
35 created or received by a covered entity and relates to the past, present, or future physical or mental health
36 or condition of an individual, provision of health care to an individual, or the past, present, or future
37 payment for health care provided to an individual.

1 14. Psychiatrist means an individual who meets the minimum professional and licensure
2 requirements set forth in Title 9, CCR, Section 623.

3 15. Psychologist means an individual who meets the minimum professional and licensure
4 requirements set forth in Title 9, CCR, Section 624.

5 16. Recovery means a process of change through which individuals improve their health and
6 wellness, live a self-directed life and strive to reach their full potential, and identifies four major
7 dimensions to support Recovery in life:

8 a. Health: Overcoming or managing one’s disease(s) as well as living in a physically and
9 emotionally healthy way;

10 b. Home: A stable and safe place to live;

11 c. Purpose: Meaningful daily activities, such as a job, school, volunteerism, family
12 caretaking, or creative endeavors, and the independence, income, and resources to participate in society;
13 and

14 d. Community: Relationships and social networks that provide support, friendship, love,
15 and hope.

16 17. Referral means providing the effective linkage of a Client to another service, when
17 indicated.

18 18. SNF/STP means Skilled Nursing Facility with Special Treatment Program and refers to a
19 facility certified by the Department of Health Care Services (DHCS) to provide 24-hour/day skilled
20 nursing care and supervision and at least 27 hours of programming to Clients with a primary psychiatric
21 diagnosis, who may also have co-existing medical conditions. In most cases, Clients are conserved under
22 LPS.

23 19. SSI/SSP means Social Security Income/Supplemental Security Payment and refers to
24 revenue resources paid to an eligible Client, or the Client’s payee, by the federal Social Security
25 Administration.

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

28
29 **II. ISSUE RESOLUTION**

30 A. CONTRACTOR agrees that for resolution of issues between COUNTY and CONTRACTOR,
31 with respect to the implementation and operation of the Agreement or COUNTY’s P&P regarding
32 services described herein, the following sequential steps will be followed:

33 1. CONTRACTOR shall routinely utilize all informal communication processes and methods
34 with ADMINISTRATOR including, but not limited to, telephone, email, and fax communication,
35 written correspondence and meetings, to resolve any issues or problems regarding the implementation
36 and operation of the Agreement or COUNTY’s P&P regarding services described herein.

37 //

1 2. CONTRACTOR agrees that if the parties are unable to resolve the issue, CONTRACTOR
2 shall give written notice to ADMINISTRATOR setting forth, in specific terms, the existence and nature
3 of any unresolved matter or concern related to the purposes and obligations of the Agreement.
4 ADMINISTRATOR shall be given fifteen (15) calendar days following such notice to obtain resolution
5 of any issue(s) identified in this manner. CONTRACTOR agrees that by mutual consent this period of
6 time may be extended to thirty (30) calendar days.

7 3. CONTRACTOR agrees that if the parties are still unable to obtain resolution of the issue,
8 they shall submit a joint written Statement describing the facts of the issue, within thirty (30) calendar
9 days after the written notice described above to COUNTY’s Director of Behavioral Health, or designee,
10 for final resolution.

11 B. The rights and remedies provided by this Paragraph are in addition to those provided by law to
12 either party.

13 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Issue
14 Resolution Paragraph of this Exhibit B to the Agreement.

15
16 **III. PATIENTS’ RIGHTS**

17 A. CONTRACTOR shall post the current DHCS Patients’ Rights poster as well as the local MHP
18 Complaint and Grievance posters in all threshold languages in locations readily available to patients and
19 staff and have complaint forms and complaint envelopes readily accessible to patients.

20 B. In addition to those processes provided by COUNTY and the resident County, CONTRACTOR
21 shall have complaint resolution and grievance processes approved by COUNTY, to which the beneficiary
22 shall have access.

23 1. CONTRACTOR’s complaint resolution processes shall emphasize informal, easily
24 understood steps designed to resolve disputes as quickly and simply as possible in all threshold
25 languages.

26 2. CONTRACTOR’s complaint resolution and grievance processes shall incorporate
27 COUNTY’s and the resident County’s grievance, patients’ rights, and utilization management guidelines
28 and procedures.

29 C. Complaint Resolution and Grievance Process - COUNTY shall support complaint and grievance
30 procedures in concert with the resident County that shall include the components outlined below. The
31 resident County will handle such complaints that may include allegations of denial of rights,
32 dissatisfaction with services or with the quality of care, or dissatisfaction with the condition of the
33 physical plant. COUNTY will handle such complaints regarding access to care or regarding COUNTY’s
34 Public Administrator/Public Guardian Office services.

