

1                                   AGREEMENT FOR PROVISION OF  
2                                   HIV PREVENTION SERVICES  
3                                   BETWEEN  
4                                   COUNTY OF ORANGE  
5                                   AND

6                                   AIDS SERVICES FOUNDATION ORANGE COUNTY  
7                                   JANUARY 1, 2017 THROUGH DECEMBER 31, 2017  
8

9           THIS AGREEMENT entered into this 1st day of January 2017, which date is enumerated for  
10 purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and  
11 AIDS SERVICES FOUNDATION ORANGE COUNTY, a California nonprofit corporation  
12 (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency  
13 (ADMINISTRATOR).  
14

15                                   **W I T N E S S E T H:**  
16

17           WHEREAS, of December 2015, there were 6,287 residents living with Human Immunodeficiency  
18 Virus disease (HIV); and an additional estimated 801 individuals unaware they are infected with HIV;  
19 and Orange County receives about 250 newly reported HIV cases each year; and

20           WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of HIV  
21 Prevention Services to support evidence-based HIV prevention activities targeting high-risk individuals  
22 and communities to reduce new HIV infections and the transmission of HIV disease; and

23           WHEREAS, COUNTY receives funding for these services from the California Department of Public  
24 Health, State Office of AIDS that originates from the Centers for Disease Control and Prevention; and

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

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

28   //  
29   //  
30   //  
31   //  
32   //  
33   //  
34   //  
35   //  
36   //  
37   //

**CONTENTS**

<b><u>PARAGRAPH</u></b>	<b><u>PAGE</u></b>
Title Page.....	1
Contents.....	2
Referenced Contract Provisions.....	3
I. Acronyms .....	5
II. Alteration of Terms .....	6
III. Assignment of Debts .....	6
IV. Compliance.....	7
V. Confidentiality.....	9
VI. Cost Report.....	10
VII. Debarment and Suspension Certification .....	12
VIII. Delegation, Assignment and Subcontracts .....	13
IX. Employee Eligibility Verification .....	14
X. Equipment .....	14
XI. Facilities, Payments and Services .....	15
XII. Indemnification and Insurance .....	16
XIII. Inspections and Audits .....	19
XIV. Licenses and Laws.....	20
XV. Literature and Advertisements .....	22
XVI. Maximum Obligation.....	22
XVII. Minimum Wage Laws.....	22
XVIII. Nondiscrimination.....	23
XIX. Notices .....	25
XX. Notification of Public Events and Meetings.....	26
XXI. Records Management and Maintenance.....	26
XXII. Research and Publication .....	28
XXIII. Severability.....	28
XXIV. Special Provisions .....	28
XXV. Status of Contractor.....	29
XXVI. Term .....	30
XXVII. Termination .....	30
XXVIII. Third Party Beneficiary .....	32
XXIX. Waiver of Default or Breach.....	32
Signature Page .....	33

//

**CONTENTS**

<b><u>EXHIBIT A</u></b>	<b><u>PAGE</u></b>
I. Definitions .....	1
II. Budget.....	3
III. Payments.....	4
IV. Reports.....	5
V. Services.....	7
VI. Staffing .....	13

<b><u>EXHIBIT B</u></b>	
I. Business Associate Contract .....	1

<b><u>EXHIBIT C</u></b>	
I. Personal Information Privacy and Security Contract .....	1

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

**REFERENCED CONTRACT PROVISIONS**

**Term:** January 1, 2017 through December 31, 2017

**Maximum Obligation:** \$260,785

**Basis for Reimbursement:** Actual Cost

**Payment Method:** Monthly in Arrears

**CONTRACTOR DUNS Number:** 18-930-0031

**CONTRACTOR TAX ID Number:** 33-0126481

**Notices to COUNTY and CONTRACTOR:**

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

**CONTRACTOR:** AIDS Services Foundation Orange County  
Attention: Executive Director  
17982 Sky Park Circle, Suite J  
Irvine, California 92614  
Email address: [PYAEGER@ocasf.org](mailto:PYAEGER@ocasf.org)

//

//

//

//

//

//

//

//

//

//

//

//

//

**I. ACRONYMS**

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

A. AIDS	Acquired Immune Deficiency Syndrome
B. ARRA	American Recovery and Reinvestment Act
C. ASRS	Alcohol and Drug Programs Reporting System
D. CCC	California Civil Code
E. CCR	California Code of Regulations
F. CDC	Centers for Disease Control and Prevention
G. CDPH/OA	California Department of Public Health, Office of AIDS
H. CEO	County Executive Office
I. CFR	Code of Federal Regulations
J. CHPP	COUNTY HIPAA Policies and Procedures
K. CHS	Correctional Health Services
L. CLEAR	Choosing Life: Empowerment, Actions, Results
M. COI	Certificate of Insurance
N. D/MC	Drug/Medi-Cal
O. DHCS	Department of Health Care Services
P. DPFS	Drug Program Fiscal Systems
Q. DRS	Designated Record Set
R. ELISA	Enzyme-linked Immunoassay
S. ePHI	Electronic Protected Health Information
T. FTE	Full Time Equivalent
U. GAAP	Generally Accepted Accounting Principles
V. HCA	Health Care Agency
W. HHS	Health and Human Services
X. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
Y. HIV	Human Immunodeficiency Virus
Z. HSC	California Health and Safety Code
AA. ISO	Insurance Services Office
AB. LEO	Local Evaluation Online
AC. MHP	Mental Health Plan
AD. MSM	Men Who Have Sex With Men
AE. OCJS	Orange County Jail System
AF. OCPD	Orange County Probation Department
AG. OCR	Office for Civil Rights

