

AGREEMENT FOR PROVISION OF  
RECUPERATIVE CARE SERVICES

BETWEEN  
COUNTY OF ORANGE

AND

«CONTRACTOR\_NAME\_»

JULY 1, 2017 THROUGH DECEMBER 31, 2020

THIS AGREEMENT entered into this 1<sup>st</sup> of July 2017, is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and «CONTRACTOR\_NAME\_» a «CONTRACTOR\_BUSINESS\_STATUS» (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

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

WHEREAS, California’s Section 1115(a) Medicaid Waiver Renewal, entitled Medi-Cal 2020, was approved by the Centers for Medicare and Medicaid Services on December 30, 2015 and included funding for a Whole Person Care (WPC) Pilot Program; and,

WHEREAS, the California the Department of Health Care Services (DHCS) published a Request for Application (RFA) relating to the WPC Pilot Program on May 16, 2016; and,

WHEREAS, COUNTY agreed to act as the Lead Entity and submitted a WPC Pilot Application which was accepted by DHCS on October 24, 2016 and,

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of certain direct patient care and administrative support functions to the WPC Pilot Program described herein; and,

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

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:

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**REFERENCED CONTRACT PROVISIONS**

**Term:** July 1, 2017 through December 31, 2020

Period One means the period from July 1, 2017 through December 31, 2017

Period Two means the period from January 1, 2018 through December 31, 2018

Period Three means the period from January 1, 2019 through December 31, 2019

Period Four means the period from January 1, 2020 through December 31, 2020

**Aggregate Maximum Obligation:** \$4,098,000

Period One Maximum Obligation:	\$500,700
Period Two Maximum Obligation:	991,500
Period Three Maximum Obligation:	1,302,900
Period Four Maximum Obligation:	<u>1,302,900</u>
<b>TOTAL MAXIMUM OBLIGATION:</b>	<b>\$4,098,000</b>

**Basis for Reimbursement:** Fee for Service

Payment Method: Monthly in Arrears

**CONTRACTOR DUNS Number:** «DUNS\_NUMBER»

**CONTRACTOR TAX ID Number:** «TAX\_ID»

**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:** «CONTRACTOR\_NAME\_»  
«CONTRACTOR\_ADDRESS»  
«CONTRACTOR\_CITY», «CONTRACTOR\_STATE», «CONTRACTOR\_ZIP»

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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:

1		
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4	AA	Alcoholics Anonymous
5	AB 109	Assembly Bill 109, 2011 Public Safety Realignment
6	ABC	Allied Behavioral Care
7	ACH	Acute Care Hospital
8	ADAS	Alcohol and Drug Abuse Services
9	ADL	Activities of Daily Living
10	ADP	Alcohol and Drug Program
11	AES	Advanced Encryption Standard
12	AFLP	Adolescent Family Life Program
13	AIDS	Acquired Immune Deficiency Syndrome
14	AIM	Access for Infants and Mothers
15	AMHS	Adult Mental Health Services
16	ARRA	American Recovery and Reinvestment Act of 2009
17	ASAM PPC	American Society of Addiction Medicine Patient Placement Criteria
18	ASI	Addiction Severity Index
19	ASIST	Applied Suicide Intervention Skills Training
20	ASO	Administrative Services Organization
21	ASRS	Alcohol and Drug Programs Reporting System
22	BBS	Board of Behavioral Sciences
23	BCP	Business Continuity Plan
24	BH	Base Hospital
25	BHS	Behavioral Health Services
26	CalOMS	California Outcomes Measurement System
27	CalWORKs	California Work Opportunity and Responsibility for Kids
28	CAP	Corrective Action Plan
29	CAT	Centralized Assessment Team
30	CCC	California Civil Code
31	CCLD	(California) Community Care Licensing Division
32	CCR	California Code of Regulations
33	CDCR	California Department of Corrections and Rehabilitation
34	CDSS	California Department of Social Services
35	CERC	Children's Emergency Receiving Center
36	CESI	Client Evaluation of Self at Intake
37	CEST	Client Evaluation of Self and Treatment

1	CFDA	Catalog of Federal Domestic Assistance
2	CFR	Code of Federal Regulations
3	CHDP	Child Health and Disability Prevention
4	CHHS	California Health and Human Services Agency
5	CHPP	COUNTY HIPAA Policies and Procedures
6	CHS	Correctional Health Services
7	CIPA	California Information Practices Act
8	CMPPA	Computer Matching and Privacy Protection Act
9	COI	Certificate of Insurance
10	CPA	Certified Public Accountant
11	CSI	Client and Services Information
12	CSW	Clinical Social Worker
13	CYBHS	Children and Youth Behavioral Health Services
14	DATAR	Drug Abuse Treatment Access Report
15	DCR	Data Collection and Reporting
16	DD	Dually Diagnosed
17	DEA	Drug Enforcement Agency
18	DHCS	California Department of Health Care Services
19	D/MC	Drug/Medi-Cal
20	DMV	California Department of Motor Vehicles
21	DoD	US Department of Defense
22	DPFS	Drug Program Fiscal Systems
23	DRC	Probation's Day Reporting Center
24	DRP	Disaster Recovery Plan
25	DRS	Designated Record Set
26	DSM	Diagnostic and Statistical Manual of Mental Disorders
27	DSM-IV	Diagnostic and Statistical Manual of Mental Disorders. 4 <sup>th</sup> Edition
28	DSM-V	Diagnostic and Statistical Manual of Mental Disorders. 5 <sup>th</sup> Edition
29	EBP	Evidence-Based Practice
30	EDN	Electronic Disease Notification System
31	EEOC	Equal Employment Opportunity Commission
32	EHR	Electronic Health Records
33	ePHI	Electronic Protected Health Information
34	EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
35	ERC	Emergency Receiving Center
36	FFS	Fee For service
37	FIPS	Federal Information Processing Standards