35 1. Complaint Resolution. This process will specifically address and attempt to resolve Client
36 complaints and concerns at CONTRACTOR’s facility.

37 //

1 2. Formal Grievance. When the Client's complaint is not resolved at CONTRACTOR's
2 facility and the Client or Client representative requests it, the complaint becomes a formal grievance.
3 The request is made to the respective Resident County or ADMINISTRATOR and represents the first
4 step in the formal grievance process.

5 3 Title IX Rights Advocacy. This process may be initiated by a Client who registers a
6 statutory rights violation or a denial or abuse complaint with COUNTY Patients' Rights Office. The
7 Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply,
8 which involve COUNTY Behavioral Health Director and the State Patients' Rights Office.

9 D. CONTRACTOR agrees that Clients have recourse to initiate a complaint to CONTRACTOR,
10 appeal to the respective resident County or COUNTY's Patients' Rights Office, to file a formal
11 grievance, file a Title IX complaint. The Patients' Advocate shall advise and assist the Client,
12 investigate the cause of the complaint or grievance, and attempt to resolve the matter.

13 E. CONTRACTOR agrees that no provision of the Agreement shall be construed to replace or
14 conflict with the duties of COUNTY Patients' Rights Office pursuant to WIC Section 5500.

15 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the
16 Patients' Rights Paragraph of this Exhibit B to the Agreement.

17
18 **IV. PAYMENTS**

19 **A. COUNTY REIMBURSED IMD RATES**

20 1. COUNTY shall pay CONTRACTOR monthly, in arrears, at the prevailing SNF/STP daily
21 rate, as determined by the California DHCS; however, the total of all such payments to CONTRACTOR
22 and all other providers of mental health SNF/STP services shall not exceed COUNTY's Aggregate
23 Maximum Obligation as specified in the Referenced Contract Provisions of the Agreement.

24 a. COUNTY may adjust the SNF/STP daily rate of reimbursement as directed by the
25 DHCS.

26 b. COUNTY will reimburse CONTRACTOR only for services provided to Clients who
27 are certified by COUNTY as eligible to receive services and for whom there is a current COUNTY
28 treatment assessment/certification in place.

29 2. COUNTY shall collect SSI/SSP revenue. CONTRACTOR shall collect additional income
30 sources and all other revenues due the Client, conservator/guardian, or legally responsible person to
31 determine a Client share of cost. CONTRACTOR shall ensure that the Client share of cost is clearly
32 stated on the CONTRACTOR's invoice. CONTRACTOR shall deduct the Client's share of costs from
33 the amount owed to CONTRACTOR by the COUNTY.

34 a. ADMINISTRATOR shall review and approve Client's revenue and share of cost.
35 ADMINISTRATOR may adjust CONTRACTOR's monthly invoice if the appropriate revenue is not
36 stated and/or the share of cost has not been appropriately deducted from the amount due from the
37 COUNTY.

1 b. ADMINISTRATOR may authorize CONTRACTOR to use a portion of the revenue for
2 non-covered costs such as personal and/or incidental costs for the Client's care or personal needs.
3 ADMINISTRATOR shall monitor such costs and may adjust the invoice to ensure that the appropriate
4 costs are deducted from the amount due from the COUNTY.

5 B. CONTRACTORS that provide Specialized Services in addition to SNF or SNF/STP Services,
6 shall be reimbursed the prevailing SNF/STP daily rate and the following per diem rate for each
7 Supplemental Service:

- 8 a. Hearing Impaired/Psychiatric Services, «HEAR_IMP_RATE»
- 9 b. Specialized Nursing Care Services, «SPECIALIZED_NURSING_RATE»
- 10 c. Subacute Services, «SUBACUTE_RATE»;
- 11 d. Subacute-Medical Services, «SUBACUTE_MED_RATE»;
- 12 e. Augmented Treatment Services, «AUG_TRTMT_RATE»;

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

18 C. MEDI-CAL REIMBURSED SNF/STP RATES – CONTRACTORS reimbursed by Medi-Cal for
19 SNF/STP Services provided in accordance with the Services Paragraph of this Exhibit B to the
20 Agreement, shall invoice the State directly for those services. COUNTY shall not pay CONTRACTOR
21 for SNF/STP Services paid directly to CONTRACTOR from the State.

