

1 AGREEMENT FOR PROVISION OF
2 HIV PREVENTION SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 SPECIAL SERVICE FOR GROUPS, INC.
7 JANUARY 1, 2018 THROUGH DECEMBER 31, 2018
8

9 THIS AGREEMENT entered into this 1st day of January 2018, which date is enumerated for
10 purposes of reference only, is by and between the COUNTY OF ORANGE, a political subdivision of
11 State of California (COUNTY), and
12 SPECIAL SERVICE FOR GROUPS, INC., a California nonprofit corporation (CONTRACTOR).
13 COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or
14 collectively as "Parties." This Agreement shall be administered by the County of Orange Health Care
15 Agency (ADMINISTRATOR).
16

17 **W I T N E S S E T H:**
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19 WHEREAS, of December 2016, there were 6,762 residents living with Human Immunodeficiency
20 Virus disease (HIV); and an additional estimated 669 individuals unaware they are infected with HIV;
21 and Orange County receives about 285 newly reported HIV cases each year; and

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

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

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

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

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REFERENCED CONTRACT PROVISIONS

Term: January 1, 2018 through December 31, 2018

Maximum Obligation: \$100,000

Basis for Reimbursement: Actual Cost

Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 02-650-8072

CONTRACTOR TAX ID Number: 95-1716914

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: Special Service for Groups, Inc.
Attention: Herbert Hatanaka
905 E. 8th Street
Los Angeles, CA 90021
Email address: ssg@ssgmain.org

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I. ACRONYMS

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

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

1	AH. OCSD	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. COMPLIANCE PROGRAM - 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 policies and procedures relating to ADMINISTRATOR’s Compliance Program, Code of Conduct and access to General Compliance and Annual Provider Trainings.

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

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

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

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

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1 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
2 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

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

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

16 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
17 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide
18 health care items or services or who perform billing or coding functions on behalf of
19 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
20 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to
21 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
22 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the
23 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
24 made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and
25 procedures (or CONTRACTOR's own compliance program, code of conduct and related policies and
26 procedures if CONTRACTOR has elected to use its own).

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

33 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
34 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
35 Agreement.

36 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
37 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that

1 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
 2 State of California health programs and have not been excluded or debarred from participation in any
 3 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
 4 any Ineligible Person in their employ or under contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

VI. COST REPORT

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

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

a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each business day after the above specified due date that the accurate and complete Cost Report is not

1 submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The
2 late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by
3 CONTRACTOR.

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

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

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

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

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

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

36 E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
37 this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim

1 monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided
2 such payment does not exceed the Maximum Obligation of COUNTY.

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

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

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

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

20 A. CONTRACTOR certifies that it and its principals:

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

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

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

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

34 5. Shall not knowingly enter into any lower tier covered transaction with a person who is
35 proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred,
36 suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless
37 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

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1 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
2 under subcontract, and include any provisions that ADMINISTRATOR may require.

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

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

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

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

14 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

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

25 **X. EQUIPMENT**

26 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all
27 property of a Relatively Permanent nature with significant value, purchased in whole or in part by
28 ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively
29 Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or
30 over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital
31 Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and
32 other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained
33 PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to
34 phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of
35 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be
36 depreciated according to GAAP.
37

1 B. CONTRACTOR shall obtain ADMINISTRATOR's prior written approval to purchase any
2 Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR
3 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting
4 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.
5 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each
6 purchased asset in an Equipment inventory.

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

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

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

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

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

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

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

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

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

1 The reduction to the Maximum Obligation shall be in an amount proportionate to the number of days in
2 which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.

3
4 **XII. INDEMNIFICATION AND INSURANCE**

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

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

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

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

37 //

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

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

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

10 E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII
 11 (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall
 12 constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate
 13 this Agreement.

14 F. QUALIFIED INSURER

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

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

23 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
 24 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

1	Network Security & Privacy Liability	\$1,000,000 per claims made
2		
3	Technology Errors & Omissions	\$1,000,000 per claims made
4		
5	Professional Liability Insurance	\$1,000,000 per claims made
6		\$1,000,000 aggregate
7		
8	Sexual Misconduct Liability	\$1,000,000 per occurrence
9		

10 H. REQUIRED COVERAGE FORMS

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

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

15 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

35 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
 36 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
 37 //

1 agents and employees, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN***
2 ***AGREEMENT.***

3 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
4 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
5 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
6 breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to terminate this
7 Agreement.