1	FQHC	Federally Qualified Health Center
2	FSP	Full Service Partnership
3	FTE	Full Time Equivalent
4	GAAP	Generally Accepted Accounting Principles
5	HAB	Federal HIV/AIDS Bureau
6	HCA	County of Orange Health Care Agency
7	HHS	Federal Health and Human Services Agency
8	HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
9		Law 104-191
10	HITECH	Health Information Technology for Economic and Clinical Health
11		Act, Public Law 111-005
12	HIV	Human Immunodeficiency Virus
13	HRSA	Federal Health Resources and Services Administration
14	HSC	California Health and Safety Code
15	IBNR	Incurred But Not Reported
16	ID	Identification
17	IEA	Information Exchange Agreement
18	IMD	Institute for Mental Disease
19	IOM	Institute of Medicine
20	IRIS	Integrated Records and Information System
21	ISO	Insurance Services Office
22	ITC	Indigent Trauma Care
23	LCSW	Licensed Clinical Social Worker
24	LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
25	LPS	Lanterman/Petris/Short (Act)
26	LPT	Licensed Psychiatric Technician
27	MAT	Medication Assisted Treatment
28	MEDS	Medi-Cal Eligibility Determination System
29	MFT	Marriage and Family Therapist
30	MH	Mental Health
31	MHIS	Mental Health Inpatient Services
32	MIHS	Medical and Institutional Health Services
33	MHP	Mental Health Plan
34	MHRC	Mental Health Rehabilitation Centers
35	MHS	Mental Health Specialist
36	MHSA	Mental Health Services Act
37	MORS	Milestones of Recovery Scale

1	MS	Mandatory Supervision
2	MTP	Master Treatment Plan
3	NA	Narcotics Anonymous
4	NIATx	Network Improvement of Addiction Treatment
5	NIH	National Institutes of Health
6	NIST	National Institute of Standards and Technology
7	NOA	Notice of Action
8	NP	Nurse Practitioner
9	NPDB	National Provider Data Bank
10	NPI	National Provider Identifier
11	NPP	Notice of Privacy Practices
12	OCEMS	Orange County Emergency Medical Services
13	OCJS	Orange County Jail System
14	OC-MEDS	Orange County Medical Emergency Data System
15	OCPD	Orange County Probation Department
16	OCR	Federal Office for Civil Rights
17	OCSD	Orange County Sheriff's Department
18	OIG	Federal Office of Inspector General
19	OMB	Federal Office of Management and Budget
20	OPM	Federal Office of Personnel Management
21	ORR	Federal Office of Refugee Resettlement
22	P&P	Policy and Procedure
23	PA DSS	Payment Application Data Security Standard
24	PAF	Partnership Assessment Form
25	PAR	Prior Authorization Request
26	PBM	Pharmaceutical Benefits Management
27	PC	California Penal Code
28	PCI DSS	Payment Card Industry Data Security Standard
29	PCP	Primary Care Provider
30	PCS	Post-Release Community Supervision
31	PHI	Protected Health Information
32	PI	Personal Information
33	PII	Personally Identifiable Information
34	PRA	California Public Records Act
35	PSAI/ACT	Perinatal Substance Abuse Services Initiative/Assessment and
36		Coordination Team
37	PSC	Professional Services Contract

1	PTRC	Paramedic Trauma Receiving Center
2	QI	Quality Improvement
3	QIC	Quality Improvement Committee
4	RHAP	Refugee Health Assessment Program
5	RHEIS	Refugee Health Electronic Information System
6	RN	Registered Nurse
7	RSA	Remote Site Access
8	SAPTBG	Substance Abuse Prevention and Treatment Block Grant
9	SD/MC	Short-Doyle Medi-Cal
10	SIR	Self-Insured Retention
11	SMA	Statewide Maximum Allowable (rate)
12	SNF	Skilled Nursing Facility
13	SR	Supervised Release
14	SRP	Supervised Release Participant
15	SSA	County of Orange Social Services Agency
16	SSI	Supplemental Security Income
17	STP	Special Treatment Program
18	SUD	Substance Use Disorder
19	TAR	Treatment Authorization Request
20	TAY	Transitional Age Youth
21	TB	Tuberculosis
22	TBS	Therapeutic Behavioral Services
23	TRC	Therapeutic Residential Center
24	TTY	Teletypewriter
25	TUPP	Tobacco Use Prevention Program
26	UMDAP	Uniform Method of Determining Ability to Pay
27	UOS	Units of Service
28	USC	United States Code
29	VOLAGs	Volunteer Agencies
30	W&IC	California Welfare and Institutions Code
31	WIC	Women, Infants and Children

**II. ALTERATION OF TERMS**

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

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

5  
6 **III. ASSIGNMENT OF DEBTS**

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

14  
15 **IV. COMPLIANCE**

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

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

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

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

35 3. If CONTRACTOR does not provide proof of its own Compliance program to  
36 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's  
37 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the

1 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed  
2 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR’s Compliance Program  
3 and Code of Conduct.

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

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

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

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

1 | procedures (or CONTRACTOR’s own compliance program, code of conduct and related policies and  
2 | procedures if CONTRACTOR has elected to use its own).