22 D. MEDI-CAL REIMBURSED SNF RATES – CONTRACTORS reimbursed by Medi-Cal for SNF
23 Services provided in accordance with the Services Paragraph of this Exhibit B to the Agreement, shall
24 invoice the State directly for those services. COUNTY shall not pay CONTRACTOR for SNF Services
25 paid directly to CONTRACTOR from the State.

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

28 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
29 Payments Paragraph of this Exhibit B to the Agreement.

30
31 **V. REPORTS**

32 A. CONTRACTOR shall report all special incidents to ADMINISTRATOR and shall submit a
33 written special incident report referred to as a "Notable Incident Form" in accordance with the Notices
34 Paragraph of the Agreement. Special incidents shall include, but are not limited to, a Client's suicide or
35 attempted suicide, elopement or absence without leave, serious injury, death, criminal behavior including
36 arrests with or without conviction, positive test results for substance use from urine screenings, or any
37 other incidents which may expose COUNTY or CONTRACTOR to liability.

1 B. CONTRACTOR shall provide COUNTY copies of all DHCS surveys, including any plans of
2 correction.

3 C. STAFFING – CONTRACTOR shall submit to ADMINISTRATOR, on a quarterly basis, a list
4 of persons who provide services under the Agreement and their job descriptions. The staff list shall state
5 the employee name, job title, profession degree, and license number, if applicable.

6 D. PROGRAMMATIC – CONTRACTOR shall submit monthly programmatic reports to
7 ADMINISTRATOR which shall be received no later than fourteen (14) calendar days following the end
8 of the month being reported. These reports shall be on a form acceptable to, or provided by
9 ADMINISTRATOR and shall evaluate each Client’s participation and functioning in CONTRACTOR’s
10 psycho-social rehabilitation program, and readiness for discharge.

11 E. CONTRACTOR shall ensure that all staff are trained and have a clear understanding of all
12 P&P’s. CONTRACTOR shall provide signature confirmation of the P&P training for each staff member
13 and place it in their personnel files.

14 F. CONTRACTOR shall obtain a NPI.

15 1. All HIPAA covered healthcare providers, individuals and organizations must obtain a NPI
16 for use to identify themselves in HIPAA standard transactions. The NPI is assigned for life.

17 2. CONTRACTOR shall ensure that each employee who is required to obtain a NPI to provide
18 services under the Agreement, will obtain a NPI upon commencement of the Agreement or prior to
19 providing services under the Agreement. CONTRACTOR shall report to ADMINISTRATOR, on a
20 form approved or supplied by ADMINISTRATOR, all NPIs as soon as they are available.

21 G. COUNTY, as the MHP, shall provide the NPP to Client, conservator/guardian, or legally
22 responsible person at the time of the first service provided under the Agreement to individuals who are
23 covered by Medi-Cal and have not previously received services at a COUNTY operated clinic.
24 COUNTY shall also provide, upon request from Client, conservator/guardian, or legally responsible
25 person the NPP for the COUNTY, as the MHP, to any individual who received services under the
26 Agreement.

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

30 **VI. SERVICES**

31 CONTRACTOR agrees to provide the following Psychiatric Skilled Nursing Facility services,
32 hereunder marked with an X, pursuant to the terms and conditions specified in the Agreement and in
33 accordance with Exhibit B to the Agreement for the provision of such services by and between
34 COUNTY and CONTRACTOR dated July 1, 2017 as hereinafter indicated. CONTRACTOR and
35 COUNTY may mutually agree, in writing, to add or delete services to be provided by CONTRACTOR.

36 //

37 //

	<u>PERIOD ONE</u>	<u>PERIOD TWO</u>	<u>PERIOD THREE</u>
1 Skilled Nursing Facility Services	<u>«OP_REC_1»</u>	<u>«OP_REC_2»</u>	<u>«OP_REC_3»</u>
2			
3			
4 Skilled Nursing Facility Services with			
5 Special Treatment Program (SNF/STP)	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
6 Services			
7			
8 <u>Specialized Services</u>			
9 Hearing Impaired/Psychiatric	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
10 Services			
11 Specialized Nursing Care Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
12 Subacute Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
13 Subacute Medical Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
14 Augmented Treatment Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
15			

VII. TYPE OF PAYMENTS

CONTRACTOR agrees to the compensation marked with an “X” below and as specified in Subparagraph IV of Exhibit B to the Agreement for the provision of Psychiatric Skilled Nursing Facility services by and between COUNTY and CONTRACTOR.

