

FIRST AMENDMENT TO AGREEMENT FOR PROVISION OF
INPATIENT MENTAL HEALTH SERVICES FOR YOUTH

BETWEEN

COUNTY OF ORANGE

AND

CHILDREN’S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN’S

APRIL 1, 2018 THROUGH JUNE 30, 2020

THIS FIRST AMENDMENT TO AGREEMENT entered into this ~~1st day of April~~ 11th day of September, 2018 (effective date), is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and CHILDREN’S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN’S, a California not-for-profit corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This ~~Agreement~~ First Amendment shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

WITNESSETH:

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Inpatient Mental Health Services for Youth as described herein to the residents of Orange County; and

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

WHEREAS, on April 1, 2018, COUNTY and CONTRACTOR previously entered into that certain Agreement for the provision of Inpatient Mental Health Services for Youth Services in the total amount of \$1,125,000 for the period April 1, 2018 through June 30, 2020 (AGREEMENT); and

WHEREAS, COUNTY now desires to increase the total AGREEMENT amount from \$1,125,000 to \$6,682,650; and

WHEREAS, CONTRACTOR desires to accept the additional funding and agrees to provide Inpatient Mental Health Services for Youth Services pursuant to the terms and conditions and scope of work stated in the AGREEMENT.

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: April 1, 2018 through June 30, 2020

Period One means the period from April 1, 2018 through June 30, 2018

Period Two means the period from July 1, 2018 through June 30, 2019

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

Maximum Obligation: ~~N/A~~

Period One Maximum Obligation:	\$ 156,450
Period Two Maximum Obligation:	\$3,263,100
Period Three Maximum Obligation:	\$3,263,100
TOTAL MAXIMUM OBLIGATION:	\$6,682,650

Basis for Reimbursement: Fee-for-Service

Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 76-602-4966

CONTRACTOR TAX ID Number: 95-2321786

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: Children's Hospital of Orange County
1201 West La Veta Ave.
Orange, California 92868
Kerri Ruppert Schiller,
Executive Vice President and Chief Financial Officer
kschiller@choc.org

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I. ACRONYMS

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

1		
2		
3		
4	A. AA	Alcoholics Anonymous
5	B. ADL	Activities of Daily Living
6	C. AES	Advanced Encryption Standard
7	D. AOABS	Adult and Older Adult Behavioral Health
8	E. ABC	Allied Behavioral Care
9	F. ARRA	American Recovery and Reinvestment Act
10	G. ASIST	Applied Suicide Intervention Skills Training
11	H. ASO	Administrative Services Organization
12	I. ASRS	Alcohol and Drug Programs Reporting System
13	J. AQIS	Authority and Quality Improvement Services
14	K. BBS	Board of Behavioral Sciences
15	L. BCP	Business Continuity Plan
16	M. BHS	Behavioral Health Services
17	N. CalWORKs	California Work Opportunity and Responsibility for Kids
18	O. CAT	Centralized Assessment Team
19	P. CCC	California Civil Code
20	Q. CCR	California Code of Regulations
21	R. CD/DVD	Compact Disc/Digital Video or Versatile Disc
22	S. CFR	Code of Federal Regulations
23	T. CHHS	California Health and Human Services Agency
24	U. CHPP	COUNTY HIPAA Policies and Procedures
25	V. CHS	Correctional Health Services
26	W. CIPA	California Information Practices Act
27	X. CMPPA	Computer Matching and Privacy Protection Act
28	Y. COI	Certificate of Insurance
29	Z. CSI	Client and Services Information
30	AA. CSW	Clinical Social Worker
31	AB. CYBH	Children and Youth Behavioral Health Services
32	AC. D/MC	Drug/Medi-Cal
33	AD. DCR	Data Collection and Reporting
34	AE. DD	Dual Disorders
35	AF. DHCS	Department of Health Care Services
36	AG. DoD	Department of Defense
37	AH. DPFS	Drug Program Fiscal Systems

1	AI. DRP	Disaster Recovery Plan
2	AJ. DRS	Designated Record Set
3	AK. DSM	Diagnostic and Statistical Manual of Mental Disorders
4	AL. DSM-V	Diagnostic and Statistical Manual of Mental Disorders 5th Edition
5	AM. EBP	Evidence-Based Practice
6	AN. EHR	Electronic Health Record
7	AO. E-Mail	Electronic Mail
8	AP. EPSDT	Early and Periodic Screening, Diagnosis and Treatment
9	AQ. FAX	Facsimile Machine
10	AR. FFS	Fee For Service
11	AS. FIPS	Federal Information Processing Standards
12	AT. FSP	Full Service Partnership
13	AU. FTE	Full Time Equivalent
14	AV. GAAP	Generally Accepted Accounting Principles
15	AW. HCA	Health Care Agency
16	AX. HHS	Health and Human Services
17	AY. HIPAA	Health Insurance Portability and Accountability Act
18	AZ. HSC	California Health and Safety Code
19	BA. ID	Identification
20	BB. IEA	Information Exchange Agreement
21	BC. IMD	Institute for Mental Disease
22	BD. IBNR	Incurred But Not Reported
23	BE. IRIS	Integrated Records Information System
24	BF. LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
25	BG. LCSW	Licensed Clinical Social Worker
26	BH. LPT	Licensed Psychiatric Technician
27	BI. MEDS	Medi-Cal Eligibility Determination System
28	BJ. MFT	Marriage and Family Therapist
29	BK. MHP	Mental Health Plan
30	BL. MHRC	Mental Health Rehabilitation Centers
31	BM. MHS	Mental Health Specialist
32	BN. MHSA	Mental Health Services Act
33	BO. MIHS	Medical and Institutional Health Services
34	BP. MORS	Milestones of Recovery Scale
35	BQ. MTP	Master Treatment Plan
36	BR. NA	Narcotics Anonymous
37	BS. NIST	National Institute of Standards and Technology

1	BT. NOA	Notice of Action
2	BU. NP	Nurse Practitioner
3	BV. NPDB	National Provider Data Bank
4	BW. NPI	National Provider Identifier
5	BX. NPP	Notice of Privacy Practices
6	BY. OCJS	Orange County Jail System
7	BZ. OCPD	Orange County Probation Department
8	CA. OCR	Office for Civil Rights
9	CB. OCSD	Orange County Sheriff's Department
10	CC. OIG	Office of Inspector General
11	CD. OMB	Office of Management and Budget
12	CE. OPM	Federal Office of Personnel Management
13	CF. P&P	Policy and Procedure
14	CG. PADSS	Payment Application Data Security Standard
15	CH. PAF	Partnership Assessment Form
16	CI. PAR	Prior Authorization Request
17	CJ. PBM	Pharmaceutical Benefits Management
18	CK. PC	Penal Code
19	CL. PCP	Primary Care Provider
20	CM. PHI	Protected Health Information
21	CN. PI	Personal Information
22	CO. PII	Personally Identifiable Information
23	CP. PRA	Public Records Act
24	CQ. PSC	Personal Services Coordinator
25	CR. QI	Quality Improvement
26	CS. QIC	Quality Improvement Committee
27	CT. RN	Registered Nurse
28	CU. RSA	Remote Site Access
29	CV. SNF	Skilled Nursing Facility
30	CW. SSI	Supplemental Security Income
31	CX. SSA	Social Services Agency
32	CY. HITECH Act	The Health Information Technology for Economic and Clinical Health Act,
33		Public Law 111-005
34	CZ. TAR	Treatment Authorization Request
35	DA. TAY	Transitional Age Youth
36	DB. TTY	Teletypewriter
37	DC. UMDAP	Universal Method of Determining Ability to Pay

- 1 DD. USC United States Code
- 2 DE. WIC State of California Welfare and Institutions Code

3
4 **II. ALTERATION OF TERMS**

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

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

12
13 **III. ASSIGNMENT OF DEBTS**

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

21
22 **IV. COMPLIANCE**

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

26 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
27 procedures relating to ADMINISTRATOR’s Compliance Program, Code of Conduct and access to
28 General Compliance and Annual Provider Trainings.

29 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
30 Compliance Program, Code of Conduct and any Compliance related policies and procedures.
31 CONTRACTOR’s Compliance Program, Code of Conduct and any related policies and procedures shall
32 be verified by ADMINISTRATOR’s Compliance Department to ensure they include all required
33 elements by ADMINISTRATOR’s Compliance Officer as described in this Paragraph IV
34 (COMPLIANCE). These elements include:

- 35 a. Designation of a Compliance Officer and/or compliance staff.
- 36 b. Written standards, policies and/or procedures.
- 37 c. Compliance related training and/or education program and proof of completion.

- d. Communication methods for reporting concerns to the Compliance Officer.
- e. Methodology for conducting internal monitoring and auditing.
- f. Methodology for detecting and correcting offenses.
- g. Methodology/Procedure for enforcing disciplinary standards.

3. If CONTRACTOR does not provide proof of its own Compliance program to ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct.

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

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

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

1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR.

1 Notwithstanding the above, this term does not include part-time or per-diem employees, contractors,
2 subcontractors, agents, and other persons who are not reasonably expected to work more than one
3 hundred sixty (160) hours per year; except that any such individuals shall become Covered Individuals at
4 the point when they work more than one hundred sixty (160) hours during the calendar year.
5 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
6 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or
7 CONTRACTOR's own compliance program, code of conduct and related policies and procedures if
8 CONTRACTOR has elected to use its own).

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

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

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

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

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

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

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

35 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
36 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.
37 Such individual or entity shall be immediately removed from participating in any activity associated with

1 this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to
 2 CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall
 3 promptly return any overpayments within forty-five (45) business days after the overpayment is verified
 4 by ADMINISTRATOR.

5 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance
 6 Training available to Covered Individuals.

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

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

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

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

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

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

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

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

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

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

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

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

34 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
 35 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
 36 and are consistent with federal, state and county laws and regulations. This includes compliance with
 37 //

1 federal and state health care program regulations and procedures or instructions otherwise communicated
2 by regulatory agencies including the Centers for Medicare and Medicaid Services or their agents.

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

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

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

11 5. CONTRACTOR shall promptly return any overpayments within sixty (60) business days
12 after the overpayment is verified by the ADMINISTRATOR.

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

19 **V. CONFIDENTIALITY**

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

23 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this
24 Agreement are Clients of the Orange County Inpatient services system, and therefore it may be necessary
25 for authorized staff of ADMINISTRATOR to audit Client files, or to exchange information regarding
26 specific Clients with COUNTY or other providers of related services contracting with COUNTY.

