

1 SECOND AMENDMENT
2 TO MASTER 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, 2014 THROUGH JUNE 30, 2017

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11 THIS SECOND AMENDMENT TO MASTER AGREEMENT entered into this 1st day of July
12 2016, which date is enumerated for purposes of reference only, is by and between the COUNTY OF
13 ORANGE (COUNTY) and various Providers, a California nonprofit corporation (CONTRACTOR).
14 This Second Amendment, the First Amendment and original Master Agreement shall be administered by
15 the County of Orange Health Care Agency (ADMINISTRATOR).

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

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19 WHEREAS, on May 6, 2014, the COUNTY authorized the Master Agreement for the provision of
20 Adult Mental Health Psychiatric Skilled Nursing Facility Services for the period of July 1, 2014 through
21 June 30, 2017; and

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23 WHEREAS, on May 6, 2014, COUNTY's Board of Supervisors authorized ADMINISTRATOR to
24 increase the Master Agreement by an amount not to exceed a total of ten percent of the Period One
25 funding for the Agreement; and

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27 WHEREAS, on May 1, 2016, ADMINISTRATOR authorized an increase of \$329,936 to the Master
28 Agreement for the period May 1, 2016 through June 30, 2016, and entered into a First Amendment
29 revising the Period Two maximum obligation from \$9,402,177 to \$9,732,113, for a revised total
30 aggregate maximum obligation of \$28,536,467; and

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32 WHEREAS, COUNTY desires to increase funding for the Master Agreement by an additional
33 amount of \$1,354,386 for the period July 1, 2016 through June 30, 2017, revising the Period Three
34 maximum obligation from \$9,402,177 to \$10,756,563, for a revised total aggregate maximum obligation
35 of \$29,890,853; and

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WHEREAS, CONTRACTOR desires to amend the Master Agreement and accept the additional funding and agrees to provide Adult Mental Health Psychiatric Skilled Nursing Facility Services pursuant to the terms and conditions of the original Master Agreement, the First Amendment and this Second Amendment;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Page 4, Referenced Contract Provisions, of the Agreement is amended to read as follows:

“**Term:** July 1, 2014 through June 30, 2017

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

Period Two means the period from July 1, 2015 through June 30, 2016

Period Three means the period from July 1, 2016 through June 30, 2017

Aggregate Maximum Obligation:

Period One Maximum Obligation: \$ 9,402,177

Period Two Maximum Obligation: \$ 9,732,113

Period Three Maximum Obligation: \$10,756,563

TOTAL MAXIMUM OBLIGATION: \$29,890,853”

2. Paragraph XII., Indemnification and Insurance, of the Agreement is amended to read as follows:

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

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

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

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

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

F. QUALIFIED INSURER

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

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

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

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

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Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made
	\$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

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

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

I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation

notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the COUNTY may suspend or terminate this Agreement.

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

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

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

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

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

R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance

provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

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

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

3. Paragraph XIV., Maximum Obligation, of the Agreement is amended to read as follows:

"The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all Agreements for Psychiatric Skilled Nursing Facility Services during Period One, Period Two, and Period Three are 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 Obligation."

In all other respects, the terms of the underlying Agreement and any prior amendments, not specifically changed by this Amendment, shall remain in full force and are incorporated by reference herein.

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

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 4 «UC_NAME»

5 «UC_DBA»

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 7 BY: _____

DATED: _____

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 10 TITLE: _____

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 16 COUNTY OF ORANGE

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 19 BY: _____

DATED: _____

20 HEALTH CARE AGENCY

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 25 APPROVED AS TO FORM

26 OFFICE OF THE COUNTY COUNSEL

27 ORANGE COUNTY, CALIFORNIA

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 30 BY:  _____

DATED: 4/25/16

31 DEPUTY

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