	<u>PERIOD ONE</u>	<u>PERIOD TWO</u>	<u>PERIOD THREE</u>
21 COUNTY Reimbursed IMD Rates	<u>«OP_REC_1»</u>	<u>«OP_REC_2»</u>	<u>«OP_REC_3»</u>
22			
23			
24 Medi-Cal Reimbursed SNF/STP Rates	<u>«OP_REC_1»</u>	<u>«OP_REC_2»</u>	<u>«OP_REC_3»</u>
25			
26 Medi-Cal Reimbursed SNF Rates	<u>«OP_REC_1»</u>	<u>«OP_REC_2»</u>	<u>«OP_REC_3»</u>
27			
28 <u>Specialized Services Rates</u>			
29 Hearing Impaired/Psychiatric	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
30 Services			
31 Specialized Nursing Care Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
32 Subacute Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
33 Subacute Medical Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
34 Augmented Treatment Services	<u>«SSI_OR_1»</u>	<u>«SSI_OR_2»</u>	<u>«SSI_OR_3»</u>
35 //			
36 //			
37 //			

1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 «UC_NAME»
 8 «UC_DBA»
 9 JULY 1, 2019 THROUGH JUNE 30, 2022

10
11 **I. BUSINESS ASSOCIATE CONTRACT**

12 **A. GENERAL PROVISIONS AND RECITALS**

13 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
14 Definitions Paragraph of Exhibit A to the Agreement or in Subparagraph B. below, shall have the same
15 meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at
16 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

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

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

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

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

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

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

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and P&Ps, to manage the selection,
5 development, implementation, and maintenance of security measures to protect ePHI and to manage the
6 conduct of CONTRACTOR's workforce in relation to the protection of that information.

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

9 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 12. “Secretary” shall mean the Secretary of the Department of HHS or his or her designee.

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

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

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

23 16. “Technical safeguards” means the technology and the P&Ps for its use that protect ePHI and
24 control access to it.

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

35 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
36 a time and manner to be determined by COUNTY, that information collected in accordance with the
37 //

1 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
2 Disclosures of PHI in accordance with 45 CFR § 164.528.

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

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

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

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

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

35 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
36 Associate Contract when requested by COUNTY pursuant to this Subparagraph C.; or

37 //

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

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

7 D. SECURITY RULE

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

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

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

24 a. Complying with all of the data system security precautions listed under Subparagraph
25 E., below;

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

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

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

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

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

4 E. DATA SECURITY REQUIREMENTS

5 1. Personal Controls

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

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

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

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

31 2. Technical Security Controls

32 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
33 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
34 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
35 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
36 COUNTY.

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

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

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

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

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

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

- 36 1) Upper case letters (A-Z)
- 37 2) Lower case letters (a-z)

1 3) Arabic numerals (0-9)

2 4) Non-alphanumeric characters (punctuation symbols)

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

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

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

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

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

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

33 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and
34 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
35 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
36 comprehensive intrusion detection and prevention solution.

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3. Audit Controls

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

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

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

4. Business Continuity/Disaster Recovery Control

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

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

5. Paper Document Controls

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

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

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

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

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

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

19 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

29 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
30 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
31 notification within twenty-four (24) hours of the oral notification.

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

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

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

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

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

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

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

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

14 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
15 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
16 COUNTY.

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

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

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

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

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

1 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

11 1) The Disclosure is required by law; or

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

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

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

22 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
23 consistent with the minimum necessary P&Ps of COUNTY.

24 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
25 required by law.

26 H. PROHIBITED USES AND DISCLOSURES

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

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

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1 I. OBLIGATIONS OF COUNTY

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

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

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

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

13 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 ADULT MENTAL HEALTH PSYCHIATRIC SKILLED NURSING FACILITY SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 «UC_NAME»
 «UC_DBA»
 JULY 1, 2019 THROUGH JUNE 30, 2022

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

6 B. TERMS OF AGREEMENT

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

11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

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

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

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

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

30 2) Providing a level and scope of security that is at least comparable to the level and
31 scope of security established by the 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 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
35 CONTRACTOR shall also comply with the substantive privacy and security requirements in the
36 CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and
37 DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security

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

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

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

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

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

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

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

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Agenda Item



AGENDA STAFF REPORT

ASR Control 19-000374

MEETING DATE: 05/21/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Health Care Agency (Pending)
DEPARTMENT CONTACT PERSON(S): Annette Mugrditchian (714) 834-5026
 Jeff Nagel (714) 834-7024