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

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

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

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

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

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

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

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

36 | C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General  
37 | Compliance Training available to Covered Individuals.

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

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

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

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

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

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

16 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered  
17 Individuals relative to this Agreement.

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

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

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

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

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

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

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

36 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also  
37 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which

1 accurately describes the services provided and must ensure compliance with all billing and  
2 documentation requirements.

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

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

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

13  
14 **V. CONFIDENTIALITY**

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

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

25  
26 **VI. DEBARMENT AND SUSPENSION CERTIFICATION**

27 A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

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

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

16  
17 **VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

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

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

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

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

37 //

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

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

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

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

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

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

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

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

29  
30 **VIII. EMPLOYEE ELIGIBILITY VERIFICATION** CONTRACTOR warrants that it shall  
31 fully comply with all federal and state statutes and regulations regarding the employment of aliens and  
32 others and to ensure that employees, subcontractors, and consultants performing work under this  
33 Agreement meet the citizenship or alien status requirements set forth in federal statutes and regulations.  
34 CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work  
35 hereunder, all verification and other documentation of employment eligibility status required by federal  
36 or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act  
37 of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended.

1 CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and  
2 consultants for the period prescribed by the law.

3  
4 **IX. FACILITIES, PAYMENTS AND SERVICES**

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

10  
11 **X. INDEMNIFICATION AND INSURANCE**

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

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

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

1 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,  
 2 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an  
 3 amount in excess of \$50,000 shall specifically be approved by the CEO/Office of Risk Management  
 4 upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is  
 5 approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s)  
 6 in this Agreement, agrees to all of the following:

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

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

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

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

20 F. QUALIFIED INSURER

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

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

29 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum  
 30 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
//	
//	

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	Network Security & Privacy Liability	\$1,000,000 per claims made
9		
10	Professional Liability Insurance	\$1,000,000 per claims made
11		\$1,000,000 aggregate
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, employees, and  
 25 agents 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  
 31 endorsements which shall accompany the Certificate of Insurance:

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

13 M. If CONTRACTOR's Professional Liability and/or Network Security & Privacy Liability are  
14 "Claims Made" policy(ies), CONTRACTOR shall agree to maintain coverage for two (2) years  
15 following the completion of the Agreement.

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

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

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

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

30 R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

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

17  
18 **XI. INSPECTIONS AND AUDITS**

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

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

33 C. CONTRACTOR shall not be subject to disallowances as the result of audits of the cost of  
34 services.

35 D. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within  
36 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,  
37 //

1 financial, programmatic or any other type of audit of CONTRACTOR’s operations, whether or not the  
2 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

3  
4 **XII. LICENSES AND LAWS**

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

13 **B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

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

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

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

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

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

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

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

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

37 //

- 1 1. ARRA of 2009.
- 2 2. Title 22, CCR, §51009, Confidentiality of Records.
- 3 3. California Welfare and Institutions Code, §14100.2, Medicaid Confidentiality.
- 4 4. Federal Medicare Cost reimbursement principles and cost reporting standards.
- 5 5. State of California-Health and Human Services Agency, Department of Health Care
- 6 Services, Orange County Medi-Cal Mental Health Managed Care Plan.
- 7 6. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
- 8 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

9  
10 **XIII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

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

31 E. CONTRACTOR shall also include any required funding statement information on social media  
32 when required by ADMINISTRATOR

33  
34 **XIV. MAXIMUM OBLIGATION**

35 A. The Total Aggregate Maximum Obligation of COUNTY for services provided in accordance  
36 with this Agreement, and the separate Maximum Obligations for each period under this Agreement, are  
37 as specified in the Referenced Contract Provisions of this Agreement. This specific Agreement with

1 CONTRACTOR is only one of several agreements to which this Aggregate Maximum Obligation  
2 applies. It therefore is understood by the Parties that reimbursement to CONTRACTOR will be only a  
3 fraction of these Aggregate Maximum Obligations.

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

6 C. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR,  
7 ADMINISTRATOR may increase or decrease the Period One, Period Two, Period Three, and Period  
8 Four Maximum Obligations, provided the total of these Maximum Obligations does not exceed the  
9 Total Maximum Obligation of COUNTY as specified in the Referenced Contract Provisions of this  
10 Agreement.

11  
12 **XV. MINIMUM WAGE LAWS**

13 A. The Total Maximum Obligation of COUNTY for services provided in accordance with this  
14 Agreement, and the separate Maximum Obligations for each period under this Agreement, are as  
15 specified in the Referenced Contract Provisions of this Agreement.

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

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

23  
24 **XVI. NONDISCRIMINATION**

25 **A. EMPLOYMENT**

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

36 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or  
37 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or

1 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection  
2 for training, including apprenticeship.

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

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

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

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

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

- 33 1. Denying a client or potential client any service, benefit, or accommodation.
- 34 2. Providing any service or benefit to a client which is different or is provided in a different  
35 manner or at a different time from that provided to other clients.
- 36 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by  
37 others receiving any service or benefit.

1 4. Treating a client differently from others in satisfying any admission requirement or  
2 condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
3 any service or benefit.

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

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

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

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

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

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

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

31  
32 **XVII. NOTICES**

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

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



1 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this  
2 Notification of Death Paragraph.