8 M. If CONTRACTOR’s Professional Liability, Technology Errors & Omissions and/or Network
9 Security & Privacy Liability are “Claims Made” policy(ies), CONTRACTOR shall agree to maintain
10 coverage for two (2) years following the completion of the Agreement.

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

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

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

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

25 **R. SUBMISSION OF INSURANCE DOCUMENTS**

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

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

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

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

- 36 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
37 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the

1 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
2 submitted to ADMINISTRATOR.

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

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

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

12
13 **XIII. INSPECTIONS AND AUDITS**

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

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

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

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

34
35 **XIV. LICENSES AND LAWS**

36 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
37 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,

1 | accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
2 | required by the laws, regulations and requirements of the United States, the State of California,
3 | COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
4 | ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the
5 | pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
6 | and exemptions. Said inability shall be cause for termination of this Agreement.

7 | B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

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

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

- 31 | 1. ARRA of 2009.
- 32 | 2. 42 CFR, Public Health, H&SC 121025.
- 33 | 3. HIPAA Privacy Rule, as it may now exist, or be hereafter amended, as applicable.
- 34 | 4. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 35 | 5. WIC §15600, et seq., Elder Abuse and Dependent Adult Civil Protection Act.
- 36 | 6. 45 CFR Part 76, Drug Free Work Place.
- 37 | 7. CCR, Title 22, Division 6, Community Care Licensing Division.

1 8. Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87, October 30,
2 2009).

3 9. U.S. Department of Health and Human Services, National Institutes of Health (NIH) Grants
4 Policy Statement (10/13).

5 10. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
6 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

7 11. Title XXVI of the Public Health Services Act, as amended by the Ryan White HIV/AIDS
8 Treatment Extension Act of 2009 (Public Law 111-87)

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

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

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

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

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

31
32 **XVI. MAXIMUM OBLIGATION**

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

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

XVII. MINIMUM WAGE LAWS

1
2 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
3 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
4 federal or California Minimum Wage to all its employees that directly or indirectly provide services
5 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that
6 all its contractors or other persons providing services pursuant to this Agreement on behalf of
7 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
8 Wage.

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

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

16
17 **XVIII. NONDISCRIMINATION**

18 A. EMPLOYMENT

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

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

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

36 //
37 //

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

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

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

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

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

37 //

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

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

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

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

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

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

27
28 **XIX. NOTICES**

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

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

34 2. When faxed, transmission confirmed;

35 3. When sent by Email; or

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

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

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

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

11
12 **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

20
21 **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

- 13 1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit
14 or site visit.
- 15 2. Provide auditor or other authorized individuals access to documents via a computer
16 terminal.
- 17 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
18 requested.

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

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

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

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

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

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

37 //

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

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

6
7 **XXII. RESEARCH AND PUBLICATION**

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

11
12 **XXIII. SEVERABILITY**

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

18
19 **XXIV. SPECIAL PROVISIONS**

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

- 22 1. Making cash payments to intended recipients of services through this Agreement.
- 23 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
24 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on
25 use of appropriated funds to influence certain federal contracting and financial transactions).
- 26 3. Fundraising.
- 27 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
28 CONTRACTOR's staff, volunteers, or members of the Board of Directors.
- 29 5. Reimbursement of CONTRACTOR's members of the Board of Directors for expenses or
30 services.
- 31 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,
32 subcontractors, and members of the Board of Directors or its designee or authorized agent, or making
33 salary advances or giving bonuses to CONTRACTOR's staff.
- 34 7. Paying an individual salary or compensation for services at a rate in excess of the current
35 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
36 Schedule may be found at www.opm.gov.
- 37 8. Severance pay for separating employees.

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

3 10. Purchasing or improving land, including constructing or permanently improving any
4 building or facility, except for tenant improvements.

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

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

9 13. Supplanting current funding for existing services.

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

15 15. To meet professional licensure or program licensure requirements.

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

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

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

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

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

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

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

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

29
30 **XXV. STATUS OF CONTRACTOR**

31 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
32 wholly responsible for the manner in which it performs the services required of it by the terms of this
33 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
34 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
35 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
36 or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR
37 assumes exclusively the responsibility for the acts of its employees, agents, consultants, or

1 subcontractors as they relate to the services to be provided during the course and scope of their
2 employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be
3 entitled to any rights or privileges of COUNTY’s employees and shall not be considered in any manner
4 to be COUNTY’s employees.