1	AH. OCS	Orange County Sheriff's Department
2	AI. OIG	Office of Inspector General
3	AJ. OMB	Office of Management and Budget
4	AK. OPM	Federal Office of Personnel Management
5	AL. PA DSS	Payment Application Data Security Standard
6	AM. PC	State of California Penal Code
7	AN. PCI DSS	Payment Card Industry Data Security Standard
8	AO. PFR	Personal Feedback Report
9	AP. PHI	Protected Health Information
10	AQ. PII	Personally Identifiable Information
11	AR. PMRP	Prevention Materials Review Panel
12	AS. PRA	Public Record Act
13	AT. PS	Partner Services
14	AU. SIR	Self-Insured Retention
15	AV. SMART	Specific, Measurable, Achievable, Relevant, Time Based.
16	AW. The HITECH Act	The Health Information Technology for Economic and Clinical Health
17		Act, Public Law 111-005
18	AX. USC	United States Code
19	AY. WIC	State of California Welfare and Institutions Code

## **II. ALTERATION OF TERMS**

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

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

## **III. ASSIGNMENT OF DEBTS**

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

#### **IV. COMPLIANCE**

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

1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA policies and procedures relating to HCA's Compliance Program, HCA's Code of Conduct and General Compliance Trainings.

2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as described in subparagraphs below.

3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct; the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement. ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain all required elements.

5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the CONTRACTOR's Compliance Program and Code of Conduct contains 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 and related policies and procedures.

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

B. SANCTION SCREENING – CONTRACTOR shall adhere to all screening policies and procedures and screen all Covered Individuals employed or retained to provide services related to this Agreement 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 and/or any other list or system as identified by the ADMINISTRATOR.

//



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

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

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

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

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

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

36           7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or  
37 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.



Such individual or entity shall be immediately removed from participating in any activity associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.

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

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

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

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

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

#### D. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

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

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

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

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

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

### **V. CONFIDENTIALITY**

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

1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Agreement are clients of the Orange County HIV services system, and therefore it may be necessary for

1 authorized staff of ADMINISTRATOR to audit client files, or to exchange information regarding  
2 specific clients with COUNTY or other providers of related services contracting with COUNTY.

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

7 3. In the event of a collaborative service agreement between HIV services providers,  
8 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,  
9 from the collaborative agency, for clients receiving services through the collaborative agreement.

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

## 17 18 **VI. COST REPORT**

19 A. CONTRACTOR shall submit a Cost Report to COUNTY no later than sixty (60) calendar days  
20 following termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance  
21 with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions  
22 Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between  
23 programs, cost centers, services, and funding sources in accordance with such requirements and  
24 consistent with prudent business practice, which costs and allocations shall be supported by source  
25 documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon  
26 reasonable notice.

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

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

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

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

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

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

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

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

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

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

//

//

//

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

Signed \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_"

## **VII. DEBARMENT AND SUSPENSION CERTIFICATION**

### **A. CONTRACTOR certifies that it and its principals:**

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

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

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

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

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

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

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

### **VIII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

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

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

1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract

//



1 subsequently fails to meet the requirements of this Agreement or any provisions that  
2 ADMINISTRATOR has required.

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

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

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

### 10 11 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

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

### 21 22 **X. EQUIPMENT**

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

34 B. CONTRACTOR shall obtain ADMINISTRATOR's prior written approval to purchase any  
35 Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR  
36 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting  
37 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.

1 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each  
2 purchased asset in an Equipment inventory.

3 C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY  
4 the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in relation to  
5 Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is  
6 purchased. Title of expensed Equipment shall be vested with COUNTY.

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

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

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

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

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

## 25 26 **XI. FACILITIES, PAYMENTS AND SERVICES**

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

32 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or  
33 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation.  
34 The reduction to the Maximum Obligation shall be in an amount proportionate to the number of days in  
35 which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.

36 //

37 //



## **XII. INDEMNIFICATION AND INSURANCE**

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

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

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

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

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

### **F. QUALIFIED INSURER**

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

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Technology Errors & Omissions	\$1,000,000 per claims made \$1,000,000 aggregate
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

#### H. REQUIRED COVERAGE FORMS

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

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

#### I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the COUNTY may suspend or terminate this Agreement.

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

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

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

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

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

#### R. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:
  - a. Prior to the start date of this Agreement.
  - b. No later than the expiration date for each policy.
  - c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance types as set forth in Subparagraph G. of this Agreement.
2. The COI and endorsements shall be provided to the COUNTY at the address as specified in the Referenced Contract Provisions of this Agreement.
3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:
  - a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.
  - b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.
  - c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR's monthly invoice.
4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

### **XIII. INSPECTIONS AND AUDITS**

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all

1 reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the  
2 premises in which they are provided.

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

#### 7 C. AUDIT RESPONSE

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

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

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

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

#### 30 **XIV. LICENSES AND LAWS**

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

37 //



1 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers  
2 and exemptions. Said inability shall be cause for termination of this Agreement.

### 3 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

8 b. In the case of a 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;

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

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

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

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

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

- 27 1. ARRA of 2009.
- 28 2. 42 CFR, Public Health, H&SC 121025.
- 29 3. HIPAA Privacy Rule, as it may now exist, or be hereafter amended, as applicable.
- 30 4. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 31 5. WIC §15600, et seq., Elder Abuse and Dependent Adult Civil Protection Act.
- 32 6. 45 CFR Part 76, Drug Free Work Place.
- 33 7. CCR, Title 22, Division 6, Community Care Licensing Division.
- 34 8. Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87, October 30,  
35 2009).
- 36 9. U.S. Department of Health and Human Services, National Institutes of Health (NIH) Grants  
37 Policy Statement (10/13).

10. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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

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

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

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

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

#### **XVI. MAXIMUM OBLIGATION**

A. The Maximum Obligation of COUNTY for services provided in accordance with this Agreement is as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

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

#### **XVII. MINIMUM WAGE LAWS**

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all



its contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum Wage.

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

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

## **XVIII. NONDISCRIMINATION**

### **A. EMPLOYMENT**

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

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

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

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

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender

1 expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed  
2 fulfilled by use of the term EOE.

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

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

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

30 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all clients  
31 through a written statement that CONTRACTOR's and/or subcontractor's clients may file all complaints  
32 alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and  
33 ADMINISTRATOR or the U.S. Department of Health and Human Services' OCR.

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

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

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

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

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

## **XIX. NOTICES**

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

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

2. When faxed, transmission confirmed;

3. When sent by Email; or

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

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

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

//

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

## **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

## **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

//

//

//

//



## **XXII. RESEARCH AND PUBLICATION**

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

## **XXIII. SEVERABILITY**

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

## **XXIV. SPECIAL PROVISIONS**

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

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

12. Contracting or subcontracting with any entity other than an individual or nonprofit entity, unless no nonprofit entity is able and willing to provide such services.

13. Supplanting current funding for existing services.

14. Payment of home mortgages; direct maintenance expense (tires, repairs, etc.) of a privately owned vehicle or any other cost associated with a vehicle, such as lease or loan payments, insurance, or license and registration fees; payment of local or state personal property taxes (for residential property, private automobiles, or any other personal property against which taxes may be levied). This restriction does not apply to vehicles operated by organizations for program purposes.

15. To meet professional licensure or program licensure requirements.

16. Providing inpatient hospital services or purchasing major medical equipment.

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

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

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

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

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

5. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's clients.

C. To the greatest extent practicable, all equipment and products purchased with funds made available through this Agreement should be American-made.

## **XXV. STATUS OF CONTRACTOR**

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

//

//



**XXVI. TERM**

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

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

**XXVII. TERMINATION**

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

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

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

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

**D. CONTINGENT FUNDING**

1. Any obligation of COUNTY under this Agreement is contingent upon the following:
  - a. The continued availability of federal, state and county funds for reimbursement of COUNTY's expenditures, and

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

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

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

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

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

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

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

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

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

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

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

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

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

//

//

**XXVIII. THIRD PARTY BENEFICIARY**

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

**XXIX. WAIVER OF DEFAULT OR BREACH**

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

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

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

3  
4 AIDS SERVICES FOUNDATION ORANGE COUNTY

5  
6 BY:  \_\_\_\_\_  
7  
8 194AF2B791284D5...

DATED: 10/20/2016

9 TITLE: Executive Director/CEO  
10  
11  
12  
13  
14

15 COUNTY OF ORANGE

16  
17  
18 BY: \_\_\_\_\_

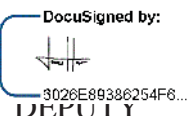
DATED: \_\_\_\_\_

19 HEALTH CARE AGENCY  
20  
21  
22  
23  
24

25 APPROVED AS TO FORM

26 OFFICE OF THE COUNTY COUNSEL

27 ORANGE COUNTY, CALIFORNIA  
28

29 BY:  \_\_\_\_\_  
30  
31 3026E89386254F6...  
32  
33  
34  
35

DATED: 10/19/2016

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

EXHIBIT A  
TO THE AGREEMENT FOR PROVISION OF  
HIV PREVENTION SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
AIDS SERVICES FOUNDATION ORANGE COUNTY  
JANUARY 1, 2017 THROUGH DECEMBER 31, 2017

**I. DEFINITIONS**

The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in this Agreement:

- A. AIDS is a medical condition resulting from HIV infection, usually after many years.
- B. CDPH/OA means a department under the California Health and Human Services Agency that administers state and federal health care programs.
- C. CDC means the division of United States Health and Human Services department responsible for the control and prevention of diseases including HIV.
- D. CLEAR means an 18-session intervention targeting substance-using young people living with HIV.
- E. Client(s) means an individual seeking HIV prevention and education services.
- F. Core Group means a group of men that are recruited to design and carryout project activities.
- G. Evidence-Based Intervention means interventions shown to be effective in reducing risk-taking behaviors that lead to transmission of HIV.
- H. Healthy Relationships means CDC evidence-based intervention for HIV positive individuals.
- I. HIV is the virus that causes AIDS.
- J. LEO means the COUNTY's designated data system for HIV prevention and testing data.
- K. M-Group means members of a one-time discussion group in which participants discuss factors contributing to unsafe sex and build skills to reduce risk of HIV.
- L. MPowerment means CDC evidenced-based intervention targeting young men who have sex with men.
- M. PS formerly called Partner Counseling Referral Services means the process whereby the sex and/or needle sharing partner(s) of a HIV infected person is/are notified by the infected individual or by PS staff regarding possible exposure to HIV. PS includes three (3) methods of notification:
  - 1. Self - Client notifies a partner him/herself.
  - 2. Dual Notification - Client notifies a partner with PS staff present.
  - 3. Anonymous Third Party Notification – PS staff notifies a partner anonymously based on partner information provided by Client.

1 N. PMRP means group of volunteers that review and approve prevention materials.

2 O. Project Volunteers means individuals recruited to assist with planning and implementation of  
3 outreach and/or publicity campaigns.