3  
4 **XIX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

12  
13 **XX. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

34 1. The medical records and billing records about individuals maintained by or for a covered  
35 health care provider;

36 2. The enrollment, payment, claims adjudication, and case or medical management record  
37 systems maintained by or for a health plan; or

1 3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

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

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

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

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

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

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

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

21 K. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR  
22 may provide written approval to CONTRACTOR to maintain records in a single location, identified by  
23 CONTRACTOR.

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

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

29  
30 **XXI. RESEARCH AND PUBLICATION**

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

34 //  
35 //  
36 //  
37 //

**XXII. SEVERABILITY**

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

**XXIII. SPECIAL PROVISIONS**

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

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

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

- 1. Funding travel or training (excluding mileage or parking).
- 2. Making phone calls outside of the local area unless documented to be directly for the purpose of client care.
- 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.

//

**XXIV. STATUS OF CONTRACTOR**

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

**XXV. TERM**

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

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

**XXVI. TERMINATION**

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

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

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

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

//

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

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

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

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

11 D. CONTINGENT FUNDING

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

13 a. The continued availability of federal, state and county funds for reimbursement of  
14 COUNTY's expenditures, and

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

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

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

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

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

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

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

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

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

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

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

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

11 9. Provide written notice of termination of services to each client being served under this  
12 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of  
13 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars  
14 day period.

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

17  
18 **XXVII. THIRD PARTY BENEFICIARY**

19 Neither Party hereto intends that this Agreement shall create rights hereunder in third parties  
20 including, but not limited to, any subcontractors or any clients provided services pursuant to this  
21 Agreement.

22  
23 **XXVIII. WAIVER OF DEFAULT OR BREACH**

24 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any  
25 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this  
26 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any  
27 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this  
28 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 «CONTRACTOR\_NAME\_»  
4

5  
6 BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
7

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

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

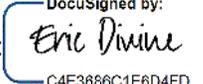
12 TITLE: \_\_\_\_\_  
13

14  
15 COUNTY OF ORANGE  
16

17 BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
18

19 HEALTH CARE AGENCY

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

24 BY:  \_\_\_\_\_ DATED: 6/12/2017  
25 C4E3886C1E6D4FD...

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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.

EXHIBIT A  
AGREEMENT FOR PROVISION OF  
RECUPERATIVE CARE SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND

«CONTRACTOR\_NAME\_»

JULY 1, 2017 THROUGH DECEMBER 31, 2020

**I. DEFINITIONS**

The Parties agree to the following terms and definitions, and to those terms and definitions that, for convenience, are set forth, elsewhere in the Agreement.

A. “Beneficiary” means a person, enrolled in Orange County’s Managed Care Plan and meeting the Medi-Cal eligibility requirements set forth in the California’s Medicaid State Plan based on the requirements set forth in Title XIX of the Social Security Act.

B. “CalOptima” means Managed Care Plan contracting with DHCS to administer the Medi-Cal Program in Orange County.

C. “Homeless Management Information System” or “HMIS” means the regional (Orange County) database of clients and services providers that track service needs and usage for homeless and those at risk of becoming homeless.

D. “Intermediary” means the organization, under a separate agreement, and any amendments thereto, with COUNTY, contracted to act as a fiscal intermediary for the purpose of reimbursing CONTRACTOR for Recuperative Care Services.

E. “Recuperative Care” or “Medical Respite Care” means short-term care and case management provided to individuals recovering from an acute illness or injury that generally does not necessitate hospitalization, but would be exacerbated by the individuals’ living conditions (e.g., street, shelter, or other unsuitable places).

F. “Special Terms and Conditions” or “STCs” means the document (Number 11-W-00193/9), issued by the Centers for Medicare & Medicaid Services (CMS) to the DHCS (State), setting forth the conditions and limitations on the State’s 1115(a) Medicaid Demonstration Waiver, known as “Medi-Cal 2020.” The document describes in detail the nature, character and extent of CMS involvement in the Waiver and the State’s obligations to CMS. The Parties acknowledge that requirements in the STCs, including any official amendments or clarifications thereto, relating to the WPC Pilot Program shall be deemed as COUNTY’s obligation to the State.

G. “Whole Person Care Pilot Program” or “WPC Pilot” or “WPC Program” means the specific program proposed by COUNTY and the WPC Collaborative in response to a Request for Applications released by DHCS to address the specific requirements in the STCs commencing with STC 110, which

1 allows for financial support to integrate care for a particularly vulnerable group of Beneficiaries who  
2 have been identified as high users of multiple systems and continue to have poor health outcomes.

3 H. “WPC Agreement” means the agreement between COUNTY and DHCS for participation in the  
4 WPC Pilot Program effective for services provided November 29, 2016 through December 31, 2020, as  
5 it exists now or may hereafter be amended, describing how the WPC Pilot Program will be implemented  
6 in Orange County.

7 I. “WPC CalOptima Recuperative Care Agreement” means the Agreement between the COUNTY  
8 and CalOptima for reimbursement of recuperative care bed days.

9 J. “WPC Collaborative” means the group of community partners, public agencies or departments,  
10 and other organizations responsible who have agreed to come together to share financial, knowledge,  
11 and human resources to collectively achieve the desired outcomes of the WPC Pilot Program.