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

31 3. In the event of a collaborative service agreement between Inpatient services providers,
32 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,
33 from the collaborative agency, for Clients receiving services through the collaborative agreement.

34 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
35 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
36 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the
37

1 confidentiality of any and all information and records which may be obtained in the course of providing
 2 such services. This Agreement shall specify that it is effective irrespective of all subsequent resignations
 3 or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized
 4 agent, employees, consultants, subcontractors, volunteers and interns.

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

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

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

17 F. CONTRACTOR shall notify ADMINISTRATOR within twenty-four (24) hours during a work
 18 week of any actual breach, as defined under HIPAA, the HITECH Act, and the HIPAA Regulations,
 19 involving COUNTY Client information in CONTRACTOR's possession, in any medium, that
 20 CONTRACTOR becomes aware of, through exercise of reasonable care, and is legally required to report
 21 in accordance with applicable State and/or Federal breach notification laws. The aforementioned
 22 COUNTY Client information is solely related to the services rendered by CONTRACTOR pursuant to
 23 this Agreement.

24 **VI. COST REPORT**

25
 26 A. CONTRACTOR shall submit a separate individual and/or consolidated Cost Report for Period
 27 One, Period Two and Period Three, or for a portion therefore, to COUNTY no later than sixty (60)
 28 calendar days following the period for which they are prepared or termination of this Agreement.
 29 CONTRACTOR shall prepare the individual and/or consolidated Cost Report in accordance with all
 30 applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this
 31 Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost
 32 centers, services, and funding sources in accordance with such requirements and consistent with prudent
 33 business practice, which costs and allocations shall be supported by source documentation maintained by
 34 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event
 35 CONTRACTOR has multiple Agreements for mental health services that are administered by HCA,
 36 consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as
 37 stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to

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

3 1. If CONTRACTOR fails to submit an accurate and complete individual and/or consolidated
4 Cost Report within the time period specified above, ADMINISTRATOR may withhold outstanding
5 payments in an amount no greater than \$5,000 limited only to payments due to CONTRACTOR pursuant
6 to this Agreement until such time that the accurate and complete individual and/or consolidated Cost
7 Report is delivered to ADMINISTRATOR.

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

12 B. The individual and/or consolidated Cost Report prepared for each period shall be the final
13 financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis
14 for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are
15 reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The
16 individual and/or consolidated Cost Report shall be the final financial record for subsequent audits, if
17 any.

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

28 D. Unless approved by ADMINISTRATOR, costs that exceed the Statewide Maximum Allowance
29 (SMA) rates per Medi-Cal Unit of Services, as determined by the DHCS, shall be unreimbursable to
30 CONTRACTOR.

31 E. In the event that CONTRACTOR is authorized to retain unanticipated revenues as described in
32 the Budget Paragraph of Exhibit A to this Agreement, CONTRACTOR shall specify in the individual
33 and/or consolidated Cost Report the services rendered with such revenues.

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

3
4 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
5 supporting documentation prepared by _____ for the cost report period
6 beginning _____ and ending _____ and that, to the best of my
7 knowledge and belief, costs reimbursed through this Agreement are reasonable and
8 allowable and directly or indirectly related to the services provided and that this Cost
9 Report is a true, correct, and complete statement from the books and records of
10 (provider name) in accordance with applicable instructions, except as noted. I also
11 hereby certify that I have the authority to execute the accompanying Cost Report.

12
13 Signed _____
14 Name _____
15 Title _____
16 Date _____"

17
18 **VII. DEBARMENT AND SUSPENSION CERTIFICATION**

19 A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

37 //

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

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

7
8 **VIII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

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

37 //

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

5 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
 6 means of subcontracts, provided such subcontracts meet the requirements of this Agreement as they
 7 relate to the service or activity under subcontract, and include any provisions that ADMINISTRATOR
 8 may require.

9 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
 10 subcontract upon five (5) calendar day's written notice to CONTRACTOR if the subcontract
 11 subsequently fails to meet the requirements of this Agreement or any provisions that
 12 ADMINISTRATOR has required.

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

15 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR, amounts
 16 claimed for subcontracts not approved in accordance with this Paragraph.

17 4. This provision shall not be applicable to service agreements usually and customarily entered
 18 into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services
 19 provided by consultants.
 20

21 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

22 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations
 23 regarding the employment of aliens and others and to ensure that employees, subcontractors, and
 24 consultants performing work under this Agreement meet the citizenship or alien status requirement set
 25 forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
 26 subcontractors, and consultants performing work hereunder, all verification and other documentation of
 27 employment eligibility status required by federal or state statutes and regulations including, but not
 28 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist
 29 and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
 30 covered employees, subcontractors, and consultants for the period prescribed by the law.
 31

32 **X. EQUIPMENT**

33 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all
 34 property of a Relatively Permanent nature with significant value, purchased in whole or in part by
 35 ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively
 36 Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or
 37 over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital

1 Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and
2 other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained
3 PHI and/or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited
4 to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of
5 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be
6 depreciated according to GAAP.

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

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

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

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

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

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

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

35 //
36 //
37 //

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

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

7 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
8 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation
9 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum
10 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount
11 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide
12 services, staffing, facilities or supplies.

13
14 **XII. INDEMNIFICATION AND INSURANCE**

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

25 B. COUNTY agrees to indemnify, defend with counsel, and hold CONTRACTOR, its Board of
26 Directors, officers, employees, contractors, physicians and agents ("CONTRACTOR INDEMNITEES")
27 harmless from any claims, demands or liability of any kind or nature, including but not limited to
28 personal injury or property damage, to the extent arising from or related to, the actions, determinations or
29 other performance provided by COUNTY pursuant to this Agreement upon which CONTRACTOR
30 reasonably relies (collectively, "COUNTY DETERMINATIONS"). By way of example only,
31 COUNTY DETERMINATIONS may include, without limitation, directions on authorizations,
32 associated diagnoses, 5150 descriptors, and child abuse designations, that CONTRACTOR relies upon for
33 the provision of service, admissions and/or discharges. CONTRACTOR shall have the opportunity to
34 provide objection to COUNTY'S selection of counsel with cause in which case COUNTY shall select
35 alternative counsel.

36 C. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
37 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary

1 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
 2 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on
 3 deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
 4 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject
 5 to the same terms and conditions as set forth herein for CONTRACTOR.

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

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

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

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

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

30 F. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII
 31 (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall
 32 constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this
 33 Agreement.

34 G. QUALIFIED INSURER

35 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
 36 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
 37 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred,

1 but not mandatory, that the insurer be licensed to do business in the state of California (California
2 Admitted Carrier).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$5,000,000 per claims made \$5,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

27 I. REQUIRED COVERAGE FORMS

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

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

32 J. REQUIRED ENDORSEMENTS

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

35 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least
36 as broad naming the County of Orange, its elected and appointed officials, officers, employees, and
37 //

1 agents as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY***
 2 ***WRITTEN AGREEMENT.***

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

6 2. The Network Security and Privacy Liability policy shall contain the following endorsements
 7 which shall accompany the Certificate of Insurance:

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

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

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

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

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

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

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

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

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

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

4 S. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

21
 22 **XIII. INSPECTIONS AND AUDITS**

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

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

37 //

1 C. AUDIT RESPONSE

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

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

14 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual
15 Single Audit as required by 31 USC 7501 – 7507, as well as its implementing regulations under
16 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
17 Federal Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen
18 (14) calendar days of receipt.

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

23
24 **XIV. LICENSES AND LAWS**

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

33 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

34 1. CONTRACTOR certifies it is in full compliance with all applicable federal and State
35 reporting requirements regarding its employees and with all lawfully served Wage and Earnings
36 Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the
37 term of the Agreement with the County of Orange. Failure to comply shall constitute a material breach

1 of the Agreement and failure to cure such breach within sixty (60) calendar days of notice from the
 2 COUNTY shall constitute grounds for termination of the Agreement.

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

5 a. In the case of an individual CONTRACTOR, his/her name, date of birth, social security
 6 number, and residence address; (the Parties acknowledge that this section is not applicable to CHOC
 7 Children's as it is a California not-for-profit corporation and not an individual);

8 b. In the case of CONTRACTOR doing business in a form other than as an individual, the
 9 name, date of birth, social security number, and residence address of each individual who owns an
 10 interest of ten percent (10%) or more in the contracting entity; (the Parties acknowledge that this section
 11 is not applicable as there is no individual that owns an interest of ten percent (10%) or more of CHOC
 12 Children's).

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

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

- 19 1. ARRA of 2009.
- 20 2. WIC, Division 5, Community Mental Health Services.
- 21 3. WIC, Division 6, Admissions and Judicial Commitments.
- 22 4. WIC, Division 7, Mental Institutions.
- 23 5. HSC, §§1250 et seq., Health Facilities.
- 24 6. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 25 7. CCR, Title 9, Rehabilitative and Developmental Services.
- 26 8. CCR, Title 17, Public Health.
- 27 9. CCR, Title 22, Social Security.
- 28 10. CFR, Title 42, Public Health.
- 29 11. CFR, Title 45, Public Welfare.
- 30 12. USC Title 42. Public Health and Welfare.
- 31 13. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 32 14. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 33 15. 42 USC §1857, et seq., Clean Air Act.
- 34 16. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 35 17. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 36 18. Policies and procedures set forth in Mental Health Services Act.
- 37 19. Policies and procedures set forth in DHCS Letters.

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

2 21. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
3 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
4 Federal Awards.

5 D. CONTRACTOR shall at all times be capable and authorized by the State of California to
6 provide treatment and bill for services provided to Medi-Cal eligible Clients while working under the
7 terms of this Agreement.

8 E. CONTRACTOR shall make every reasonable effort to obtain appropriate licenses and/or
9 waivers to provide Medi-Cal billable treatment services at school or other sites identified by
10 ADMINISTRATOR, if both Parties have mutually agreed to do so.

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

12 A. COUNTY owns all rights to the name, logos, and symbols of COUNTY. The use and/or
13 reproduction of COUNTY's name, logos, or symbols for any purpose, including commercial
14 advertisement, promotional purposes, announcements, displays, or press releases, without COUNTY's
15 prior written consent is expressly prohibited.