4 P. SMART Program Objectives means objectives that are specific, measurable, achievable,  
5 relevant, and time-based.

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //

**II. BUDGET**

A. The following Budget is set forth for informational purposes only, and may be adjusted by mutual agreement, in writing, of CONTRACTOR and ADMINISTRATOR.

**MPOWERMENT****ADMINISTRATIVE COSTS**

Salaries	\$4,207
Benefits	1,094
Services and Supplies	<u>1,546</u>
<b>SUBTOTAL</b>	<b>\$6,847</b>

**PROGRAM COSTS**

Salaries	\$29,722
Benefits	7,728
Services and Supplies	<u>31,008</u>
<b>SUBTOTAL</b>	<b>\$68,458</b>

**TOTAL NET COSTS** **\$75,305**

**HEALTHY RELATIONSHIPS****ADMINISTRATIVE COSTS**

Salaries	\$9,021
Benefits	2,345
Services and Supplies	<u>4,502</u>
<b>SUBTOTAL</b>	<b>\$15,868</b>

**PROGRAM COSTS**

Salaries	\$113,809
Benefits	29,590
Services and Supplies	<u>26,213</u>
<b>SUBTOTAL</b>	<b>\$169,612</b>

**TOTAL NET COSTS** **\$185,480**

**TOTAL CONTRACT COSTS** **\$260,785**

B. Any increases or decreases to the budget must be approved, in advance and in writing, by ADMINISTRATOR. Administrative Costs shall not exceed ten percent (10%) of total costs.



C. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds between budgeted line items within a program, for the purpose of meeting specific program needs or for providing continuity of care to its consumers, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing Modification Request to ADMINISTRATOR for consideration, in advance, which will include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.

D. CONTRACTOR shall submit a budget revision request to ADMINISTRATOR to request budget changes hereafter. The budget revision request shall be on a form approved or provided by ADMINISTRATOR.

#### E. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) INFORMATION

1. This Agreement includes federal funds paid to CONTRACTOR. The CFDA number and associated information for federal funds paid through this Agreement are specified below:

CFDA Year:	2017
CFDA No.:	93.940
Program Title:	HIV Prevention Program (indirect)
Federal Agency:	Centers for Disease Control and Prevention
Award Name:	HIV Prevention Program (indirect)
Amount:	\$260,785 (estimated)

2. CONTRACTOR may be required to have an audit conducted in accordance with 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200. CONTRACTOR shall be responsible for complying with any federal audit requirements within the reporting period specified by 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200.

3. ADMINISTRATOR may revise the CFDA information listed above, and shall notify CONTRACTOR in writing of said revisions.

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

### **III. PAYMENTS**

A. COUNTY shall pay CONTRACTOR monthly, in arrears, for the actual costs of providing the services described hereunder, less revenues which are actually received by CONTRACTOR provided,

1 however, the total of such payments does not exceed COUNTY's Maximum Obligation, as set forth in  
 2 the Referenced Contract Provisions of the Agreement and provided further, CONTRACTOR's costs are  
 3 reimbursable pursuant to county, state and/or federal regulations. All payments are interim payments  
 4 only and are subject to final settlement in accordance with the Cost Report Paragraph of the Agreement.  
 5 ADMINISTRATOR may, at its discretion, pay supplemental billings for any month for which the  
 6 interim payment amount specified above has not been fully paid.

7 1. ADMINISTRATOR shall use the Expenditure and Revenue Report specified in the Reports  
 8 Paragraph of this Exhibit A to the Agreement to determine payment to CONTRACTOR.

9 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 10 monthly interim payments exceed the actual cost of providing services, ADMINISTRATOR may reduce  
 11 COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the year-to-  
 12 date interim payment amount to CONTRACTOR and the year-to-date actual cost incurred by  
 13 CONTRACTOR.

14 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 15 interim payment amounts are less than the actual cost of providing services, ADMINISTRATOR may  
 16 authorize a supplemental payment to CONTRACTOR by an amount not to exceed the difference  
 17 between the year-to-date interim payment amount to CONTRACTOR and the year-to-date actual cost  
 18 incurred by CONTRACTOR.

19 B. CONTRACTOR's billing shall be on a form approved or supplied by COUNTY and provide  
 20 such information as is required by ADMINISTRATOR. Billings are due the twentieth (20th) calendar  
 21 day of each month and payments to CONTRACTOR should be released by COUNTY no later than  
 22 twenty-one (21) calendar days after receipt of the correctly completed billing form.

23 C. All billings to COUNTY shall be supported, at CONTRACTOR's facility, by source  
 24 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements,  
 25 canceled checks, receipts, receiving records and records of services provided. ADMINISTRATOR may  
 26 require CONTRACTOR to submit documentation in support of the monthly billings.

27 D. At ADMINISTRATOR's sole discretion, ADMINISTRATOR may withhold or delay all or a  
 28 part of any payment if CONTRACTOR fails to comply with any provision of the Agreement.

29 E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration  
 30 and/or termination of this Agreement, except as may otherwise be provided under this Agreement, or  
 31 specifically agreed upon in a subsequent Agreement.

32 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 33 Payments Paragraph of this Exhibit A to the Agreement.