5
6 **XXVI. TERM**

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

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

15
16 **XXVII. TERMINATION**

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

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

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

- 25 1. The loss by CONTRACTOR of legal capacity.
- 26 2. Cessation of services.
- 27 3. The delegation or assignment of CONTRACTOR’s services, operation or administration to
28 another entity without the prior written consent of COUNTY.
- 29 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
30 required pursuant to this Agreement.
- 31 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
32 this Agreement.
- 33 6. The continued incapacity of any physician or licensed person to perform duties required
34 pursuant to this Agreement.
- 35 7. Unethical conduct or malpractice by any physician or licensed person providing services
36 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR

37 //

1 removes such physician or licensed person from serving persons treated or assisted pursuant to this
2 Agreement.

3 D. CONTINGENT FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 arising out of such cancellation of commitment which shall be subject to written approval of
2 ADMINISTRATOR.

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

5
6 **XXVIII. THIRD PARTY BENEFICIARY**

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

10
11 **XXIX. WAIVER OF DEFAULT OR BREACH**

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

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

3
4
5 SPECIAL SERVICE FOR GROUPS, INC.

6
7 DocuSigned by:
8 BY: Herbert K Hatanaka DATED: 11/2/2017
9 8BF83E3A162A493...

10 TITLE: Executive Director

11
12
13
14
15
16 COUNTY OF ORANGE

17
18
19 BY: _____ DATED: _____
20 HEALTH CARE AGENCY

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

29
30 DocuSigned by:
31 BY: Eric Divine DATED: 11/2/2017
32 C4E3686C1E6D4FD...
33 **DEPUTY**

34
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or
36 any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
37 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 AGREEMENT FOR PROVISION OF
HIV PREVENTION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
SPECIAL SERVICE FOR GROUPS, INC.
JANUARY 1, 2018 THROUGH DECEMBER 31, 2018

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. Client(s) means an individual seeking HIV prevention and education services.

E. Evidence-Based Intervention means interventions shown to be effective in reducing risk-taking behaviors that lead to transmission of HIV.

F. HIV is the virus that causes AIDS.

G. LEO means the COUNTY's designated data system for HIV prevention and testing data.

H. 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.

I. PMRP means a group of volunteers that review and approve prevention materials.

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

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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.

CLEAR PLWH/A

ADMINISTRATIVE COSTS

Salaries	\$ 5,504
Benefits	<u>1,541</u>
SUBTOTAL	\$ 7,045

PROGRAM COSTS

Salaries	\$ 41,596
Benefits	12,479
Services and Supplies	<u>16,380</u>
SUBTOTAL	\$ 70,455

TOTAL NET COSTS \$ 77,500

PCC MSM

ADMINISTRATIVE COSTS

Salaries	\$ 1,598
Benefits	<u>447</u>
SUBTOTAL	\$ 2,045

PROGRAM COSTS

Salaries	\$ 11,085
Benefits	3,326
Services and Supplies	<u>6,044</u>
SUBTOTAL	\$ 20,455

TOTAL NET COSTS \$ 22,500

TOTAL CONTRACT COSTS \$100,000

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.

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

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

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

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

18
19 CFDA Year: 2018
20 CFDA No.: 93.940
21 Program Title: HIV Prevention Program (indirect)
22 Federal Agency: Centers for Disease Control and Prevention
23 Award Name: HIV Prevention Program (indirect)
24 Amount: \$100,000 (estimated)
25
26

27 2. CONTRACTOR may be required to have an audit conducted in accordance with 31 USC
28 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200. CONTRACTOR shall be
29 responsible for complying with any federal audit requirements within the reporting period specified by
30 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200.

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

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

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

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

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

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

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

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

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

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

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

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IV. REPORTS

A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial 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 30, 2018; July 30, 2018; October 29, 2018 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 to ADMINISTRATOR. Narrative reports shall provide an overview of all activities conducted during the period being reviewed. Reports shall be on forms provided or approved by ADMINISTRATOR and are due to ADMINISTRATOR on July 23, 2018 and January 28, 2019.

3. CONTRACTOR shall submit annual outcome reports to ADMINISTRATOR to report results on program objectives due on March 30, 2018. These reports shall be on a form provided or

1 approved by ADMINISTRATOR, and shall include outcome data specific to each intervention.