SUBJECT: Psychiatric Skilled Nursing Facility and Intensive Residential Services

CEO CONCUR Pending Review	COUNTY COUNSEL REVIEW Pending Review	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** FY 2019-20
 \$12,274,690
 FY 2020-21 \$12,704,304
 FY 2021-22 \$13,148,955

Staffing Impact: No **# of Positions:** **Sole Source:** No
Current Fiscal Year Revenue: N/A
Funding Source: GF: 12%, State: 88% (Mental Health Realignment, Vehicle License Fee, Managed Care, Purpose Restrict Rev-Int) **County Audit in last 3 years:** No

Prior Board Action: 03/28/17 #16, 05/24/2016 #57, 05/06/2014 #24

RECOMMENDED ACTION(S):

1. Approve the Master Agreement with various providers for provision of Adult Mental Health Psychiatric Skilled Nursing Facility Services for the period of July 1, 2019, through June 30, 2022, for a total aggregate maximum obligation not to exceed \$37,006,714.
2. Approve the Agreement with Anne Sippi Clinic Treatment Group for provision of Adult Mental Health Intensive Residential Services for the period of July 1, 2019, through June 30, 2022, for a total maximum obligation not to exceed \$1,121,235.
3. Authorize the Health Care Agency Director, or designee, to exercise a contingency contract cost increase not to exceed \$1,191,372 which is 10 percent of the first year funding of the Master Agreement for Recommended Action #1, to be used over the entire term of the Master Agreement and within the scope of work set forth in the Agreement, pursuant to Contract Policy Manual Section 3.4-114. The contingency provision would be exercised in the event there is an increase in the projected services needed for the clients being served.

4. Authorize the Health Care Agency Director, or designee, to exercise a contingency contract cost increase in the amount not to exceed 10 percent of the first year funding of the Agreement for Recommended Action #2, to be used over the entire term of the Agreement and within the scope of work set forth in the Agreement, pursuant to Contract Policy Manual Section 3.4-114. The contingency provision would be exercised in the event there is an increase in the projected services needed for the clients being served.
5. Authorize the Health Care Agency Director, or designee, to execute the Agreements, as referenced in the Recommended Actions above.

SUMMARY:

Approval of the Master Agreement for provision of Adult Mental Health Psychiatric Skilled Nursing Facility Services and the Agreement with Anne Sippi Clinic Treatment Group will provide psychiatric skilled nursing facility and intensive residential treatment services to severely mentally ill residents of Orange County.

BACKGROUND INFORMATION:

On May 6, 2014, your Honorable Board of Supervisors (Board) approved the Master Agreement for provision of Adult Mental Health Psychiatric Skilled Nursing Facility (SNF) Services, and the Agreement with Anne Sippi Clinic Treatment Group (Anne Sippi) for provision of Adult Mental Health Intensive Residential Services for period of July 1, 2014, through June 30, 2017. During FY 2015-16, a First Amendment to the Master Agreement was executed to exercise the 10 percent contingency increase to meet the need for additional SNF services. On May 24, 2016, the Board approved a Second Amendment to the Master Agreement to increase funding for FY 2016-17. The current Agreements will end June 30, 2019, and the proposed Agreements will allow services to continue July 1, 2019 through June 30, 2022.

FY	SNF Maximum Obligation	Anne Sippi Maximum Obligation
2017-18	\$11,133,043	\$348,757
2018-19	\$11,522,699	\$348,757
2019-20	\$11,913,726	\$360,964
2020-21	\$12,330,706	\$373,598
2021-22	\$12,762,281	\$386,674

Each individual Agreement will share the annual maximum obligation and funding between Board approved providers, which will vary based on utilization. Health Care Agency requests that the Board approve the selection of and the Agreements for the provision of Adult Mental Health Psychiatric SNF Services and Adult Mental Health Intensive Residential Services.

Psychiatric SNF Services

The Health Care Agency (HCA) currently contracts with six organizations to provide 24-hour, seven days per week Psychiatric SNF Services for severely mentally ill Orange County clients who are residing in locked and unlocked Skilled Nursing Facilities. These programs provide recovery-based mental health

services including medication management and a minimum of 27 hours per week of structured therapeutic group activities.