#### 34 35 **IV. REPORTS**

36 A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial  
 37 and/or programmatic reports as requested by ADMINISTRATOR concerning CONTRACTOR's

activities as they relate to this Agreement. ADMINISTRATOR will be specific as to the nature of the information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

#### B. FISCAL

1. In support of monthly billings, CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports shall be on a form provided or approved by ADMINISTRATOR, and shall include the units of service provided and actual costs for each of CONTRACTOR's program(s) or cost center(s) described in the Service paragraph of this Exhibit A to the Agreement. Reports are due to ADMINISTRATOR no later than the twentieth (20th) calendar day of the month following the month in which services were performed under the Agreement, unless otherwise agreed to in writing by ADMINISTRATOR

2. CONTRACTOR shall submit quarterly, year-end projection reports to ADMINISTRATOR. These reports shall be on a form approved or provided by ADMINISTRATOR and shall include, but not be limited to, anticipated year-end actual costs and revenue for CONTRACTOR's program(s) or cost center(s) described in the Services paragraph of this Exhibit A to the Agreement. Said projection reports shall be submitted by April 28, 2017; July 29, 2017; October 28, 2017 unless otherwise agreed to in writing by ADMINISTRATOR.

C. STAFFING – CONTRACTOR shall submit a monthly staffing report to ADMINISTRATOR and designated COUNTY staff, in support of the monthly invoice. These reports shall be on a form provided or approved by ADMINISTRATOR, and shall include, but not be limited to, employees' names, positions, and actual hours worked, and when and which staff have taken Compliance Training in accordance with the Compliance Paragraph of the Agreement. Reports are due to ADMINISTRATOR no later than the twentieth (20th) calendar day following the end of the month being reported, unless otherwise agreed to in writing by ADMINISTRATOR.

#### D. PROGRAMMATIC

1. CONTRACTOR shall submit Intervention Implementation Planning Tools to ADMINISTRATOR for approval for each intervention at least thirty (30) business days before the start of each contract period.

2. CONTRACTOR shall submit semi-annual narrative report of implementation of project to ADMINISTRATOR. Narrative reports shall provide an overview of all activities conducted in the Pre-Implementation, Implementation, and Maintenance phases of the project. Plans described under this report must be approved by ADMINISTRATOR prior to project implementation. Reports shall be on forms provided or approved by ADMINISTRATOR and are due to ADMINISTRATOR on July 21, 2017 and no later than thirty (30) calendar days following termination of this Agreement.

3. CONTRACTOR shall submit semi-annual outcome reports to ADMINISTRATOR to report progress on program objectives due on July 21, 2017 and no later than thirty (30) calendar days following termination of this Agreement. These reports shall be on a form provided or approved by ADMINISTRATOR, and shall include outcome data specific to each intervention.

E. DATA REPORTING – CONTRACTOR shall fully comply with ADMINISTRATOR’s requirements for data reporting for Prevention funded services. For purposes of this Agreement, data reporting shall be defined as collecting data on approved forms for all interventions and entering data into the COUNTY’s designated data system inclusive of LEO by the fifteenth (15th) calendar day of each month for interventions completed following the end of the month being reported, unless otherwise agreed to in writing by ADMINISTRATOR.

G. CONTRACTOR shall provide additional reports as required by ADMINISTRATOR in regard to CONTRACTOR’s activities as related to the services hereunder. ADMINISTRATOR shall be specific as to the nature of information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

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

## **V. SERVICES**

A. Mpowerment – CONTRACTOR shall implement Mpowerment program, consistent with CDC’s guidance and including all core elements of the intervention. Target population will be MSM ages 18-29 who engage in, or are likely to engage in, unprotected sex. All planning, implementation, and monitoring activities must include efforts to increase knowledge, reduce risk, and increase skills related to HIV prevention and increasing annual testing for those who are HIV negative.

1. Implementation – CONTRACTOR will conduct the tasks and activities outlined below. Conduct 32 Core Group meetings with 12-20 members for each Core Group. A total of 70 individuals may participate in Core Group meetings during the reporting period of the Agreement.

a. Conduct early activities of intervention including:

- 1) Convene Core Group.
- 2) Core Group to determine project name and logo, identify unmet needs of young MSM, begin talking to friends about project, and furnish and decorate project space as needed.
- 3) Develop plans for initial formal outreach at community venues and via outreach events.
- 4) Determine optimal media outlets for publicity.
- 5) Develop publicity plan.
- 6) Coordinators learn how to conduct M-groups.
- 7) Director of Prevention and Coordinators establish approach to supervision; establish weekly behavioral objectives, and reporting procedures.

b. Conduct intermediate activities of intervention including:

- 1) Core Group talks about the Project in their social groups and brings friends to M-groups.

//

2) Recruit two (2) Project Volunteers, in addition to Core Group members, to assist with planning and implementation of outreach and/or publicity campaign.

3) Implement one (1) large outreach event to 200 participants. Documentation of event must include sign-in sheet with date, time and location of event and program documentation of staff and/or volunteers assisting with event.

4) Implement three (3) small to medium outreach events to 60 participants. Outreach events are conducted by Core Group and volunteers at locations frequented by MSM or created by the Core Group to discuss and promote safer sex, deliver literature on HIV risk reduction, and distribute condoms. Documentation of event must include sign-in sheet with date, time and location of event and program documentation of staff and/or volunteers assisting with event.

5) Implement M-groups every 4-6 weeks (minimum of 12 M-groups) to 75 unduplicated participants. Each M-group should have 8-10 attendees. M-groups should be conducted by trained Project Coordinator and adhere to CDC M-Group guide. Documentation of M-group must include sign-in sheet with date, time and location of event and program documentation of staff or volunteers facilitating M-group.

6) Collect Pre and Post-Session Assessment from M-group attendees.

7) M-group participants conduct informal outreach with their friends and peers.

8) Discuss informal outreach periodically at Core Group meetings.

9) Coordinators role model informal outreach.

10) Implement publicity plan, including placing advertisements in media and distributing materials throughout the community.