16 B. CONTRACTOR may develop and publish information related to County patients or the specific
17 services provided under this Agreement to County patients where all of the following conditions are
18 satisfied:
19

20 1. Unless directed otherwise by ADMINISTRATOR, the information includes a statement that
21 the program, wholly or in part, is funded through COUNTY, State and Federal government funds;

22 2. The information does not give the appearance that the COUNTY, its officers, employees, or
23 agencies endorse:

24 a. any commercial product or service; and,

25 b. any product or service provided by CONTRACTOR, unless approved in writing by
26 ADMINISTRATOR; and,

27 4. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other
28 publicly available social media sites) to publish information related to this Agreement, CONTRACTOR
29 shall develop social media policies and procedures and have them available to ADMINISTRATOR.
30 CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain
31 to any social media developed in support of the services described within this Agreement. The policy is
32 available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies>.

33 **XVI. MINIMUM WAGE LAWS**

34 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
35 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
36 federal or California Minimum Wage to all its employees that directly or indirectly provide services
37

1 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all
 2 its contractors or other persons providing services pursuant to this Agreement on behalf of
 3 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
 4 Wage.

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

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

12 **XVII. NONDISCRIMINATION**

13 **A. EMPLOYMENT**

14 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
 15 unlawfully discriminate against any employee or applicant for employment because of his/her race,
 16 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
 17 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
 18 orientation, or military and veteran status. Additionally, during the term of this Agreement,
 19 CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall
 20 not unlawfully discriminate against any employee or applicant for employment because of his/her race,
 21 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
 22 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
 23 orientation, or military and veteran status.
 24

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

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

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

35 5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR
 36 and/or subcontractor shall state that all qualified applicants will receive consideration for employment
 37 without regard to race, religious creed, color, national origin, ancestry, physical disability, mental

1 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
2 expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed
3 fulfilled by use of the term EOE.

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

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

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

31 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Clients
32 through a written statement that CONTRACTOR's and/or subcontractor's Clients may file all complaints
33 alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and
34 ADMINISTRATOR or COUNTY's Patient's Rights Office.

- 35 1. Whenever possible, problems shall be resolved informally and at the point of service.
36 CONTRACTOR shall establish an internal informal problem resolution process for Clients not able to

37 //

1 resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with
2 CONTRACTOR either orally or in writing.

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

5 b. Throughout the problem resolution and grievance process, Client rights shall be
6 maintained, including access to the Patients' Rights Office at any point in the process. Clients shall be
7 informed of their right to access the Patients' Rights Office at any time.

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

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

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

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

25 26 **XVIII. NOTICES**

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

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

32 2. When faxed, transmission confirmed;

33 3. When sent by Email; or

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

36 B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of
37 this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,

1 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
2 Parcel Service, or other expedited delivery service.

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

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

9 10 **XIX. NOTIFICATION OF DEATH**

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

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

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

21 2. WRITTEN NOTIFICATION

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

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

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

33 34 **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

6 **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

18 D. CONTRACTOR shall ensure appropriate financial records related to cost reporting, expenditure,
 19 revenue, billings, etc., are prepared and maintained accurately and appropriately.

20 E. CONTRACTOR shall ensure all appropriate state and federal standards of documentation,
 21 preparation, and confidentiality of records related to participant, Client and/or patient records are met at
 22 all times.

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

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

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

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

32 G. CONTRACTOR may retain participant, Client, and/or patient documentation electronically in
 33 accordance with the terms of this Agreement and common business practices. If documentation is
 34 retained electronically, upon reasonable notice and during normal business hours, CONTRACTOR shall,
 35 in the event of an audit or site visit:

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

1 2. Provide auditor or other authorized individuals access to documents via a computer terminal.
2 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
3 requested.

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

7 I. CONTRACTOR shall be required to pay actual costs associated with a Breach of privacy and/or
8 security of PII and/or PHI possessed or controlled by CONTRACTOR, including but not limited to the
9 costs of notification.

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

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

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

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

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

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

27 28 **XXII. RESEARCH AND PUBLICATION**

29 CONTRACTOR shall not utilize information and data received from COUNTY or developed as a
30 result of this Agreement for the purpose of personal or professional publication, without prior written
31 approval of ADMINISTRATOR.

32 **XXIII. REVENUE**

33 A. CLIENT FEES – CONTRACTOR shall charge, unless waived by ADMINISTRATOR, a fee to
34 Clients to whom billable services, other than those amounts reimbursed by Medicare, Medi-Cal or other
35 third party health plans, are provided pursuant to this Agreement, their estates and responsible relatives,
36 according to their ability to pay as determined by the State Department of Health Care Services'
37 "Uniform Method of Determining Ability to Pay" (UMDAP) procedure or by any other payment

1 procedure as approved in advance, and in writing by ADMINISTRATOR; and in accordance with Title 9
 2 of the California Code of Regulations. Such fee shall not exceed the actual cost of services provided.
 3 No Client shall be denied services because of an inability to pay.

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

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

14 **XXIV. SEVERABILITY**

15
 16 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
 17 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
 18 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
 19 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in
 20 full force and effect, and to that extent the provisions of this Agreement are severable.

21 **XXV. SPECIAL PROVISIONS**

22
 23 A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following
 24 purposes:

- 25 1. Making cash payments to intended recipients of services through this Agreement.
- 26 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
 27 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use
 28 of appropriated funds to influence certain federal contracting and financial transactions).
- 29 3. Fundraising.
- 30 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
 31 CONTRACTOR’s staff, volunteers, or members of the Board of Directors or governing body.
- 32 5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body
 33 for expenses or services.
- 34 6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants,
 35 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
 36 agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.

37 //

1 7. Paying an individual salary or compensation for services at a rate in excess of the current
2 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
3 Schedule may be found at www.opm.gov.

4 8. Severance pay for separating employees.

5 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
6 codes and obtaining all necessary building permits for any associated construction.

7 10. Supplanting current funding for existing services.

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

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

11 2. Making phone calls outside of the local area unless documented to be directly for the
12 purpose of Client care.

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

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

16 5. Purchasing or improving land, including constructing or permanently improving any
17 building or facility, except for tenant improvements.

18 6. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
19 funds (matching).

20 7. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
21 CONTRACTOR's Clients.

22
23 **XXVI. STATUS OF CONTRACTOR**

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

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XXVII. TERM

1
2 A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions
3 of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified
4 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided
5 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as
6 would normally extend beyond this term, including but not limited to, obligations with respect to
7 confidentiality, indemnification, audits, reporting and accounting.

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

XXVIII. TERMINATION

10
11
12 A. Either Party may terminate this Agreement, without cause, upon ninety (90) calendar days'
13 written notice given the other Party.

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

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

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

24 4. The neglect by any physician or licensed person employed or contracted by
25 CONTRACTOR of any duty required pursuant to this Agreement; unless CONTRACTOR promptly
26 removes such physician or licensed person from serving persons treated or assisted pursuant to this
27 Agreement.

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

30 6. The continued incapacity of any physician or licensed person employed or contracted by
31 CONTRACTOR to perform duties required pursuant to this Agreement; unless CONTRACTOR
32 promptly removes such physician or licensed person from serving persons treated or assisted pursuant to
33 this Agreement.

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

1 D. CONTINGENT FUNDING

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

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

5 b. Inclusion of sufficient funding for the services hereunder in the applicable budget
6 approved by the Board of Supervisors.

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

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

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

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

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

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

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

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

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

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

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

1 9. Provide written notice of termination of services to each Client being served under this
2 Agreement, within thirty (30) calendar days of receipt of termination notice. A copy of the notice of
3 termination of services must also be provided to ADMINISTRATOR within the thirty (30) calendar day
4 period.

5 G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
6 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
7

8 **XXIX. THIRD PARTY BENEFICIARY**

9 Neither Party hereto intends that this Agreement shall create rights hereunder in third parties
10 including, but not limited to, any subcontractors or any Clients provided services pursuant to this
11 Agreement.
12

13 **XXX. WAIVER OF DEFAULT OR BREACH**

14 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
15 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
16 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
17 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
18 Agreement.
19

20 **XXXI. MAXIMUM OBLIGATION**

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

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

3
4 CHILDREN’S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN’S

5
6
7 BY: _____ DATED: _____

8
9
10 TITLE: _____

11
12
13
14
15 COUNTY OF ORANGE

16
17
18 BY: _____ DATED: _____

19 HEALTH CARE AGENCY

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

27
28
29 BY: _____ DATED: _____

30 DEPUTY

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

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 INPATIENT MENTAL HEALTH SERVICES FOR YOUTH
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CHILDREN’S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN’S
 8 APRIL 1, 2018 THROUGH JUNE 30, 2020
 9

10 **I. COMMON TERMS AND DEFINITIONS**

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

13 1. Admission means documentation, by CONTRACTOR, for completion of entry and
 14 evaluation services provided to Clients.

15 2. Care Plan means a written plan, including by reference any juvenile court order(s),
 16 developed and signed by the Family Team that includes the following elements:

- 17 a. A statement of an overall goal or vision for the Client and Client’s family.
- 18 b. The strengths of the Client and Client’s family.
- 19 c. The needs, as defined by specific life areas that must be met to achieve the goal(s) of the
 20 Client and Client’s family.
- 21 d. Prevention and intervention safety plans.
- 22 e. The type, frequency, and duration of intervention strategies.
- 23 f. Financial responsibility for the components of the POC.
- 24 g. Desired outcomes.

25 3. Crisis Assessment Team (CAT) means the team of behavioral health specialists operated by
 26 the COUNTY to provide community based assessment and intervention for youth in crisis operating
 27 24/7. The CAT serves as the central point for locating psychiatric beds for youth and facilitating
 28 admission for those who require this level of care.

29 4. Client means any individual, referred or enrolled, for services under the Agreement who is
 30 living with mental, emotional, or behavioral disorders.

31 5. Crisis Stabilization Unit (CSU) means a County operated or contracted facility operating
 32 twenty-four hour for the evaluation of Clients who are experiencing a behavioral health crisis. Those
 33 Clients who don’t stabilize require inpatient treatment.

34 6. Diagnosis means identifying the nature of a Client's disorder. When formulating the
 35 Diagnosis of Client, CONTRACTOR shall use the diagnostic codes as specified in the most current
 36 International Classification of Diseases –Clinical Modification (ICD-CM) and further defined in the
 37 //

1 current Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American
2 Psychiatric Association.

3 7. Early Periodic Screening Diagnostic and Treatment (EPSDT) means the State of
4 California's implementation of the Federal child health component of Medicaid program which provides
5 physical, mental, and developmental health services for children and young adults.

6 8. Education Coordinator means an individual who is responsible for providing assistance and
7 support with educational and vocational services as well as coordinating instruction on the unit and
8 linkage back to the home school at discharge.

9 9. Engagement means the process where a trusting relationship between CONTRACTOR's
10 staff and Client is developed over a short period of time, so CONTRACTOR and Client can develop a
11 plan to link the Client to appropriate services within the community. Engagement of the Client is the
12 objective of a successful outreach.