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

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

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

14
15 **V. SERVICES**

16 A. CLEAR for HIV-positive individuals – CONTRACTOR shall implement CLEAR program,
17 consistent with CDC’s guidance and including all core elements of the intervention. Target population
18 will be 72 HIV-positive individuals. All planning, implementation, and monitoring activities must
19 include efforts to increase knowledge, reduce risk, and increase skills related to decreasing HIV
20 transmission.

21 1. Implementation – CONTRACTOR will conduct five (5) Core Skills Sessions, at least two
22 (2) additional menu sessions from one of six (6) CLEAR domains, and a wrap-up session to 32 HIV-
23 positive individuals for a total of at least 256 sessions. Each session should be completed in 60-75
24 minutes and should occur weekly. Sessions shall be delivered with a client-centered approach by
25 trained counselors. CONTRACTOR will conduct the tasks and activities outlined below after
26 submission and approval of the Pre-Implementation activities.

27 a. Recruit and screen clients for CLEAR participation. Recruitment should include
28 informing referral sources of program and eligibility requirements and conducting direct outreach to
29 potential clients. While clients may initially self-report HIV status, it is the CONTRACTOR’s
30 responsibility to confirm and document HIV status prior to reporting units of service to
31 ADMINISTRATOR, entering information into the California Department of Public Health (CDPH)
32 database, and for the purpose of site visits and/or audits, have documentation available for review.
33 Documentation of HIV-positive status verified via Western Blot, Immunofluorescent assay (IFA),
34 Multispot HIV1/HIV2, or verification of HIV signed by a doctor must be included in client records.

35 b. Schedule sessions.

36 c. Conduct sessions including:

37 //

1 1) Five (5) Core Skills Sessions implemented sequentially including: a) Getting to
 2 know each other; b) Creating a vision for the future; c) Stressors and SMART problem solving; d)
 3 Exploring different types of communication; and e) Putting it all together. At the end of these sessions,
 4 clients must have developed life goals and an individualized prevention plan.

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

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

12 d. Document sessions including:

13 1) Client program enrollment form administered by the counselor.

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

16 3) Client's life goals and individualized prevention plan.

17 e. Provide, track, and document referrals.

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

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

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

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

26 b. Hold regular staff meetings to review program progress.

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

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

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

32 f. Identify additional training for staff as appropriate.

33 g. Plan ongoing recruitment for CLEAR participants.”

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

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

37 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.

B. Personalized Cognitive Counseling (PCC) for high-risk MSM - CONTRACTOR shall implement PCC program, consistent with CDC's guidance and including all core elements of the intervention. Target population will be Men who have sex with men (MSM) who previously tested for HIV, are HIV-negative, and had unprotected anal intercourse (UAI) since their last test with a male who was not their primary partner, and that partner's serostatus was positive or unknown. All planning, implementation, and monitoring activities must include efforts to increase knowledge, reduce risk, and increase skills related to decreasing HIV transmission.

1. Implementation – CONTRACTOR will conduct, one (1) Individual Level Intervention Sessions, to 150 high-risk men who have sex with men (MSM) who previously tested for HIV, are HIV-negative, and had unprotected anal intercourse (UAI) since their last test with a male who was not their primary partner, and that partner's serostatus was positive or unknown for a total of at least 120 sessions. Each session should be completed in 30-50 minutes. Sessions shall be delivered by trained counselors. CONTRACTOR shall conduct the tasks and activities defined below at least 30 business days before the start of each contract period.

a. Recruit and screen clients for PCC participation. Recruitment should include informing referral sources of program and eligibility requirements and conducting direct "inreach" and outreach to potential clients.

b. Schedule sessions.

c. Conduct sessions including:

1) Recall a recent memorable episode of a UAI; 2) Administering the PCC Questionnaire; 3) Draw out the story and ask about thoughts and feelings during UAI; 4) Identify self-justifications and discuss them; 5) Talk about what the client will do in the future.

d. Document sessions including:

1) PCC Questionnaire form administered by the counselor.

2) Client participation record including client name or ID, duration of session, and overview of future plan of how he may think or decide differently.

e. Provide, track, and document referrals.

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

1 2. Maintenance – CONTRACTOR will conduct the tasks and activities outlined below after
2 successful implementation of PCC intervention.