11) Continue to communicate community Project goals and structure to staff.

3. Maintenance – CONTRACTOR will conduct the tasks and activities outlined below after successful and consistent implementation of Core and M-group meetings.

a. Core group meets weekly to plan long term and weekly outreach activities.

b. Conduct outreach at community venues.

c. Evaluate outreach events.

d. Recruit attendees to M-groups.

e. Encourage informal outreach at Core Group meetings and at other outreach activities.

f. Continue implementing publicity plan, including placing advertisements in media and distributing materials throughout the community.

g. Meet with the Community Advisory Board to discuss Project activities.

h. Communicate with staff regarding progress.

4. Monitoring and Evaluation – CONTRACTOR shall monitor and evaluate the progress of implementation activities described above. Key objectives to be documented include:

a. Sign-in sheets on paper and entered in LEO and Volunteer Satisfaction Surveys to assess number of Core Group members who were engaged and retained in the Core Group.



b. Event Satisfaction Survey to assess percent of Outreach participants who rate the event positively.

c. M-Group evaluation forms to assess percent of M-group participants who rate the M-groups positively.

d. Spot Interview and Spot Survey to assess percent of MSM ages 18-29 who were aware of publicity campaign.

e. M-Group Pre and Post-Session Assessment to assess percent of M-group participants who show improvement in HIV-related attitudes and risk-reduction skills.

B. Healthy Relationships – CONTRACTOR shall implement Healthy Relationships program, consistent with CDC's guidance and including all core elements of the intervention. Target population will be HIV-positive individuals with an emphasis on MSM and heterosexual populations.

1. Implementation – CONTRACTOR will conduct 10 cycles of five-session Healthy Relationship workshops to groups of 5-12 HIV-positive MSM (English and/or Spanish) reaching a total of 100 total unduplicated HIV-positive MSM (English and/or Spanish), and 2 cycles of five-session Healthy Relationships workshops to groups of 5-10 HIV-positive heterosexual individuals (English/and/or Spanish) reaching a total of 20 total unduplicated HIV-positive heterosexual individuals (English and/or Spanish).

a. Recruit clients for Healthy Relationships participation.

b. Enroll clients for intervention. While clients may initially self-report HIV status, it is the CONTRACTOR's responsibility to confirm and document HIV status prior to reporting units of service to ADMINISTRATOR, entering information into the CDPH database, and for the purpose of site visits and/or audits, have documentation available for review. Documentation of HIV-positive status verified via Western Blot, Immunofluorescent assay (IFA), Multispot HIV1/HIV2, or verification of HIV signed by a doctor must be included in client records.

c. Schedule session.

d. Prepare PFR forms and other evaluative instruments for sessions.

e. Conduct 120-minute session. Sessions should be conducted by trained Project Coordinator and adhere to CDC guidance. Documentation of session must include sign-in sheet with date, time and location of event and program documentation of staff facilitating session and agenda.

f. Debrief Healthy Relationships group sessions with program staff.

g. Evaluate Healthy Relationships group sessions based on PFR forms, session evaluations, consistency outlines, and other feedback from participants.

3. Maintenance – CONTRACTOR will conduct the tasks and activities outlined below after implementation of Healthy Relationships cycle.

a. Brief staff on plans and strategies for collecting required data for reporting and evaluation.

//



- 1                   b. Discuss lessons learned from delivery of intervention.
- 2                   c. Maintain stakeholders buy-in.
- 3                   d. Plan for the next cycle of Healthy Relationships.
- 4           4. Monitoring and Evaluation – CONTRACTOR shall monitor and evaluate the progress of
- 5 implementation activities described above through the following:
- 6           a. For Healthy Relationships group sessions:
- 7               1. Sign-in sheet on paper and entered in LEO to assess percent of attendees that attend
- 8 all five sessions in a cycle.
- 9               2. Initial and post-assessment survey to assess:
- 10                   a) Increase in participants' self report of comfort level and confidence to disclose
- 11 their HIV status to family and friends.
- 12                   b) Increase in participants' self report of comfort level and confidence to disclose
- 13 their HIV status to sex partners.
- 14                   c) Increase in participants' ability to negotiate safer sex practices with partner.
- 15                   d) Increase in participants' ability to use condoms with partners.
- 16                   e) Increase in participants' self report of intentions to use condoms with sex
- 17 partners.
- 18                   f) Increase in participants' self report of condom use with sex partners.
- 19               3. Session monitoring form at the conclusion of each session to assess completion of
- 20 contents and modification to planned activities.
- 21       C. CLEAR for HIV-positive individuals – CONTRACTOR shall implement CLEAR program,
- 22 consistent with CDC's guidance and including all core elements of the intervention. Target population
- 23 will be HIV-positive MSM (English and/or Spanish) and HIV-positive Heterosexual (English and/or
- 24 Spanish). All planning, implementation, and monitoring activities must include efforts to increase
- 25 knowledge, reduce risk, and increase skills related to HIV transmission.
- 26       1. Implementation – CONTRACTOR will conduct five (5) Core Skills Sessions, at least two
- 27 (2) additional menu sessions from one of six (6) CLEAR domains, and a wrap-up session to 14 HIV-
- 28 positive individuals (5 MSM English, 5 MSM Spanish, 2 Heterosexual English, and 2 Heterosexual
- 29 Spanish) for a total of at least 112 sessions. Each session should be completed in 60-75 minutes and
- 30 should occur weekly. Sessions shall be delivered with a client-centered approach by trained counselors.
- 31 CONTRACTOR will conduct the tasks and activities outlined below.
- 32       a. Recruit and screen clients for CLEAR participation. Recruitment should include
- 33 informing referral sources of program and eligibility requirements and conducting direct outreach to
- 34 potential clients. While clients may initially self-report HIV status, it is the CONTRACTOR's
- 35 responsibility to confirm and document HIV status prior to reporting units of service to
- 36 ADMINISTRATOR, entering information into the California Department of Public Health (CDPH)
- 37 database, and for the purpose of site visits and/or audits, have documentation available for review.