13 10. Full Service Partnership/Wraparound (FSP/W) means a program model described in
14 COUNTY's MHSA plan that has been approved by the state. The MHSA plan describes how
15 COUNTY will use MHSA funds to develop and implement treatment plans for mental health Clients
16 through FSP/Ws. A FSP/W is an evidence-based and strength-based model with the focus on the
17 individual rather than the disease. It is culturally competent in-home, intensive, mental health care
18 coordination services that will address family needs across all life domains of the Client. This level of
19 care is a possible linkage after discharge from inpatient services.

20 11. Head of Service means an individual ultimately responsible for overseeing the program and
21 is required to be licensed as a mental health professional.

22 12. Licensed Clinical Social Worker (LCSW) means a licensed individual, pursuant to the
23 provisions of Chapter 14 of the California Business and Professions Code, who can provide clinical
24 services to Clients. The license must be current and in force, and has not been suspended or revoked.
25 Also, it is preferred that the individual has at least one (1) year of experience treating children and TAY.

26 13. Licensed Marriage Family Therapist (MFT) means a licensed individual, pursuant to the
27 provisions of Chapter 13 of the California Business and Professions Code, pursuant to the provisions of
28 Chapter 14 of the California Business and Professions Code, who can provide clinical services to
29 Clients. The license must be current and in force, and has not been suspended or revoked. Also, it is
30 preferred that the individual has at least one (1) year of experience treating children and TAY.

31 14. Licensed Professional Clinical Counselor (LPCC) means a licensed individual, pursuant to
32 the provisions of Chapter 13 of the California Business and Professions Code, pursuant to the provisions
33 of Chapter 16 of the California Business and Professions Code, who can provide clinical service to
34 Clients. The license must be current and in force, and has not been suspended or revoked. Also, it is
35 preferred that the individual has at least one (1) year of experience treating children and TAY.

36 15. Licensed Psychiatric Technician (LPT) means a licensed individual, pursuant to the
37 provisions of Chapter 10 of the California Business and Professions Code, who can provide clinical

1 services to Clients. The license must be current and in force, and has not been suspended or revoked.
2 Also, it is preferred that the individual has at least one (1) year of experience treating children and TAY.

3 16. Licensed Psychologist means a licensed individual, pursuant to the provisions of Chapter
4 6.6 of the California Business and Professions Code, who can provide clinical services to Clients. The
5 license must be current and in force, and has not been suspended or revoked. Also, it is preferred that
6 the individual has at least one (1) year of experience treating children and TAY.

7 17. Licensed Vocational Nurse (LVN) means a licensed individual, pursuant to the provisions
8 of Chapter 6.5 of the California Business and Professions Code, who can provide clinical services to
9 Clients. The license must be current and in force, and has not been suspended or revoked. Also, it is
10 preferred that the individual has at least one (1) year of experience treating children and TAY.

11 18. Medi-Cal means the State of California's implementation of the federal Medicaid health
12 care program which pays for a variety of medical services for children and adults who meet eligibility
13 criteria.

14 19. Medical Necessity means health-care services or supplies needed to prevent, diagnose, or
15 treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medicine.
16 It is a level of impairment, and needed intervention related to criteria as defined in the COUNTY's MHP
17 under Medical Necessity for Medi-Cal reimbursed Specialty Mental Health Services.

18 20. Mental Health Services are individual or a group therapy and intervention being provided to
19 Clients that are designed to reduce mental disability and restores or improves daily functioning. Mental
20 Health Services must be consistent with goals of learning and development, as well as independent
21 living and enhanced self-sufficiency. In addition, these services cannot be provided as a component of
22 adult residential services, crisis residential treatment services, Crisis Intervention, crisis stabilization,
23 day rehabilitation, or day treatment intensive. Service activities may include, but are not limited to:
24 Assessment, plan development, rehabilitation, and collateral. Also, Mental Health Services may be
25 either Face-to-Face Contact, or by telephone with Clients or significant support individuals, and services
26 may be provided anywhere in the community.

27 a. Assessment means a service activity, which may include a clinical analysis of the history
28 and current status of a Client's mental, emotional, behavioral disorder, and relevant cultural issues. The
29 Assessment also needs to include history of services being provided, diagnosis, and any testing
30 procedures that were used.

31 b. Collateral means significant support individual(s) in a Client's life and is/are used to
32 define services provided to the Client with the intent of improving or maintaining the mental health
33 status of the Client. The Client may or may not be present for this service activity.

34 c. Intensive Care Coordination (ICC) means a medically necessary service provided to
35 Medi-Cal beneficiaries under the EPSDT benefit. ICC includes assessment, care planning and
36 coordination of services across child services systems and providers, including intensive services for
37 children/youth who meet the Katie A. Subclass criteria.

1 d. Intensive Home-Based Services (IHBS) means a medically necessary service provided to
 2 Medi-Cal beneficiaries under the EPSDT benefit. IHBS are individualized, strength-based mental
 3 health treatment interventions designed to ameliorate mental health conditions that interfere with a
 4 Client's functioning. IHBS are provided only in conjunction with ICC and are recommended by the
 5 Child and Family Team. IHBS is also provided to the Katie A. Subclass population.

6 e. Medication Support Services means services provided by licensed physicians, registered
 7 nurses, or other qualified medical staff, which include: prescribing, administering, dispensing and
 8 monitoring of psychiatric medications or biologicals that are necessary to alleviate symptoms of mental
 9 illness. These services also include evaluation and documentation of the clinical justification and
 10 effectiveness of medication, dosage, side effects, compliance, and response to medication. In addition,
 11 the licensed physicians, registered nurses, or other qualified medical staff must obtain informed consent
 12 from Clients prior to providing medication education and plan development related to the delivery of
 13 these services and/or Assessment to Clients.

14 f. Rehabilitation Service means an activity which includes assistance to improving,
 15 maintaining, or restoring a Client's or group of Clients' functional skills, daily living skills, social and
 16 leisure skill, grooming and personal hygiene skills, meal preparation skills, support resources and/or
 17 medication education.

18 g. Substance Use treatment means a program that uses a stage-wise treatment model and is
 19 non-confrontational, follows behavioral principles, considers interactions between mental illness and
 20 substance abuse, and has gradual expectations of abstinence. Mental illness and substance abuse
 21 research has strongly indicated that a Client with a disorder needs treatment for both problems to
 22 recover fully. Focusing on one does not ensure the other will go away. Substance use services integrate
 23 assistance for each condition by helping Clients recover from mental illness and substance abuse in one
 24 setting and at the same time.

25 h. Therapeutic Behavioral Services (TBS) means one-on-one behavioral interventions with
 26 a Client, which is designed to reduce or eliminate targeted behaviors as identified in the Client's
 27 treatment plan. Collateral services are also provided to parent(s)/guardian(s) as part of TBS. Clients
 28 must be Medi-Cal eligible and meet TBS class membership and service need requirements.
 29 Documentation in the medical record must support Medical Necessity for these intensive services.
 30 Cases in which Clients are receiving more than twenty (20) hours per week of TBS or those who are
 31 expected to receive more than four months (120 days) of TBS must be approved by
 32 ADMINISTRATOR. ADMINISTRATOR has to approve individuals that are delivering these
 33 intervention services to ensure they are qualified to deliver these services.

34 i. Targeted Case Management (TCM) means services that assist a Client to access needed
 35 medical, educational, social, prevocational, vocational, rehabilitative, or other community services.
 36 These service activities may include, but are not limited to: communicating and coordinating services

37 //

1 through referral; monitoring service delivery to ensure Clients' access to service and the service delivery
2 system; and tracking of Clients' progress and plan development.

3 j. Treatment Foster Care (TFC) also known as Therapeutic Foster Care, consists of
4 intensive and highly coordinated mental health and support services provided to a foster parent or
5 caregiver in which the foster parent/caregiver becomes an integral part of the child's treatment team.

6 k. Therapy means a therapeutic intervention that focuses primarily on symptom reduction as
7 a means to improve functional impairments. Therapy may be delivered to a Client or a group of Clients,
8 which may include family Therapy with Client being present.

9 21. The Mental Health Services Act (MHSA) is a voter-approved initiative to develop a
10 comprehensive approach to providing community-based mental health services and supports for
11 California residents. It is also known as "Proposition 63."

12 22. National Provider Identifier (NPI) means the standard unique health identifier that was
13 adopted by the Secretary of HHS Services under HIPAA for health care providers. All HIPAA covered
14 healthcare providers, individuals, and organizations must obtain an NPI for use to identify themselves in
15 HIPAA standard transactions. The NPI is assigned for life.

16 23. Notice of Action-A (NOA-A) means a Medi-Cal requirement that informs the beneficiary
17 that she/he is not entitled to any specialty mental health service. The COUNTY has expanded the
18 requirement for an NOA-A to all beneficiaries requesting an Assessment for services and found not to
19 meet the Medical Necessity criteria for specialty Mental Health Services.

20 24. Notice of Privacy Practices (NPP) means a document that notifies Clients of uses and
21 disclosures of PHI/PII. The NPP may be made by, or on behalf of, the health plan or health care
22 provider as set forth in HIPAA.

23 25. Outcomes Analyst means an individual who ensures that a program maintains a focus on
24 program outcomes and quality assurance of the data being reported. This individual will be responsible
25 for reviewing outcome data and other collected information for accuracy and correcting any errors prior
26 to entering into the data capture system. The Outcomes Analyst will, analyze data, and developing
27 strategies for gathering new data from the Client's perspective to improve the Program's understanding
28 of Client's needs and desires towards furthering their recovery. In addition, this position will be
29 responsible for attending all data and outcome related meetings and ensuring that the program is being
30 proactive in all data collection requirements and changes at the local and state levels.

31 26. Outreach means linking potential Clients to appropriate Mental Health Services within the
32 community. Outreach activities will include educating the community about the services offered and
33 requirements for participation in the various mental health programs within the community. Such
34 activities may result in the CONTRACTOR developing Referral sources for Clients from programs
35 being offered within the community.

36 27. Pathways to Wellbeing is the program that the State Departments of Social Services and
37 Health Care Services have put into place to serve youth, many of whom had been in the

1 Katie A. Subclass which was established in settlement of the lawsuit, Katie A. et al. v. Bonta et al., a
 2 class action lawsuit filed in Federal District Court concerning the availability of intensive mental health
 3 services to children in California who are either in foster care or at imminent risk of coming into care.

4 28. Program Director means an individual who is responsible for all aspects of administration
 5 and clinical operations of the mental health program, including development and adherence to the
 6 annual budget. This individual will also be responsible for the following: hiring, development and
 7 performance management of professional and support staff, and ensuring mental health treatment
 8 services are provided in concert with COUNTY and state rules and regulations.

9 29. Protected Health Information (PHI) means individually identifiable health information
 10 usually transmitted through electronic media. PHI can be maintained in any medium as defined in the
 11 regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is
 12 created or received by a covered entity and is related to the past, present, or future physical or mental
 13 health or condition of an individual, provision of health care to an individual, or the past, present, or
 14 future payment for health care provided to an individual.

15 30. Psychiatrist means an individual who meets the minimum professional and licensure
 16 requirements set forth in Title 9, CCR, Section 623, and, preferably, has at least one (1) year of
 17 experience treating children and TAY.

18 31. Quality Improvement Committee (QIC) means a committee that meets quarterly to review
 19 one percent (1%) of all “high-risk” Medi-Cal Clients in order to monitor and evaluate the quality and
 20 appropriateness of services provided. At a minimum, the committee is comprised of one (1)
 21 ADMINISTRATOR, one (1) clinician, and one (1) physician who are not involved in the clinical care of
 22 the cases reviewed.

23 32. Referral means effectively linking Clients to other services within the community and
 24 documenting follow-up provided within five (5) business days to assure that Clients have made contact
 25 with the referred service(s).

26 33. Registered Nurse (RN) means a licensed individual, pursuant to the provisions of Chapter 6
 27 of the California Business and Professions Code, who can provide clinical services to Clients. The
 28 license must be current and in force, and has not been suspended or revoked. Also, it is preferred that
 29 the individual has at least one (1) year of experience treating children and TAY.

30 34. Seriously Emotionally Disturbed (SED) means children or adolescents minors under the
 31 age of 18 years who have a mental disorder as identified in the most recent edition of the Diagnostic and
 32 Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental
 33 disorder, which results in behavior inappropriate to the child’s age according to expected developmental
 34 norms. W&I 5600.3.

35 35. Serious Mental Impairment (SMI) means an adult with a mental disorder that is severe in
 36 degree and persistent in duration, which may cause behavioral functioning which interferes substantially
 37 with the primary activities of daily living, and which may result in an inability to maintain stable

1 adjustment and independent functioning without treatment, support, and rehabilitation for a long or
2 indefinite period of time. W&I 5600.3.

3 36. Student Intern means student(s) currently enrolled in an accredited graduate or
4 undergraduate program and is/are accumulating supervised work experience hours as part of field work,
5 internship, or practicum requirements. Acceptable programs include all programs that assist students in
6 meeting the educational requirements to be a Licensed MFT, a LCSW, a Licensed Clinical Psychologist,
7 a Licensed PCC, or to obtain a Bachelor's degree. Individuals with graduate degrees and have two (2)
8 years of full-time experience in a mental health setting, either post-degree or as part of the program
9 leading to the graduate degree, are not considered as students.

10 37. UMDAP means the method used for determining the annual Client liability for mental
11 health services received from the COUNTY mental health system and is set by the State of California.

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

14 **II. ISSUE RESOLUTION**

15 A. For resolution of issues between CONTRACTOR and ADMINISTRATOR with respect to the
16 implementation and operation of this Agreement or COUNTY's policies and procedures regarding
17 services described herein, the following sequential steps shall apply:

18 1. CONTRACTOR shall routinely utilize all informal communication processes and methods
19 with ADMINISTRATOR program and administrative staff including, but not limited to, telephone
20 contact, electronic mail (e-mail), FAX, written correspondence and meetings, to resolve any issues or
21 problems regarding the implementation and operation of this Agreement or COUNTY's policies and
22 procedures regarding services described herein.

23 2. If the parties are unable to resolve the issue, CONTRACTOR shall give written notice to
24 ADMINISTRATOR setting forth in specific terms the existence and nature of any unresolved matter or
25 concern related to the purposes and obligations of this Agreement. ADMINISTRATOR shall have
26 fifteen (15) calendar days following such notice to obtain resolution of any issue(s) identified in this
27 manner, provided, however, by mutual consent this period of time may be extended to thirty (30)
28 calendar days.

29 3. If the parties are unable to obtain resolution of the issue, they shall submit a joint written
30 Statement describing the facts of the issue to the HCA Director of Behavioral Health and a designated
31 representative of CHOC. Within thirty (30) days after the joint written Statement has been provided to
32 each Party's representative, the Parties agree to meet so that both Parties may come to mutual agreement
33 as to resolution on the issue or as a last option to an agreed upon third party for final resolution.

34 4. The rights and remedies provided by this paragraph are in addition to those provided by law
35 to either party.

36 //

1 B. CONTRACTOR AND ADMINISTRATOR may mutually agree, in writing, to modify the Issue
2 Resolution Paragraph of this Exhibit A to the Agreement.

3 4 **III. PATIENT'S RIGHTS**

5 A. CONTRACTOR shall post the current DHCS Patients' Rights poster as well as the
6 ADMINISTRATOR's MHP Complaint and Grievance poster in all County threshold languages in
7 locations readily available to Clients and staff and have complaint forms and complaint envelopes
8 readily accessible to Clients and families on the unit without having to make a request for one. This
9 information should be at a readability level to match at least half of the Clients on the unit.
10 CONTRACTOR shall develop a policy or include in a current applicable policy how they will include
11 those with limited reading ability in exercising their Patient's Rights.

12 B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have
13 complaint resolution and grievance processes approved by ADMINISTRATOR, to which the
14 beneficiary shall have access.

15 1. CONTRACTOR's complaint resolution processes shall emphasize informal, easily
16 understood steps designed to resolve disputes as quickly and simply as possible.

17 2. CONTRACTOR's complaint resolution and grievance processes shall incorporate
18 COUNTY's grievance, patients' rights, and utilization management guidelines and procedures.

19 C. Complaint Resolution and Grievance Process – ADMINISTRATOR shall implement complaint
20 and grievance procedures that shall include the following components:

21 1. Complaint Resolution. This process will specifically address and attempt to resolve Client
22 complaints and concerns at CONTRACTOR's facility. Examples of such complaints may include
23 dissatisfaction with services or with the quality of care, or dissatisfaction with the condition of the
24 physical plant.

25 2. Formal Grievance. When the Client's complaint is not resolved at CONTRACTOR's
26 facility and the Client or Client representative requests it, the complaint becomes a formal grievance.
27 The request is made to COUNTY's MHIS and represents the first step in the formal grievance process.
28 *(All formal grievances go directly to Patients' Rights to address).*

29 3. Title IX Rights Advocacy. This process may be initiated by a Client who registers a
30 statutory rights violation or a denial or abuse complaint with the County Patients' Rights Office. The
31 Patients' Rights office shall investigate the complaint, and Title IX grievance procedures shall apply,
32 which involve ADMINISTRATOR'S Director of Behavioral Health Care and the State Patients' Rights
33 Office.

34 D. The parties agree that Clients have recourse to initiate a complaint to CONTRACTOR, appeal
35 to the County Patients' Rights Office, file a formal grievance, and file a Title IX complaint. The
36 Patients' Advocate shall advise and assist the Client, investigate the cause of the complaint or grievance,
37 and attempt to resolve the matter.

E. No provision of this Agreement shall be construed as to replacing or conflicting with the duties of County Patients' Rights Office pursuant to Welfare and Institutions Code Section 5500.

F. CONTRACTOR AND ADMINISTRATOR may mutually agree, in writing, to modify the Patient's Rights Paragraph of this Exhibit A to the Agreement.

IV. PAYMENTS

A. CONTRACTOR agrees to provide six (6) beds per day at an agreed upon all-inclusive rate of \$1490 per day for Orange County youth between the ages of three (3) and seventeen (17) referred by ADMINISTRATOR. CONTRACTOR agrees to accept additional Orange County youth between the ages of three (3) and seventeen (17) referred by ADMINISTRATOR for additional beds per day at the same rate if additional beds are available.

~~1. CONTRACTOR and ADMINISTRATOR will work collaboratively to manage bed usage. This will be accomplished at two (2) levels:~~

~~a. CONTRACTOR and ADMINISTRATOR will meet daily in a census control meeting in which prospective admissions and discharges will be discussed as well as milieu dynamics that might influence who is referred to the inpatient psychiatric unit.~~

1. CONTRACTOR and ADMINISTRATOR will work collaboratively to manage bed usage. This will be accomplished at two (2) levels:

a. CONTRACTOR and ADMINISTRATOR will meet daily in a census control meeting in which prospective admissions and discharges will be discussed as well as milieu dynamics that might influence who is referred to the inpatient psychiatric unit.

b. CONTRACTOR and ADMINISTRATOR will meet monthly to discuss all areas of collaboration related to services provided under this Agreement with a specific emphasis on bed day usage.

B. DHCS PAYMENTS

~~1. CONTRACTOR shall be reimbursed by DHCS for services provided at the following all-inclusive rates per Client day for acute Psychiatric Inpatient Hospital Services for Medi-Cal eligible Clients referred by ADMINISTRATOR based on the accommodation codes set forth therein.~~

<u>Accommodation Code</u>	<u>Description</u>	<u>Daily Rate</u>		
		<u>Period One</u>	<u>Period Two</u>	<u>Period Three</u>
<u>097</u>	<u>Single Room Adolescent/Child, Psychiatric</u>	<u>\$1490</u>	<u>\$1490</u>	<u>\$1490</u>
<u>169</u>	<u>Administrative Day</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>

1. CONTRACTOR shall be reimbursed by DHCS for services provided at the following all-inclusive rates per Client day for acute Psychiatric Inpatient Hospital Services for Medi-Cal eligible Clients referred by ADMINISTRATOR based on the accommodation codes set forth therein.

<u>Accommodation Code</u>	<u>Description</u>	<u>Daily Rate</u>		
		<u>Period One</u>	<u>Period Two</u>	<u>Period Three</u>
<u>114</u>	<u>Single Room Adolescent/Child, Psychiatric</u>	<u>\$1490</u>	<u>\$1490</u>	<u>\$1490</u>
<u>169</u>	<u>Administrative Day</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>	<u>Current DHCS Rate</u>

a. The rate for Accommodation Code 169 is established and adjusted by the DHCS.

b. Rates are inclusive of all Psychiatric Inpatient Hospital Services as defined in this Exhibit A to the Agreement, and shall constitute payment in full for these services.

c. The number of billable Units of Service shall include the day of admission and exclude the day of discharge unless admission and discharge occur on the same day.

d. DHCS may reimburse Administrative Days for dates in which documentation does not meet requirements for Acute Day reimbursement, contingent upon CONTRACTOR documentation of services that qualify for the Administrative Day reimbursement.

e. Rates do not include physician or psychologist services rendered to Clients, or transportation services required in providing Psychiatric Inpatient Hospital services. These services shall be billed separately from the above per diem rate for Psychiatric Inpatient Hospital services as follows:

1) When Medi-Cal eligible mental health services are provided by a psychiatrist or psychologist, such services shall be billed to COUNTY's ASO. Prior authorization and notification are not required prior to providing these services.