3 a. Hold monthly supervision with Prevention Specialist to discuss successes, challenges,
4 and strategies.

5 b. Hold regular staff meetings to review program progress.

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

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

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

11 f. Identify additional training for staff as appropriate.

12 g. Plan and recruit for next cohort of PCC participants.

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

15 a. Client PCC Questionnaire HE/RR forms on paper and entered in LEO to assess the total
16 number of clients who completed PCC session.

17 C. CONTRACTOR shall develop tools to evaluate services and shall evaluate services provided
18 pursuant to this Agreement. CONTRACTOR shall maintain on-going data collection and analysis of
19 results.

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

25 E. CONTRACTOR shall provide information on Partner Services (PS); conduct PS counseling;
26 and refer, when appropriate, to ADMINISTRATOR for notification services.

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

29 G. Any literature, including educational and promotional materials, developed and distributed by
30 CONTRACTOR for purposes directly related to this Agreement, shall be approved by
31 ADMINISTRATOR’s Prevention Materials Review Panel (PMRP) and Office of HIV Planning and
32 Coordination prior to dissemination and shall indicate that CONTRACTOR’s services are supported by
33 federal, state, and county funds, as appropriate.

34 H. CONTRACTOR shall participate on PMRP established by ADMINISTRATOR.

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

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 in FTEs, for the period, which shall be equal to an average of forty (40) hours worked per week:

	CLEAR PLWH/A	PCC MSM	TOTAL
ADMINISTRATIVE STAFF			
Payroll Assistant	<u>0.1654</u>	<u>0.048</u>	<u>0.2134</u>
SUBTOTAL FTEs	0.1654	0.048	0.2134
PROGRAM STAFF			
Health Educator	<u>1.1</u>	<u>0.3</u>	<u>1.4</u>
SUBTOTAL FTEs	1.1	0.3	1.4
TOTAL FTEs	1.2654	0.348	1.6134

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

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

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

8 E. CONTRACTOR shall ensure that its employees, interns and volunteers facilitating Prevention
9 Interventions and/or Partner Services complete the appropriate trainings prior to service delivery. In
10 addition, CONTRACTOR shall ensure that appropriate staff is trained in using LEO. CONTRACTOR
11 must submit to ADMINISTRATOR documents verifying completion of all required training.

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

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EXHIBIT B
TO AGREEMENT FOR PROVISION OF
HIV PREVENTION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
SPECIAL SERVICE FOR GROUPS, INC.
JANUARY 1, 2018 THROUGH DECEMBER 31, 2018

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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,
27 maintains, 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

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

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

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

9 E. DATA SECURITY REQUIREMENTS

10 1. Personal Controls

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

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

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

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

36 2. Technical Security Controls

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

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

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

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

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

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

32 g. User IDs and Password Controls. All users must be issued a unique user name for
33 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
34 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
35 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
36 within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must
37 be a non-dictionary word. Passwords must not be stored in readable format on the computer.

1 Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if
2 revealed or compromised. Passwords must be composed of characters from at least three of the
3 following four groups from the standard keyboard:

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

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

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

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

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

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

32 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
33 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
34 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
35 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
36 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
37 website access, file transfer, and E-Mail.

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

5 3. Audit Controls

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

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

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

19 4. Business Continuity/Disaster Recovery Control

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

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

32 5. Paper Document Controls

33 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
34 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
35 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
36 that information is not being observed by an employee authorized to access the information. Such PHI
37 //

1 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
2 baggage on commercial airplanes.

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

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

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

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

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

24 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

18 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
19 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
20 COUNTY.

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

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

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

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

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

5 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

15 1) The Disclosure is required by law; or

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

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

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

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

28 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
29 required by law.

30 H. PROHIBITED USES AND DISCLOSURES

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

36 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
37 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on

1 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC §
2 17935(d)(2).

3 I. OBLIGATIONS OF COUNTY

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

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

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

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

15 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

35 3. The obligations of this Business Associate Contract shall survive the termination of the
36 Agreement.

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EXHIBIT C
TO AGREEMENT FOR PROVISION OF
HIV PREVENTION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
SPECIAL SERVICE FOR GROUPS, INC.
JANUARY 1, 2018 THROUGH DECEMBER 31, 2018

I. PERSONAL INFORMATION 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).

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

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

12 B. TERMS OF AGREEMENT

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

18 2. Responsibilities of CONTRACTOR

19 CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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