The proposed Agreement reflects a 3.5 percent rate increase each year, consistent with the State mandated rate setting for these types of services. Utilization has increased to 54,780 beds days in FY 2017-18 and remains high with 41,145 used in the first 3 quarters of FY 18-19 leading to a projection of 55,395 bed days for FY 18-19. The majority of consumers placed in these programs are Lanterman-Petris Short conservatees, referred from either the State hospital system or acute care hospitals, with a long history of serious mental illness that requires long-term care.

HCA staff have conducted due diligence on the Contractor's performance which has been confirmed as satisfactory. Contractor is currently under a contract with HCA. HCA has verified there are no concerns that must be addressed with respect to the Contractor's name/ownership, litigation status or conflicts with County interests.

In addition to the services outlined above, the County provides supplemental rates for specialized services which include programming tailored for those with hearing impairments, medical co-morbidities, and dangerous behaviors which require more intensive behavioral interventions and supervision.

The proposed performance outcomes for these programs are to improve client functioning levels and decrease symptoms as evidenced by discharging clients to a lower level of care.

<u>Fiscal Year</u>	Number of Clients Served	Number of Bed Days Utilized	Percent Discharged to Lower Level of Care	Percent Discharged to Higher Level of Care
2017-2018	207	54,780	54%	11%
2018-2019 (July thru March)	188	41,145	50%	23%

The rate of discharges to lower levels has risen significantly as reflected in the chart. In comparison, during FY 15-16 there were 171 participants served, and a discharge to lower level of care rate of 36 percent. Approximately 25-35 percent of clients are discharged to other locations not considered higher or lower levels of service, usually for treatment of medical comorbidities in general acute hospitals or medical skilled nursing facilities.

Intensive Residential Services

HCA currently contracts with Anne Sippi to provide Intensive Residential Services in two unlocked licensed Board and Care Facilities. The target population for these services are high acuity clients, often from the state hospital or other acute settings who have complex symptoms and are difficult to place in alternate settings. These services provide a recovery-based, structured psycho-social rehabilitative program that assists clients to move along the rehabilitative continuum. In addition to one-to-one interaction between clinical staff and clients, there is a minimum of five planned and structured group activities each week provided by psychologists and other clinical staff as well as medication services.

The proposed annual maximum obligation for Intensive Residential Services reflects a 3.5 percent negotiated increase in rates for each year and allows for approximately 7 clients per day or a maximum utilization of 2,555 bed days annually.

<u>Fiscal Year</u>	Number of clients served	Average Length of Stay (LOS) for Clients Completing Program	Percent of Clients Discharged to a Lower Level of Care
2017-18	12	16 Months	37%
2018-19 (July thru March)	13	11 months	17%

The LOS for clients completing the program ranges between nine months and 3.5 years. Those clients discharged to a higher level of care, usually for psychiatric stabilization, have an average LOS of 32 days, and often will readmit to the facility, being given the opportunity succeed in the program multiple times. However, this may affect the measured outcomes for the program. This program also admits clients directly from the State hospital system and are treating a fragile population.

The proposed Agreement with Anne Sippi will not have any subcontracts or pass through to other providers. This Agreement does not currently include subcontractors or pass through to other providers. See attachment C and D for Contract Summary Forms.

HCA requests the Board authorize the HCA Director, or designee, to exercise a contingency contract cost increase in an amount not to exceed \$1,227,469 which is 10 percent of the first year funding of the Agreements, for the entire term of the Agreement and within the scope of work set forth in the Agreements, pursuant to Contract Policy Manual Section 3.4-114. The contingency provision would be exercised in the event there is an increase in the projected services needed for the clients being served.

Health Care Agency requests that the Board approve the Agreements as referenced in the Recommended Actions.

FINANCIAL IMPACT:

Appropriations for this Agreement are included in the FY 2019-20 Budget and will be included in the budgeting process for future years.

Should services need to be reduced or terminated due to lack of funding, the Agreements contain language that allows the Health Care Agency to give a 30-day notice to either terminate or renegotiate the level of services to be provided. The notice will allow the Health Care Agency adequate time to transition or terminate services to clients, if necessary.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Master Agreement for Provision of Adult Mental Health Psychiatric Skilled Nursing Facility Services between County of Orange and various providers

Attachment B - Agreement for Provision of Adult Mental Intensive Residential Services between County of Orange and Anne Sippi Clinic Treatment Group

Attachment C - Redline Version to Attachment A

Attachment D - Redline Version to Attachment B
Attachment E - Contract Summary to Attachment A
Attachment F - Contract Summary to Attachment B