Documentation of HIV-positive status verified via Western Blot, Immunofluorescent assay (IFA), Multispot HIV1/HIV2, or verification of HIV signed by a doctor must be included in client records.

b. Schedule sessions.

c. Conduct sessions including:

1) Five (5) Core Skills Sessions At the end of these sessions, clients must have developed life goals and an individualized prevention plan.

2) At least two (2) menu sessions in at least one (1) CLEAR domain in sequential order based on CLEAR guidance. Sessions in more than one (1) domain may be covered; determination of which domains to cover will be based on the individualized prevention plan. Domains include: a) Sexual risk; b) Substance abuse risk; c) Health care and self-care; d) Adherence; e) Disclosure; f) Stigma.

3) Wrap-Up session to help the client develop maintenance strategies for sustaining new behaviors and provide an opportunity for the client to reflect on his or her experiences in CLEAR.

d. Document sessions including:

1) Client program enrollment form administered by the counselor

2) Client participation record form including client name or ID, duration of session, and overview of progress or barriers toward goals

3) Client's life goals and individualized prevention plan

e. Provide, track, and document referrals

f. Conduct clinical supervision with counselors to discuss successes, challenges, and strategies.

g. Evaluate sessions based on pre and post risk reduction assessments and session fidelity forms.

3. Maintenance – CONTRACTOR will conduct the tasks and activities outlined below after successful implementation of CLEAR.

a. Hold weekly clinical supervision with Prevention Specialist to discuss successes, challenges, and strategies.

b. Hold regular staff meetings to review program progress.

c. Communicate with community partners and referral agencies and update referral network as necessary.

d. Conduct periodic quality assurance review in accordance with quality assurance plan.

e. Adjust program delivery as needed based on quality assurance activities and monthly staff meeting discussions.

f. Identify additional training for staff as appropriate.

g. Plan and recruit for next cohort of CLEAR participants.”

4. Monitoring and Evaluation – CONTRACTOR shall monitor and evaluate the progress of implementation activities described above through the following:

a. Client enrollment and session forms on paper and entered in LEO to assess:

1) Proportion of clients who completed five (5) Core Skills sessions

2) Proportion of clients who completed at least one (1) domain

b. Pre and post risk reduction assessments to assess:

1) Increase in client's emotional awareness

2) Increase in client's problem-solving and goal-setting skills

3) Increase in client's assertive behavior and communication skills

4) Increase in client's motivation to change behavior

5) Increase in client's intention and ability to decrease targeted high risk behaviors

c. Session fidelity forms after each session to assess fidelity to CLEAR core elements.

5. Increase in client's intention and ability to decrease targeted high risk behaviors

D. CONTRACTOR shall develop tools to evaluate services and shall evaluate services provided pursuant to this Agreement. Evaluation tools must be approved by ADMINISTRATOR prior to implementation. CONTRACTOR shall maintain on-going data collection and analysis of results.

E. It is understood by the parties that CONTRACTOR shall enter into cooperative agreements with other Orange County HIV prevention service providers, and establish partnerships with community programs, including but not limited to drug and alcohol prevention and treatment programs, and mental health providers, to provide a comprehensive approach to HIV prevention. All cooperative agreements must be submitted to ADMINISTRATOR for review and approval.

F. CONTRACTOR shall provide information on PS; conduct PS counseling; and refer, when appropriate, to ADMINISTRATOR for notification services.

G. CONTRACTOR shall complete CDPH/OA database set-up and obtain approval by ADMINISTRATOR within 30 business days of CDPH/OA or ADMINISTRATOR notification.

H. Any literature, including educational and promotional materials, developed and distributed by CONTRACTOR for purposes directly related to this Agreement, shall be approved by ADMINISTRATOR's PMRP and Office of HIV Planning and Coordination prior to dissemination and shall indicate that CONTRACTOR's services are supported by federal, state, and county funds, as appropriate.

I. CONTRACTOR shall participate on PMRP established by ADMINISTRATOR.

J. CONTRACTOR shall participate on the Orange County HIV Prevention and Care Strategies Committee established by ADMINISTRATOR and shall adhere to the standards set forth by the HIV Prevention Planning Committee.

K. CONTRACTOR shall attend meetings with ADMINISTRATOR, as requested and scheduled by ADMINISTRATOR on an as needed basis, to discuss contractual and other issues related to, but not limited to compliance with policies and procedures, statistics, and reporting.

//

//

L. CONTRACTOR shall establish a written non-smoking policy which shall be reviewed and approved by ADMINISTRATOR. At a minimum, the non-smoking policy shall specify that the facility is "smoke free" and designate smoking areas outside the facility.

M. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of this Agreement. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.

N. CONTRACTOR shall make its best efforts to provide services pursuant to this Agreement in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain documentation of such efforts which may include, but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring policies and procedures; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, persons who are physically challenged.