2) When Medi-Cal eligible medical services are provided by a physician, such services shall be billed to the designated CalOptima Plan or CalOptima Direct, depending on the Client's health coverage benefit. Prior authorization and notification may be required prior to providing these services.

3) When Medi-Cal eligible transportation services are provided, such services shall be billed to the designated CalOptima Plan or CalOptima Direct, depending on the Client's health coverage benefit. Prior authorization and notification may be required prior to providing these services.

f. The Client daily rates stated above do not include ECT or CT/MRI Services. When medically appropriate CONTRACTOR shall provide services for ECT or CT/MRI and/or make referrals

1 for services as needed. The rates for ECT and CT/MRI Services shall apply only for the day(s) in which
 2 the Client received an approved ECT or CT/MRI (rates listed below). These rates reflect
 3 CONTRACTOR's reimbursement only and associated professional services shall be billed to
 4 COUNTY's ASO, the designated CalOptima Plan or CalOptima Direct. CONTRACTOR must obtain
 5 prior approval from the ADMINISTRATOR to perform the ECT or CT/MRI in order to be reimbursed.
 6 CONTRACTOR shall submit to ADMINISTRATOR ECT and MRI invoices that indicate for whom
 7 services were provided, the date of service, and shall be supported with such documentation as may be
 8 required by ADMINISTRATOR.

9 g. For all services outlined above wherein CONTRACTOR has exhausted available funding
 10 sources and remains in whole or in part unfunded, CONTRACTOR may not invoice
 11 ADMINISTRATOR for said services.

12 2. DHCS BILLING PROCEDURES

13 a. CONTRACTOR must obtain an NPI.

14 b. CONTRACTOR shall invoice DHCS for each Client day, approved by the
 15 ADMINISTRATOR, for each Client who meets notification, admission and/or continued stay criteria,
 16 documentation requirements, treatment and discharge planning requirements and occupies a psychiatric
 17 inpatient hospital bed at 12:00 a.m. in CONTRACTOR's facility. CONTRACTOR may invoice DHCS
 18 if the Client is admitted and discharged during the same day; provided, however, that such admission
 19 and discharge is not within twenty-four (24) hours of a prior discharge.

20 c. CONTRACTOR shall determine that Psychiatric Inpatient Hospital services provided
 21 pursuant to the Agreement are not covered, in whole or in part, under any other state or federal medical
 22 care program or under any other contractual or legal entitlement including, but not limited to, a private
 23 group indemnification or insurance program or Workers' Compensation Program. CONTRACTOR
 24 shall seek to be reimbursed by other coverage prior to seeking reimbursement by DHCS. DHCS's
 25 maximum obligation shall be reduced if other coverage is available.

26 d. CONTRACTOR shall submit claims to DHCS's fiscal intermediary for all services
 27 rendered pursuant to the Agreement, in accordance with the applicable invoice and billing requirements
 28 contained in WIC, Section 14718.

29 e. CONTRACTOR may appeal, in writing, a denied request for reimbursement to the
 30 ADMINISTRATOR. In the event that the appeal is denied, by the ADMINISTRATOR,
 31 CONTRACTOR may continue the appeals process by writing directly to DHCS, within thirty (30)
 32 calendar days of the ADMINISTRATOR's decision. The decision of DHCS shall be final.

33 3. Customary Charges Limitation – DHCS's obligation to CONTRACTOR shall not exceed
 34 CONTRACTOR's total customary charges for like services during each hospital fiscal year or portion
 35 thereof in which the Agreement is in effect. DHCS may recoup any portion of the total payments to
 36 CONTRACTOR which are in excess of CONTRACTOR's total customary charges.

37 C. COUNTY PAYMENTS

1 1. If ADMINISTRATOR identifies unfunded Clients for whom Medi-Cal eligibility cannot be
 2 obtained, COUNTY agrees to reimburse CONTRACTOR for services to these Clients at the same all-
 3 inclusive rate of \$1490 per Client day for acute Psychiatric Inpatient Hospital Services as set forth in
 4 Paragraph IV.A., above.

5 2. In exchange for agreeing to set aside a minimum of six (6) beds per day for COUNTY
 6 placements, COUNTY agrees to pay CONTRACTOR for any COUNTY designated bed which remains
 7 unused following the collaboration related to bed day usage set forth above in Paragraph A.1, at the rate
 8 of \$1490 per bed day.

9 3. CONTRACTOR's invoices to COUNTY shall be on a form mutually agreed upon by both
 10 Parties. Invoices are due the tenth (10th) calendar day of each month. Invoices received after the due
 11 date may not be paid within the same month. Payments to CONTRACTOR should be released by
 12 COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice.

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

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

18 6. CONTRACTOR shall promptly return any overpayments within sixty (60) business days
 19 after the overpayment is verified by the ADMINISTRATOR and both parties have agree to any
 20 overpayment amounts to be returned.

21 D. CONTRACTOR shall submit the 18-3 TAR for authorization of payment for Psychiatric
 22 Inpatient Hospital services to ADMINISTRATOR no later than fourteen (14) calendar days after:

- 23 1. Ninety-nine (99) calendar days of continuous service to a Client, and/or
- 24 2. Discharge.

25 E. CONTRACTOR shall resubmit the 18-3 TAR and any additional information requested, no
 26 later than sixty (60) calendar days from the date of the deferral letter, in the event ADMINISTRATOR
 27 defers the 18-3 TAR back to CONTRACTOR to obtain further information.

28 F. ADMINISTRATOR shall provide CONTRACTOR with a Notification Form that is mutually
 29 agreed upon by both parties which serves to confirm hospitalization of the Client. CONTRACTOR
 30 must submit the Notification Form, along with the Client's TAR to ADMINISTRATOR for review of
 31 medical necessity and payment authorization.

32 G. CONTRACTOR must document, in the Client's medical record, each contact with the
 33 appropriate placement facility or the person or agency responsible for placement. CONTRACTOR must
 34 continue to document contacts with appropriate placement facilities until the Client is discharged.
 35 Contacts shall be documented by a brief description of the placement facilities reported bed availability
 36 status, reason for denial if applicable, and the signature of the person making the contact.

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1 H. ADMINISTRATOR shall monitor the Client's status, the appropriateness of the facilities being
2 contacted for referral, and/or the Client's chart to determine if the Client's status has changed.

3 I. CONTRACTOR shall notify ADMINISTRATOR, prior to 12:00 p.m. of the daily census of all
4 Clients in which reimbursement for Psychiatric Inpatient Hospital Services will be requested.

5 J. CONTRACTOR shall notify ADMINISTRATOR of any Client discharge within twenty-four
6 (24) hours of the Client's discharge.

7 K. CONTRACTOR shall include the Client's name, discharge date, discharge placement and
8 placement phone number. CONTRACTOR shall inform COUNTY of where the Client has been
9 referred for continuing treatment, along with the facility's phone number, contact person and the
10 Client's first appointment time and date.

11 L. CONTRACTOR shall make reasonable efforts to notify the Regional Center Service
12 Coordinator and Nurse Consultant of a Regional Center Client's admission within twenty-four (24)
13 hours of admission or within twenty-four (24) hours of identifying that a Client is a Regional Center
14 Client.

15 M. CONTRACTOR shall notify both the Client's Regional Center Service Coordinator and one of
16 the Regional Center Nurse Consultants of the intent to seek their placement services. Such notification
17 must occur on or before the date for which CONTRACTOR intends to seek Administrative Day
18 reimbursement. CONTRACTOR may seek reimbursement from Regional Center for all Administrative
19 Days after the first three (3) Administrative Days.

20 N. CONTRACTOR shall notify the ADMINISTRATOR within twenty-four (24) hours of
21 admission of all Clients, served under this Agreement.

22 O. CONTRACTOR shall notify the ADMINISTRATOR on the day that the other health insurance
23 benefit has been exhausted, or the day the other health insurance benefit is known to be denied, if the
24 Client has other health insurance coverage in addition to Medi-Cal, and the CONTRACTOR intends to
25 seek Medi-Cal reimbursement for all or a portion of the hospital stay.

26 P. CONTRACTOR shall provide Psychiatric Inpatient Hospital Services in the same manner to
27 Medi-Cal Clients as it provides to all other Clients and not discriminate against Medi-Cal Clients in any
28 manner, including admission practices, placement in special wings or rooms, or provision of special or
29 separate meals.

30 Q. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the
31 Payments Paragraph of this Exhibit A to the Agreement.

32 **V. REPORTS**

34 A. CONTRACTOR shall maintain records and make statistical reports as required by
35 ADMINISTRATOR and/or DHCS on forms provided by either agency.

36 B. ADMINISTRATOR may request reasonable reports of CONTRACTOR in order to determine
37 the quality and nature of services provided hereunder. ADMINISTRATOR will be specific as to the

1 nature of information requested, and may allow up to thirty (30) calendar days for CONTRACTOR to
2 respond.

3 C. PROGRAMMATIC – CONTRACTOR shall submit a daily census of County Clients giving
4 name, age, date of admission, projected date of discharge, and for planning purposes disidentified
5 information on Clients occupying non-County beds giving age, date of admission and projected date of
6 discharge.

7 D. CONTRACTOR shall submit monthly Programmatic reports to ADMINISTRATOR. These
8 reports shall be in a format approved by ADMINISTRATOR and shall include but not limited to,
9 descriptions of any performance objectives, outcomes, daily census meetings, and or interim findings as
10 directed by ADMINISTRATOR.

11 E. CONTRACTOR shall be prepared to present and discuss the programmatic reports at the
12 monthly meetings with ADMINISTRATOR, to include whether or not CONTRACTOR is progressing
13 satisfactorily and if not, specify what steps are being taken to achieve satisfactory progress. Such
14 reports shall be received by ADMINISTRATOR no later than twentieth (20th) calendar day following
15 the end of the month being reported.

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

20 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
21 Reports Paragraph of this Exhibit A to the Agreement.

22 VI. SERVICES

23 A. FACILITY – CONTRACTOR shall provide Psychiatric Inpatient Hospital Services at the
24 following location in accordance with the standards established by the COUNTY and the State and
25 within the specifications stated below, unless otherwise authorized by the ADMINISTRATOR.
26 CONTRACTOR shall provide Psychiatric Inpatient Hospital Services within a licensed and certified
27 facility. Unless otherwise authorized in writing by ADMINISTRATOR, CONTRACTOR shall
28 maintain regularly scheduled service hours, seven (7) days a week, twenty-four (24) hours per day
29 throughout the year.
30

31
32 1201 West La Veta Ave
33 Orange, CA 92868
34

35 B. CLIENTS SERVED – CONTRACTOR shall admit and serve all Clients ages three (3) to
36 seventeen (17.95) referred by ADMINISTRATOR who meet ADMINISTRATOR’s criteria for acute
37 psychiatric hospitalization. CONTRACTOR shall provide Clients with private rooms and provide parent

1 room-in accommodations upon request so parents can stay with the child. CONTRACTOR may admit
 2 and serve Clients not referred by ADMINISTRATOR or the CSU; however CONTRACTOR must first
 3 notify ADMINISTRATOR of any Client served under the Agreement who has not been referred by
 4 ADMINISTRATOR or the CSU prior to admission.

5 C. SERVICES PROVIDED

6 1. CONTRACTOR shall provide Psychiatric Inpatient Hospital Services, which include but
 7 are not limited to physician services, psychologist services, and transportation services, in accordance
 8 with WIC, Section 14680, et seq.

9 2. CONTRACTOR shall provide services that include but are not limited to psychiatric,
 10 ancillary, testimony, medical, specialized services, and additional services required of general acute care
 11 hospitals. CONTRACTOR's services shall be designed to engage seriously mentally ill children and
 12 adolescents, including those who have multiple diagnoses in collaboration with parents or care takers to
 13 achieve the individual's wellness and resiliency goals. CONTRACTOR shall provide services in
 14 collaboration with the COUNTY's Director of Behavioral Health, or designee.

15 a. PSYCHIATRIC SERVICES – CONTRACTOR shall provide psychiatric services
 16 seven days per week that include psychiatric assessment, psychiatric treatment and psychiatric support
 17 services in accordance with all applicable laws and regulations. Psychiatric services shall include but
 18 not be limited to:

19 1) A psychiatric evaluation, within twenty-four (24) hours of admission, by a licensed
 20 psychiatrist. The psychiatric evaluation shall include a psychiatric history, diagnosis, and be completed
 21 in accordance with the current ICD-CM/DSM;

22 2) A review of each Client's medical history and a physical examination within
 23 twenty-four (24) hours of admission;

24 3) Initiation of a Care Plan which meets Medi-Cal standards for acute inpatient
 25 services for each new Client within twenty-four (24) hours of admission;

26 4) Initial psychometric for all children entering the unit to provide more information
 27 for diagnosis and treatment planning.

28 5) A Care Plan for each Client must be completed with signatures of the treatment
 29 team and the Client unless Contractor is able to demonstrate documentation of the
 30 Client/guardian/caretaker's agreement to the treatment plan (or explanation of inability to obtain) within
 31 seventy-two (72) hours of admission. All psychiatric, psychological, and social services must be
 32 consistent with the Care Plan;

33 6) CONTRACTOR shall cause licensed psychiatrists to provide psychiatric services
 34 which shall include the following:

35 a) Direct Treatment Services including psychiatric history, diagnosis and
 36 evaluation which shall include an interview, mental status, diagnosis, clinical recommendation,
 37 and prescription of medication as required for treatment of the Client.

1 b) Approval of an individual treatment plan and supervision or provision of
2 individual therapy as required by Client; provided, however, the psychiatrist shall provide a minimum of
3 three (3) individual therapy sessions to each Client per week. Each individual therapy session shall be at
4 least thirty (30) minutes in length, and additional sessions shall be provided by a psychiatrist if indicated
5 by Client acuity. All other individual therapy sessions may be provided by a person licensed or
6 waived to provide psychotherapy.

7 c) Supervision or provision of family therapy sessions if indicated, which shall be
8 at least thirty (30) minutes in duration. Family therapy shall be provided two times per week if minor
9 remains hospitalized more than three (3) days. At least one (1) family session shall be provided before
10 discharge unless clinically contraindicated.

11 d) CONTRACTOR's hospital psychiatrist and social worker/case manager shall
12 consult with parent/legal guardian for minors who are living with parents/legal guardian, SSA for
13 dependents, and Probation for Wards of the Court during the hospital stay.

14 e) CONTRACTOR's hospital psychiatrist shall make at least one contact with
15 Client's treating psychiatrist in the community during each hospital stay.

16 f) CONTRACTOR's hospital psychiatrist shall provide Clients with seven (7)
17 days of medications at discharge. This includes psychiatric medications and other medications needed
18 to treat concurrent medical conditions.

19 g) Other services to include supervision of affiliate and nursing staff as it relates
20 to Client treatment, clinical consultation to other mental health clinical staff, and participation in
21 CONTRACTOR's quality assurance procedures.

22 7) Appropriate collateral therapy and interventions for each Client;

23 8) One-on-one, Client-to-staff counseling as appropriate to the diagnosis and
24 Treatment Plan;

25 9) Documentation of Client's attendance and their participation in collateral therapy
26 including schedule of therapies, attendance log, and medical record progress notes;

27 10) Daily rounds and progress notes by psychiatrists on all Clients;

28 11) Discharge planning that includes but is not limited to continuing care planning, and
29 referral services;

30 a) Discharge planning must begin upon admission and occur seven (7) days a
31 week;

32 b) ADMINISTRATOR may provide assistance to CONTRACTOR to initiate,
33 develop and finalize discharge planning and necessary follow-up services on a case-by case basis;

34 c) CONTRACTOR shall arrange a specific date and time for an aftercare services
35 with an appropriate level of care. For any Client referred to such a program the CONTRACTOR shall
36 provide at the time of discharge, the Hospital Discharge Referral Form or the hospital's aftercare plan,
37 the initial psychiatric evaluation, the history and physical examination report, recent lab studies, the

1 medication list, and any medical consults. This procedure should be followed with all post-hospital
2 service locations.

3 12) On-call psychiatric and medical specialist coverage twenty-four (24) hours per day,
4 seven (7) days per week;

5 13) A psycho-social assessment completed within forty-eight (48) hours of admission;

6 14) In-patient services are all-inclusive; the contractor may not bill for services under
7 another County Contract while the Client is on the inpatient unit.

8 b. ANCILLARY SERVICES - CONTRACTOR shall provide ancillary services,
9 necessary for the evaluation and treatment of psychiatric conditions. Services shall be recovery-based,
10 non-coercive and must focus on assisting Clients to become more independent and self-sufficient.
11 Services shall include but not be limited to as clinically indicated:

12 1) Group therapy;

13 2) Activities therapy and other adjunctive therapies to provide stress reduction
14 through self-expression in art and music;

15 3) Integration of health focused interventions into the inpatient treatment program
16 such as movement therapy, yoga, physical fitness, sleep studies and healthy nutrition, initial laboratory
17 services that are consistent with CONTRACTOR's usual and customary hospital admitting protocol;

18 4) Additional laboratory and diagnostic services, when necessary for the initiation and
19 monitoring of psychiatric medication treatments; and

20 5) Access as necessary to consultations by physical medicine staff.

21 6) Pharmaceutical services.

22 c. TESTIMONY SERVICES - CONTRACTOR shall provide expert witness testimony
23 by appropriate mental health professionals in all legal proceedings required for the institutionalization,
24 admission, or treatment of COUNTY Clients. These services shall include, but not be limited to, writs
25 of habeas corpus, capacity hearings, Independent Professional Reviews of minors over 12,
26 conservatorship, probable cause hearings, court-ordered evaluation, and appeal and post-certification
27 proceedings. CONTRACTOR shall also include:

28 1) Preparation of the documentation required by the Juvenile Court to authorize the
29 administration of psychotropic medication for those youth who are under the jurisdiction of the juvenile
30 court.

31 2) ADMINISTRATOR shall provide representation to CONTRACTOR, at
32 ADMINISTRATOR's cost and expense, in all legal proceedings required for conservatorship.

33 3) CONTRACTOR shall cooperate with ADMINISTRATOR in all such proceedings.

34 4) ADMINISTRATOR will provide hearing officers for probable cause hearings for
35 Clients approved by ADMINISTRATOR only.

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1 d. MEDICAL SERVICES – CONTRACTOR shall provide all medical care services
 2 deemed appropriate according to usual and customary hospital practices without regard for payer status.
 3 Medical services include physician and/or other professional services required by the Client.

4 1) CONTRACTOR shall provide transportation to the medical treatment and an escort
 5 to and from the service.

6 e. ADDITIONAL SERVICES – CONTRACTOR shall provide additional services
 7 required of general acute care hospitals.

8 D. CONTRACTOR shall make available a copy of the “COUNTY Guide to Medi-Cal Mental
 9 Health Services” and “OC Mental Health Plan Provider Directory” to each Client/guardian/conservator
 10 at the time of admission. CONTRACTOR shall ensure that the Client signs a form indicating receipt of
 11 both handbooks, and this form shall become part of the Client’s medical record. If the Client refuses to
 12 sign or receive the handbooks, a hospital staff member shall document that the handbooks were
 13 provided.

14 E. CONTRACTOR shall provide the Client/guardian/conservator the DHCS notification materials
 15 entitled, “EPSDT”, and “TBS” to each full-scope Medi-Cal Client under twenty-one (21) years of age
 16 admitted for acute psychiatric inpatient services. CONTRACTOR shall document in the Client’s
 17 medical record that these materials were provided.

18 F. CONTRACTOR shall provide, the NPP for the COUNTY, as the MHP, to any individual who
 19 received services under the Agreement.

20 G. CONTRACTOR shall allow ADMINISTRATOR to conduct a face-to-face evaluation of the
 21 Client for assessment and recommendation to CONTRACTOR regarding the appropriate level of care
 22 and need for the Clients’ hospitalization.

23 H. CONTRACTOR shall ensure that contact is made with the minor’s Social Worker or
 24 Probation Officer daily, excluding weekend and holidays when the minor is a dependent or ward of the
 25 Court and is in need of an appropriate placement facility.

26 I. QUALITY IMPROVEMENT – CONTRACTOR shall cooperate with ADMINISTRATOR in
 27 meeting quality improvement and utilization review requirements. Quality improvement and utilization
 28 reviews shall include, but not be limited to, performance outcome studies and Client satisfaction
 29 surveys. CONTRACTOR shall cooperate with managed care procedures related to treatment
 30 authorization, including the provision of working space for ADMINISTRATOR to conduct visits with
 31 the Client, interview staff and perform chart reviews.

32 J. PERFORMANCE OUTCOMES – CONTRACTOR shall perform outcome studies, on-site
 33 reviews and written reports to be made available to ADMINISTRATOR upon request as mutually
 34 agreed upon by both parties.

35 K. CONTRACTOR shall provide services pursuant to the Agreement in a manner that is culturally
 36 and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain
 37 documentation of such efforts which may include, but not be limited to: records of participation in

1 COUNTY sponsored or other applicable training; recruitment and hiring P&Ps; copies of literature in
 2 multiple languages and formats, as appropriate; and descriptions of measures taken to enhance
 3 accessibility for, and sensitivity to, persons who are physically challenged.

4 L. CONTRACTOR shall provide Inpatient Psychiatric Hospital Services that are non-
 5 discriminatory and tailored to meet the individual needs of the multi-cultural Clients served under the
 6 Agreement. CONTRACTOR shall demonstrate program access, linguistically appropriate and timely
 7 mental health service delivery, staff training, and organizational P&P's related to the treatment of
 8 culturally diverse populations. CONTRACTOR shall ensure that high quality accessible mental health
 9 care includes:

10 1. Clinical care and therapeutic interventions which are linguistically and culturally
 11 appropriate; including, at a minimum, admission, discharge, and medication consent forms available in
 12 all County threshold languages;

13 2. Medically appropriate interventions which acknowledge specific cultural influences;

14 3. Provision and utilization of qualified interpreters within twenty-four (24) hours of identified
 15 need;

16 4. Screening and certification of interpreters;

17 5. Client related information translated into the various languages of the diverse populations
 18 served.

19 M. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
 20 Services Paragraph of this Exhibit A to the Agreement.

21 **VII. STAFFING**

22 A. CONTRACTOR shall provide clinical staffing as required by CCR, Title 9. CONTRACTOR
 23 shall provide professional, allied, and supportive paramedical personnel to provide all necessary and
 24 appropriate Psychiatric Inpatient Hospital services. There is no specific administrative and/or clerical
 25 staffing pattern however, CONTRACTOR must provide sufficient staff to support the services provided
 26 pursuant to the Agreement.

27 B. CONTRACTOR shall ensure that a bilingual professional or qualified interpreter is fluent in
 28 English and in the primary language spoken by the Client and the Client's parents or primary caretakers.
 29 The bilingual professional or qualified interpreter must have the ability to accurately speak, read and
 30 interpret the Client's primary language and that of the Client's parents or primary caretakers.
 31 CONTRACTOR shall ensure that, when needed, a qualified interpreter is available who can accurately
 32 provide sign language services. The bilingual professional or qualified interpreter must have the ability
 33 to translate mental health terminology necessary to convey information such as symptoms or
 34 instructions to the Client. CONTRACTOR shall ensure that the bilingual person and/or the qualified
 35 interpreter, completes appropriate courses that cover terms and concepts associated with mental illness,
 36 psychotropic medications, and cultural beliefs and practices which may influence the Client's mental
 37

1 health condition, if they have not been not been trained in the provision of mental health services.

2 C. CONTRACTOR shall ensure that all staff is trained and is knowledgeable in treatment issues
3 reflecting the diversity of the Medi-Cal population. CONTRACTOR shall develop and maintain in-
4 service staff training programs which will train staff to respect and respond with sensitivity to the
5 language and cultural experiences of the Clients. CONTRACTOR staff shall participate in cultural
6 competency and/or awareness training on an annual basis. Training shall be designed to help staff
7 understand cultural diversity and may include but not be limited to such topics such as: mental health
8 care that is unique to the Client including awareness; sensitivity to the Client’s cultural and spiritual
9 beliefs, and the role of the family in diverse cultures and ethnic groups. Additionally, training
10 components shall include:

11 1. Background information for identifying and treating mental illnesses and related health
12 conditions not commonly found in the dominant Client population;

13 2. Use of non-psychiatrically trained interpreters in taking Client histories and assisting with
14 communication relating to mental health treatment; and

15 3. Strategies for using the belief patterns and family support systems of Clients to promote
16 adherence to the course of treatment and assuming responsibility for preventive mental health behaviors.

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

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1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 INPATIENT MENTAL HEALTH SERVICES FOR YOUTH
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CHILDREN’S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN’S
 8 APRIL 1, 2018 THROUGH JUNE 30, 2020

9
10 **I. BUSINESS ASSOCIATE CONTRACT**

11 **A. GENERAL PROVISIONS AND RECITALS**

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

17 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,
18 and the HIPAA regulations between the CONTRACTOR and COUNTY arises if and only to the extent
19 that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on
20 behalf of COUNTY pursuant to, and as set forth in, the Agreement that meet the statutory definition of
21 “Business Associate” in 45 CFR § 160.103. It is further understood and agreed that in the absence of a
22 Business Associate relationship as defined by HIPAA, between CONTRACTOR and COUNTY, any
23 and all terms contained within this Exhibit B shall have no legal force or binding effect. Irrespective of
24 the applicability of Exhibit B, CONTRACTOR and COUNTY shall maintain appropriate safeguards to
25 protect Protected Health Information in full compliance with all applicable State and Federal privacy
26 laws, including, but not limited to HIPAA and the HITECH Act, as is required of both parties in their
27 roles as Covered Entities.

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

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

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

4 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
5 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the
6 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
7 terms of this Business Associate Contract and the applicable standards, implementation specifications,
8 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
9 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
10 pursuant to the Agreement.

11 B. DEFINITIONS

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

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

18 a. Breach excludes:

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

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

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

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

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

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

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

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

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

4 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in
5 45 CFR § 164.501.

6 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in
7 45 CFR § 160.103.

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

10 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in
11 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
12 with 45 CFR § 164.502(g).

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

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

18 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in
19 45 CFR § 160.103.

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

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

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

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

31 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in
32 45 CFR § 160.103.

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

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

3 18. "Use" shall have the meaning given to such term under the HIPAA regulations in
4 45 CFR § 160.103.

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

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

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

13 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of
14 45 CFR Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or
15 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.

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

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

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

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

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

35 9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps,
36 relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on
37 behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by

1 COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's
2 compliance with the HIPAA Privacy Rule.

3 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
5 and to make information related to such Disclosures available as would be required for COUNTY to
6 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with
7 45 CFR § 164.528.

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

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

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

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

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

34 16. The Parties acknowledge that federal and state laws relating to electronic data security and
35 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
36 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
37 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH

1 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
 2 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
 3 concerning an amendment to this Business Associate Contract embodying written assurances consistent
 4 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
 5 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
 6 event:

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

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

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

15 D. SECURITY RULE

16 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
 17 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with
 18 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to
 19 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
 20 CONTRACTOR shall develop and maintain a written information privacy and security program that
 21 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
 22 CONTRACTOR's operations and the nature and scope of its activities.

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

27 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
 28 containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
 29 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
 30 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
 31 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

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

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

36 c. Providing a level and scope of security that is at least comparable to the level and scope
 37 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal

1 Automated Information Systems, which sets forth guidelines for automated information systems in
2 Federal agencies;

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

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

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

12 E. DATA SECURITY REQUIREMENTS

13 1. Personal Controls

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

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

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

32 d. Background Check. Before a member of the workforce may access PHI COUNTY
33 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
34 COUNTY, a background screening of that worker must be conducted. The screening should be
35 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
36 screening being done for those employees who are authorized to bypass significant technical and
37 //

1 operational security controls. The CONTRACTOR shall retain each workforce member's background
2 check documentation for a period of three (3) years.

3 2. Technical Security Controls

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

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

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

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

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

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

35 g. User IDs and Password Controls. All users must be issued a unique user name for
36 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
37 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password

1 | changed upon the transfer or termination of an employee with knowledge of the password, at maximum
2 | within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
3 | characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
4 | computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.

5 | Passwords must be changed if revealed or compromised. Passwords must be composed of characters
6 | from at least three (3) of the following four (4) groups from the standard keyboard:

- 7 | 1) Upper case letters (A-Z)
- 8 | 2) Lower case letters (a-z)
- 9 | 3) Arabic numerals (0-9)
- 10 | 4) Non-alphanumeric characters (punctuation symbols)

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

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

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

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

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

35 | m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
36 | CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
37 | outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is

1 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
 2 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
 3 website access, file transfer, and E-Mail.

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

8 3. Audit Controls

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

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

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

22 4. Business Continuity/Disaster Recovery Control

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

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

35 5. Paper Document Controls

36 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
 37 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left

1 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
2 that information is not being observed by an employee authorized to access the information. Such PHI
3 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
4 baggage on commercial airplanes.

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

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

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

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

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

26 **F. BREACH DISCOVERY AND NOTIFICATION**

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

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

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

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

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

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

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

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

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

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

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

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

22 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
23 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
24 COUNTY.

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

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

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

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

6 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
 7 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs
 8 in addressing the Breach and consequences thereof, including costs of investigation, notification,
 9 remediation, documentation or other costs associated with addressing the Breach. CONTRACTOR
 10 shall not be at fault if the Breach is deemed to be the fault of a participating hospital or other provider.

11 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

21 1) The Disclosure is required by law; or

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

27 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
 28 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
 29 CONTRACTOR.

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

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

34 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
 35 required by law.

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1 H. PROHIBITED USES AND DISCLOSURES

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

7 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
8 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
9 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC §
10 17935(d)(2).

11 I. OBLIGATIONS OF COUNTY

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

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

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

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

23 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 INPATIENT MENTAL HEALTH SERVICES FOR YOUTH
 BETWEEN
 COUNTY OF ORANGE
 AND
 CHILDREN'S HOSPITAL OF ORANGE COUNTY DBA CHOC CHILDREN'S
 APRIL 1, 2018 THROUGH JUNE 30, 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 CIPA, Civil Code § 1798.29(d).

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

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

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

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

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

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

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

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

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

7 B. TERMS OF AGREEMENT

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

12 2. Responsibilities of CONTRACTOR

13 CONTRACTOR agrees:

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

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

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

29 1) Complying with all of the data system security precautions listed in subparagraph E
 30 of the Protected Health Information/Personal Information Contract, Exhibit B to the Agreement; and

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

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

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

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

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

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

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

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

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

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