12 K. “WPC Beneficiary” means a Beneficiary who is eligible to receive services provided by the  
13 WPC Program and has been identified as being homeless. For the purposes of the WPC Pilot, “being  
14 homeless” describes individuals or families who:

- 15 1. Lack a fixed, regular, and adequate nighttime residence; or,
- 16 2. Have a primary nighttime residence that is a public or private place not designed for, or  
17 ordinarily used as, a regular a regular sleeping accommodation for human beings, including a car, park,  
18 abandoned building, bus or train station, airport, or camping ground; or,
- 19 3. Are living in a supervised publicly or privately operated shelter designated to provide  
20 temporary living arrangements (including hotels and motels paid for by federal, State, or local  
21 government programs for low-income individuals or by charitable organizations), congregate shelters,  
22 and transitional housing; or,
- 23 4. Reside in a shelter or place not meant for human habitation and is exiting an institution  
24 where he or she temporarily resided; or,
- 25 5. Otherwise meet the definition of 42 U.S. Code Sections 11302(a)(5), (6) or (b).

26 L. “WPC Participating Entity” means an organization, entity, or public agency or department that  
27 has agreed to have an active role in the WPC Pilot through agreements or memoranda of understanding  
28 with COUNTY acting as the Lead Agency for the WPC Pilot

29 M. “WPC Steering Committee” means an advisory committee established in accordance with a  
30 directive from COUNTY’s Board of Supervisors to provide high level support, advocacy, and  
31 enablement for the WPC Pilot Project.

32 **II. PAYMENTS**

33  
34 A. Recuperative Care Services – COUNTY shall pay CONTRACTOR at the following rates per  
35 level of service as specified in Paragraph III below; provided, however, that the total of all payments to  
36 CONTRACTOR and all other contract providers of Recuperative Care Services provided to WPC

37 //

1 Beneficiaries shall not exceed COUNTY's Maximum Obligation per Period as specified in the  
2 Referenced Contract Provisions of this Agreement.

3 1. Phase 1: \$220 per bed day from the day of admission (Day 1) through and including Day  
4 30, or until the WPC Beneficiary no longer meets medical necessity for Recuperative Care, whichever  
5 comes first.

6 2. Phase 2: \$150 per bed day from Day 31 until the WPC Beneficiary no longer meets  
7 medical necessity for Recuperative Care or has reached a length of stay equal to ninety (90) days,  
8 whichever comes first.

9 B. For services provided to WPC Beneficiaries:

10 1. Pending implementation of the WPC CalOptima Recuperative Care Agreement, for WPC  
11 Beneficiaries admitted to CONTRACTOR's facility from a hospital:

12 a. CONTRACTOR shall submit its billings for the first fifteen (15) days to the referring  
13 hospital for reimbursement from the referring hospital in an amount of \$150 per bed day.

14 1) Billings shall be submitted as directed by the referring hospital.

15 2) COUNTY shall reimburse CONTRACTOR \$70 per bed day for the first fifteen  
16 (15) days.

17 b. CONTRACTOR shall submit its billings to COUNTY, monthly in arrears.

18 2. Following implementation of the WPC CalOptima Recuperative Care Agreement, for WPC  
19 Beneficiaries, CONTRACTOR shall submit all billings to COUNTY, monthly in arrears, and shall no  
20 longer bill hospitals for WPC Beneficiaries referred to CONTRACTOR for Recuperative Care.

21 C. CONTRACTOR's billings to COUNTY shall be on a form approved or provided by  
22 ADMINISTRATOR and provide such information as is required by ADMINISTRATOR.

23 D. Billings are due by the tenth (10<sup>th</sup>) working day of each month, and payment to  
24 CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after  
25 receipt of the correctly completed billing form.

26 E. CONTRACTOR agrees that all billings to COUNTY shall be supported, at CONTRACTOR's  
27 facility, by source documentation including, but not limited to, ledgers, journals, timesheets, invoices,  
28 bank statements, canceled checks, receipts, receiving records, and records of service provided.

29 F. CONTRACTOR agrees that ADMINISTRATOR may withhold or delay any payment due to  
30 CONTRACTOR, if CONTRACTOR fails to comply with any provision of the Agreement.

31 G. CONTRACTOR shall not claim reimbursement for services provided beyond the expiration  
32 and/or termination of the Agreement, except as any otherwise be provided under the Agreement.

33  
34 **III. CONTRACTOR OBLIGATIONS**

35 A. CONTRACTOR agrees that the overarching goal of the WPC Pilot Program is the coordination  
36 of health, behavioral health, and social services, as applicable, in a patient-centered manner with the  
37 //

1 | goals of improved beneficiary health and wellbeing through more efficient and effective use of  
2 | resources.

3 | B. Recuperative Care Services are acute and post-acute medical care for homeless persons who are  
4 | too ill or frail to recover from physical illness or injury on the streets, but are not ill enough to require  
5 | hospital or skilled nursing level care.

6 | 1. COUNTY understands that Recuperative Care programs often exist as partnerships between  
7 | two or more organizations that together provide the clinical care, physical space, and supportive  
8 | services. CONTRACTOR has identified its partners, if any, as subcontractors in Exhibit B to this  
9 | Agreement.

- 10 | a. A safe, stable and supportive place to recover from illness or injury.
- 11 | b. In addition to providing medical oversight, promote connections to primary and  
12 | behavioral health care.
- 13 | c. Provide support services designed to secure housing and/or ensure readiness for  
14 | housing placement.

15 | 2. The Parties agree that Recuperative Care Services may be provided in a variety of settings  
16 | including, but not limited to, freestanding facilities, homeless shelters, motels, and transitional housing.

17 | C. CONTRACTOR shall provide the following services during each phase:

18 | 1. **Phase 1** shall be from the day of admission (Day 1) through and including Day 30, and  
19 | shall include the following services. Depending on the each patient’s unique circumstances, the Parties  
20 | agree that services identified in Phase 2 below may be provided during Phase 1; and, further, services  
21 | identified in Phase 1 may continue to carry over to Phase 2.

- 22 | a. Medical Care Plan Coordination:
  - 23 | 1) If the patient is referred to CONTRACTOR from a hospital or skilled nursing  
24 | facility, CONTRACTOR shall provide medical oversight of the discharge plan as provided by the  
25 | referring facility. CONTRACTOR shall be available 24/7 to accept referrals from hospital emergency  
26 | rooms, unless otherwise authorized in writing by ADMINISTRATOR.
  - 27 | 2) If the patient is referred to CONTRACTOR from a community clinic or Behavioral  
28 | Health Services provider, and CONTRACTOR agrees the patient meets the medical necessity criteria  
29 | for recuperative care, CONTRACTOR shall work with the referring facility to develop an initial care  
30 | coordination plan pending linkage with the patient’s primary care provider.
  - 31 | 3) If the patient is referred to CONTRACTOR from a shelter bed provider, and  
32 | CONTRACTOR agrees the patient meets the medical necessity criteria for recuperative care,  
33 | CONTRACTOR shall develop an initial care coordination plan based on CONTRACTOR’s assessment  
34 | of the patient pending linkage with the patient’s primary care provider.

35 | b. Medications: When a patient is referred from a hospital or skilled nursing facility,  
36 | CONTRACTOR shall ensure that the patient has sufficient medications and/or prescriptions for needed

37 | //

1 medications for the initial 30 days in Recuperative Care until a linkage to a primary care provider can be  
2 established.

3 c. Linkage to Services:

4 1) Primary Care Provider: CONTRACTOR shall ensure the patient is seen by their  
5 primary care provider, which may include helping the patient to select a primary care provider.

6 2) Mental Health Services:

7 a) If the patient is known to COUNTY’s Behavioral Health Services (BHS),  
8 CONTRACTOR shall coordinate with BHS, including services that can be offered by CONTRACTOR,  
9 if any, to support the efforts of BHS while the patient is receiving recuperative care services.

10 b) If the patient is not currently linked to BHS; however, CONTRACTOR  
11 determines that an evaluation by BHS may be necessary, CONTRACTOR shall coordinate with BHS to  
12 determine how the patient’s needs can best be met.

13 3) Substance Use Programs: CONTRACTOR shall coordinate with BHS for known  
14 or suspected substance use by patients to ensure the most appropriate course of care can be provided  
15 while the patient is receiving recuperative care services.

16 d. Patient Education: CONTRACTOR shall educate each patient on the specifics of their  
17 medical issues and needs designed to prevent the need for future emergency room or inpatient hospital  
18 stays.

19 e. Linkage to Other Benefits: CONTRACTOR shall work to connect the patient with  
20 other benefits including, but not limited to SSI, disability, veteran’s benefits, and Medi-Cal. This may  
21 include assisting the patient in obtaining identification documents such as a State-issued identification,  
22 birth certificates, etc.

23 f. Housing Readiness: CONTRACTOR agrees to receive training from 2-1-1 Orange  
24 County on the coordinated entry program, including administering the Vulnerability Index-Service  
25 Prioritization Decision Assistance Tool (VI-SPDAT).

26 2. **Phase 2** shall be from Day 31 through and including Day 90. Depending on each patient’s  
27 unique circumstances, the Parties agree that services identified in Phase 2 below may be provided during  
28 Phase 1; and, further, services identified in Phase 1 may continue to carry over to Phase 2.

29 a. Discharge Planning: CONTRACTOR shall prepare a discharge plan for the patient’s  
30 discharge from recuperative care that shall be shared with the patient, the patient’s primary care  
31 provider, and other providers involved in the Whole Person Care Plan of the patient, as appropriate.

32 b. Community and Social Resources: CONTRACTOR shall connect the patient to  
33 community and social resources and ensure they know how to navigate to those resources via public  
34 transportation as necessary.

35 c. Housing:

36 1) CONTRACTOR shall provide patient education to ensure housing readiness and  
37 successful placement such as tenant/landlord education (i.e., How to be a good tenant, etc.).

1 2) Directly or through linkages to other community resources, CONTRACTOR shall  
2 connect the patient with housing opportunities.

3 d. Family Reunification: If possible, CONTRACTOR shall facilitate the patient's  
4 connection with family.

5 D. In providing Recuperative Care Services, CONTRACTOR shall follow the Standards for  
6 Medical Respite Care Programs issued by the National Health Care for the Homeless Counsel  
7 ([https://www.nhchc.org/wp-content/uploads/2011/09/medical\\_respite\\_standards\\_oct2016.pdf](https://www.nhchc.org/wp-content/uploads/2011/09/medical_respite_standards_oct2016.pdf)) as those  
8 standards pertain to the intensity of Recuperative Care Services being provided by CONTRACTOR, and  
9 shall ensure, at a minimum, the following:

10 1. Space for patients to rest and perform activities of daily living (ADLs) while receiving  
11 recuperative care which is habitable, promotes physical functioning, adequate hygiene, and personal  
12 safety.

- 13 a. A bed available to each patient for 24 hours per day.
- 14 b. On-site showering facilities.
- 15 c. On-site or access to laundering facilities.
- 16 d. Access to secured storage for personal belongings.
- 17 e. Access to secured storage for medications if CONTRACTOR is not legally authorized  
18 to store/dispense medication).
- 19 f. At least three (3) meals per day.
- 20 g. If CONTRACTOR provides services in a congregate setting, CONTRACTOR shall  
21 maintain a 24-hour staff presence, with staff trained at a minimum to provide first aid, basic life support  
22 services, and the ability to communicate to outside emergency assistance.
- 23 h. Written policies and procedures for responding to life-threatening emergencies.
- 24 i. Compliant with State and local fire safety standards.
- 25 j. Written code of conduct for patient behavior.
- 26 k. Written plans, and staff trainings, on how to address the handling of alcohol, illegal  
27 drugs, unauthorized prescription drugs, and weapons, including strategies to maximize patient and staff  
28 safety.

29 2. Follow applicable local and State guidelines and regulations related to hazardous waste  
30 handling and disposal, disease prevention, and safety. Written policies and procedures should address  
31 the following:

- 32 a. Safe storage, disposal, and handling of biomedical and pharmaceutical waste, including  
33 expired or unused medications and needles.
- 34 b. Managing exposure to bodily fluids and other biohazards.
- 35 c. Infection control and the management of communicable diseases, including following  
36 applicable reporting requirements.

37 //

1 d. Storage, handling, security, and disposal of patient medications, if patient medications  
2 are stored and/or handled by CONTRACTOR's staff.

3 3. Manage timely and safe care transitions to recuperative care from acute care, specialty care,  
4 and/or community settings.

5 a. Maintain clear policies and procedures for the screening and management of referrals  
6 into CONTRACTOR's Recuperative Care Program consistent with the intensity of services offered by  
7 CONTRACTOR as indicated in the standards and guidance established by the WPC Collaborative.

8 1) Admission criteria

9 2) Review for clinical appropriateness

10 a) Initial clinical determination for admission into Recuperative Care may be  
11 done by medical personnel of the referring facility or CONTRACTOR.

12 b) All admissions shall be subject to prospective or retrospective review, as  
13 provided in the standards and guidance established by the WPC Collaborative, by COUNTY's Care  
14 Coordinator.

15 3) Point of contact and phone number to receive referrals for those providers not  
16 connected to the WPC Connect, the WPC Program notification system.

17 4) HIPAA compliant communication

18 b. WPC Beneficiaries may be referred from any of the following locations as long as they  
19 meet medical necessity for Recuperative Care as defined by the WPC Collaborative. Transportation of  
20 clients from these referring agencies to CONTRACTOR should be provided by the referring agency.

21 1) Hospital after an inpatient stay

22 2) Hospital emergency department

23 3) Community Clinic

24 4) Shelter bed program

25 5) Any County BHS Program

26 6) Other community based organizations as determined by the WPC Collaborative

27 c. Each patient shall have a designated Recuperative Care provider of record.

28 d. Screen for and honor advance directives of patients.

29 e. Notify and coordinate care, as necessary and appropriate, with the patient's primary  
30 care provider.

31 4. Provide quality post-acute clinical care.

32 a. Have adequate and qualified medical personnel to assess the baseline patient health,  
33 make on-going reassessments to determine if the clinical interventions are effective, and determine  
34 readiness for discharge from the program.

35 b. Maintain a medical record for each patient in a manner consistent with federal and state  
36 laws and regulations, including privacy laws.

37 //

1 c. Develop an individual WPC Care Plan specifying treatments, desired outcomes and  
2 goals, and discharge indicators. When various professional disciplines are involved in the care plan,  
3 care, treatment, and services are provided to the patient in an interdisciplinary and collaborative manner  
4 and noted in the WPC Care plan as applicable and consistent with laws and regulations regarding the  
5 patient's privacy.

6 5. Coordinate care for WPC beneficiaries who may otherwise face barriers to adequately  
7 navigate and engage in support systems.

8 a. Broker linkages to community and social supports in order to help patients transition  
9 out of homelessness and achieve positive outcomes.

10 b. Medical care coordination includes:

11 1) Supporting the patient in developing self-management goals to increase their  
12 understanding of how their actions affect their health and develop strategies to meet those goals.

13 2) Assisting patients in navigating their health network and establish a relationship  
14 with a primary care provider and/or patient-centered medical home.

15 3) Coordinating transportation to and from medical appointments and support services

16 4) Facilitating patient follow-up for medical appointments, including accompanying  
17 them as necessary and appropriate.

18 5) Ensuring communication between medical recuperative care staff and outside  
19 providers to follow up on any change in patient care plans.

20 6) Providing access to phones during the recuperative care stay.

21 7) Making referrals to substance abuse and/or mental health programs as needed.

22 c. Wraparound services includes:

23 1) Facilitating access to housing, including supportive housing as appropriate.

24 2) Identifying community resources as indicated.

25 3) Submitting applications for SSI/SSDI, food stamps, Medi-Cal, and other  
26 federal/State benefit programs as applicable.

27 4) Providing access to social support groups such as cancer support and addiction  
28 support.

29 5) Facilitating family/caregiver interaction.

30 6. Facilitate safe and appropriate transitions out of recuperative care.

31 a. Maintain clear policies and procedures for discharging patients back to the community.

32 b. Provide a written discharge summary and written discharge instructions to the patient,  
33 which may include, but not be limited to:

34 1) Medication list and refill information

35 2) Medical problem list, including indications of a worsening condition and how to  
36 respond.

37 //



1 2. The WPC Collaborative may elect to continue past the period of the WPC Agreement if all  
2 or a portion of the infrastructure and services developed for the WPC Program are continued through  
3 other funding mechanisms following the termination of the WPC Agreement on December 31, 2020.

4 3. The WPC Collaborative shall be responsible for:

5 a. Development and implementation of all policies and procedures relating to the  
6 implementation and monitoring of the WPC Program.

7 b. Review and analysis of all data gathered and reported for the WPC Program.

8 c. Participation in the Plan-Do-Study-Act Cycle as required by DHCS

9 1) Plan – The components of the WPC Program to be implemented

10 2) Do – The implementation of the components of the WPC Program

11 3) Study – Reviewing the data and results of the WPC Program components as  
12 implemented

13 4) Act – Determining what modifications should be made, if any, to the WPC  
14 Program components to achieve the desired results

15 B. A WPC Steering Committee shall be formed by ADMINISTRATOR, and shall remain in place  
16 through December 31, 2020.

17 1. The WPC Steering Committee shall consist of the following members:

18 a. COUNTY’s Care Coordinator, who shall be the Chairperson

19 b. One representative from CalOptima

20 c. One representative from the Hospital Community;

21 d. One representative from the Clinic Community

22 e. One representative from COUNTY’s Behavioral Health Services Program

23 f. One representative from COUNTY’s Public Health Program

24 g. One representative from COUNTY’s Community Resource Department responsible for  
25 the housing programs.

26 h. One representative from 2-1-1 Orange County

27 2. COUNTY’s WPC Project Manager shall provide staff support to the WPC Steering  
28 Committee.

29  
30 **VII. REPORTS**

31 A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, monthly  
32 programmatic reports concerning CONTRACTOR’s activities as they relate to the Agreement.

33 B. CONTRACTOR submit, on forms provided or approved by ADMINISTRATOR, any  
34 additional information not already included in the quarterly programmatic reports, as requested by  
35 ADMINISTRATOR or DHCS, concerning CONTRACTOR’s activities as they relate to the Agreement.  
36 ADMINISTRATOR will be specific as to the nature of the information requested and allow thirty (30)  
37 calendar days for CONTRACTOR to respond, unless deadlines imposed by DHCS dictate otherwise.



EXHIBIT B  
AGREEMENT FOR PROVISION OF  
RECUPERATIVE CARE SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND

«CONTRACTOR\_NAME\_»

JULY 1, 2017 THROUGH DECEMBER 31, 2020

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

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

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

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

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

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

//

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

3 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

37 //

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

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

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

9 D. SECURITY RULE

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

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

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

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

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

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

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

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

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

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

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

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

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

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

34 2. Technical Security Controls

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

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

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

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

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

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

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

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

- 1) Upper case letters (A-Z)
  - 2) Lower case letters (a-z)
  - 3) Arabic numerals (0-9)
  - 4) Non-alphanumeric characters (punctuation symbols)
- h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.
- i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

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

3 3. Audit Controls

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

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

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

17 4. Business Continuity/Disaster Recovery Control (DRC)

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

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

30 5. Paper Document Controls

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

37 //

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

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

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

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

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

22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

32 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY  
33 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written  
34 notification within five (5) business days of the oral notification.

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

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

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

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

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

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

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

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

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

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

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

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

33 8. If the Breach is due to the negligence or willful misconduct of CONTRACTOR,  
34 CONTRACTOR shall bear all expense associated with the Breach and shall reimburse COUNTY for all  
35 reasonable expenses COUNTY incurs in addressing the Breach and consequences thereof, including  
36 costs of investigation, notification, remediation, documentation, or other costs associated with  
37 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  
13 is 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 policies and procedures 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 42 USC §  
35 17935(d)(2).

36 I. OBLIGATIONS OF COUNTY

37 //

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

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

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

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

12 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C  
AGREEMENT FOR PROVISION OF  
RECUPERATIVE CARE SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND

«CONTRACTOR\_NAME\_»

JULY 1, 2017 THROUGH DECEMBER 31, 2020

**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 California Information Practices Act, Civil Code § 1798.29(d).

3. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).

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

5. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and DHCS.

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

7. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

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

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court

1 orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental  
2 or tribal inspector general, or an administrative body authorized to require the production of  
3 information, and a civil or an authorized investigative demand. It also includes Medicare conditions of  
4 participation with respect to health care providers participating in the program, and statutes or  
5 regulations that require the production of information, including statutes or regulations that require such  
6 information if payment is sought under a government program providing public benefits.

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

10 B. TERMS OF AGREEMENT

11 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as  
12 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform  
13 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the  
14 Agreement provided that such use or disclosure would not violate the California Information Practices  
15 Act (CIPA) if done by the COUNTY.

16 2. Responsibilities of CONTRACTOR

17 CONTRACTOR agrees:

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

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

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

33 1) Complying with all of the data system security precautions listed in Paragraph E of  
34 the Business Associate Contract, Exhibit to the Agreement; and

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

3 3) If the data obtained by CONTRACTOR from COUNTY includes PII,  
4 CONTRACTOR shall also comply with the substantive privacy and security requirements in the  
5 Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health  
6 and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the  
7 Information Exchange Agreement (IEA). The specific sections of the IEA with substantive privacy and  
8 security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA,  
9 Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State  
10 and Local Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to  
11 ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides  
12 DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that  
13 apply to CONTRACTOR with respect to such information.

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

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

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

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

32 h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR  
33 agrees to implement reasonable systems for the discovery of any breach of unsecured DHCS PI and PII  
34 or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI  
35 and PII or security incident in accordance with Paragraph F, of the Business Associate Contract, Exhibit  
36 to the Agreement.

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

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