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

## **VI. STAFFING**

A. CONTRACTOR shall, at a minimum, provide the following paid staff expressed FTEs, for period one and two, which shall be equal to an average of forty (40) hours worked per week:

<b>MPOWERMENT</b>	<b>PERIOD ONE</b>
-------------------	-------------------

<b>ADMINISTRATIVE STAFF</b>	
-----------------------------	--

Director of Finance and Operations	0.0126
Senior Accountant	0.0126
Staff Accountant	0.0126
Accounting Clerk	0.0126
Data Programmer	<u>0.0126</u>

SUBTOTAL FTEs	0.0630
---------------	--------

<b>PROGRAM ADMINISTRATIVE STAFF</b>	<b>PERIOD ONE</b>
-------------------------------------	-------------------

Director of Health Education	0.0030
------------------------------	--------

<b>PROGRAM STAFF</b>	
----------------------	--

Director of Health Education	0.2970
HIV Prevention Specialist	<u>0.1500</u>

1	SUBTOTAL FTEs	0.4470
2		
3	TOTAL FTEs	0.5130
4		
5	HEALTHY RELATIONSHIPS	PERIOD ONE
6	ADMINISTRATIVE STAFF	
7	Director of Finance and Operations	0.0276
8	Senior Accountant	0.0276
9	Staff Accountant	0.0276
10	Accounting Clerk	0.0276
11	Data Programmer	<u>0.0276</u>
12	SUBTOTAL FTEs	0.1380
13		
14	PROGRAM ADMINISTRATIVE	PERIOD ONE
15	STAFF	
16	Director of Health Education	0.0040
17		
18	PROGRAM STAFF	
19	Director of Health Education	0.3960
20	HIV Prevention Specialist	1.0000
21	HIV Prevention Specialist	<u>0.8500</u>
22	SUBTOTAL FTEs	2.2460
23		
24	TOTAL FTEs	2.3880

26 B. CONTRACTOR shall notify ADMINISTRATOR, in writing, within five (5) business days, of  
 27 any staffing changes that occur during the term of the Agreement.

28 C. CONTRACTOR shall maintain a time allocation system that will document the amounts  
 29 charged to grant-supported projects for personnel services to ensure that staff is providing services under  
 30 this Agreement based on the FTEs noted above. CONTRACTOR shall submit a monthly time and  
 31 effort report, in a format approved or provided by ADMINISTRATOR, representing actual work  
 32 performed by the employee during the covered period.

33 D. CONTRACTOR may augment the above paid staff with volunteers. CONTRACTOR shall  
 34 provide supervision to volunteers as specified in the respective job descriptions or work contracts.

35 E. CONTRACTOR shall ensure that its employees, interns and volunteers facilitating Prevention  
 36 Interventions and/or Partner Services complete the appropriate trainings prior to service delivery. In

37 //

1 addition, CONTRACTOR shall ensure that appropriate staff is trained in using LEO. CONTRACTOR  
2 must submit to ADMINISTRATOR documents verifying completion of all required training.

3 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
4 Staffing Paragraph of this Exhibit A to the Agreement.

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //



EXHIBIT B  
TO AGREEMENT FOR PROVISION OF  
HIV PREVENTION SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
AIDS SERVICES FOUNDATION ORANGE COUNTY  
JANUARY 1, 2017 THROUGH DECEMBER 31, 2017

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

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

4 B. DEFINITIONS

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

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

11 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to

//

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

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

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

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

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

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

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

37 //



1 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the  
2 event:

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

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

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

#### 11 D. SECURITY RULE

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

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

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

28 a. Complying with all of the data system security precautions listed under Paragraphs E,  
29 below;

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

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

36 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or  
37 transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to



the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

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

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

#### E. DATA SECURITY REQUIREMENTS

##### 1. Personal Controls

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

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

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

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

//

//

2. Technical Security Controls

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

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

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

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

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

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

g. User IDs and Password Controls. All users must be issued a unique user name for accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must

1 be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords  
 2 must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or  
 3 compromised. Passwords must be composed of characters from at least three of the following four  
 4 groups from the standard keyboard:

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

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

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

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

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

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

33 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to  
 34 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
 35 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is  
 36 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files

37 //

1 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as  
2 website access, file transfer, and E-Mail.

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

### 7 3. Audit Controls

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

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

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

### 21 4. Business Continuity/Disaster Recovery Control

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

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

### 34 5. Paper Document Controls

35 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR  
36 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left  
37 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means

1 that information is not being observed by an employee authorized to access the information. Such PHI  
2 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in  
3 baggage on commercial airplanes.

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

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

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

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

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

## 25 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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



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

- a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
  - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

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

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

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

8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests

//



1 for further information, or follow-up information after report to COUNTY, when such request is made  
2 by COUNTY.

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

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

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

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

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

17 1) The Disclosure is required by law; or

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

23 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to  
24 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of  
25 CONTRACTOR.

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

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

30 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as  
31 required by law.

#### 32 H. PROHIBITED USES AND DISCLOSURES

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

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

I. OBLIGATIONS OF COUNTY

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

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

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

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

J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

b. CONTRACTOR shall retain no copies of the PHI.

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

//

Agreement.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

EXHIBIT C  
TO AGREEMENT FOR PROVISION OF  
HIV PREVENTION SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
AIDS SERVICES FOUNDATION ORANGE COUNTY  
JANUARY 1, 2017 THROUGH DECEMBER 31, 2017

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

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

**A. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

## B. TERMS OF AGREEMENT

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

2. Responsibilities of CONTRACTOR  
CONTRACTOR agrees:

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

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

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

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

//

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

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

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

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

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

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

h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR agrees to implement reasonable systems for the discovery of any breach of unsecured DHCS PI and PII or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI

//



1 and PII or security incident in accordance with Paragraph F, of the Business Associate Contract, Exhibit  
2 B to the Agreement.

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

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //