

AGREEMENT FOR PROVISION OF
HIV COUNSELING AND TESTING SERVICES

BETWEEN
COUNTY OF ORANGE

AND

«UC_NAME» «UC_DBA»

JANUARY 1, ~~2017~~2018 THROUGH DECEMBER 31, ~~2017~~2018

THIS AGREEMENT entered into this 1st day of January ~~2017~~2018, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and «UC_NAME»«UC_DBA», «CORP_STATUS» (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

W I T N E S S E T H:

WHEREAS, of December ~~2015~~2016, there were 6,~~287~~762 residents living with Human Immunodeficiency Virus disease (HIV); and an additional estimated ~~801~~669 individuals unaware they are infected with HIV; and Orange County receives about 285 newly reported HIV cases each year; and

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of HIV Counseling and Testing Services to target high-risk individuals in order to yield an HIV seropositivity rate of 0.85% among clients testing for the first time in Orange County; and

WHEREAS, COUNTY receives funding for these services from the Centers for Disease Control and Prevention; and

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

Term: January 1, ~~2017~~2018 through December 31, ~~2017~~2018

Aggregate Maximum Obligation: \$100,000

Basis for Reimbursement: Fee for Service

Payment Method: Fee for Service

CONTRACTOR DUNS Number:

CONTRACTOR TAX ID Number:

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

CONTRACTOR: «CONTACT», «TITLE»
«LC_NAME»«LC_DBA»
«ADDRESS»
«CITY_STATE_ZIP»
«EMAIL»

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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. CAQ	Client Assessment Questionnaire
8	E. CAS	Client Assessment Staff
9	F. CCC	California Civil Code
10	G. CCR	California Code of Regulations
11	H. CDPH/OA	California Department of Public Health, Office of AIDS
12	I. CEO	County Executive Office
13	J. CFR	Code of Federal Regulations
14	K. CHPP	COUNTY HIPAA Policies and Procedures
15	L. CHS	Correctional Health Services
16	M. CIF	Counseling Information Form
17	N. CLIA	Clinical Laboratory Improvement Act/Amendment
18	O. CMS	Center for Medicare and Medicaid Services
19	P. COI	Certificate of Insurance
20	Q. D/MC	Drug/Medi-Cal
21	R. DHCS	Department of Health Care Services
22	S. DPFS	Drug Program Fiscal Systems
23	T. DRS	Designated Record Set
24	U. ePHI	Electronic Protected Health Information
25	V. FDA	Food and Drug Administration
26	W. GAAP	Generally Accepted Accounting Principles
27	X. HCA	Health Care Agency
28	Y. HHS	Health and Human Services
29	Z. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
30		Law 104-191
31	AA. HIV	Human immunodeficiency virus
32	AB. HSC	California Health and Safety Code
33	AC. ISO	Insurance Services Office
34	AD. LEO	Local Evaluation Online
35	AE. MHP	Mental Health Plan
36	AF. OCJS	Orange County Jail System
37	AG. OCPD	Orange County Probation Department

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

II. ALTERATION OF TERMS

A. This Agreement, together with Exhibit(s) 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 DEBTSCOMPLIANCE

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.

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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 ~~relevant HCA~~ policies and procedures relating to ~~HCA's~~ ADMINISTRATOR's Compliance Program, ~~HCA's~~ Code of Conduct and ~~access to~~ General Compliance and Annual Provider Trainings.

2. CONTRACTOR has the option to ~~adhere to HCA's Compliance Program and Code of Conduct or establish~~ provide ADMINISTRATOR with proof of its own, ~~provided~~ Compliance Program, Code of Conduct and any Compliance related policies and procedures. CONTRACTOR's Compliance Program ~~and~~ Code of Conduct ~~have been verified to~~ 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 ~~subparagraphs below~~ 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 ~~elects to adhere~~ does not provide proof of its own Compliance program to HCA's 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 ~~award~~ execution of this Agreement a signed acknowledgement that CONTRACTOR shall comply with ~~HCA's~~ ADMINISTRATOR's Compliance Program and Code of Conduct.

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

1 elements: to the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program
 2 and Code of Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required
 3 elements and CONTRACTOR shall revise its compliance program and code of conduct to meet
 4 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
 5 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

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

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

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

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

34 2. An Ineligible Person shall be any individual or entity who:
 35 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal
 36 and state health care programs; or
 37 b. has been convicted of a criminal offense related to the provision of health care items or

1 services and has not been reinstated in the federal and state health care programs after a period of
2 exclusion, suspension, debarment, or ineligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 4. ~~D~~ ADMINISTRATOR will track online completion of training while CONTRACTOR
16 shall provide copies of the certifications upon request.

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

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

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

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

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

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

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

37 F. Failure to comply with the obligations stated in this Paragraph IV (COMPLIANCE) shall

1 constitute a breach of the Agreement on the part of CONTRACTOR and ground for COUNTY to
 2 terminate the Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR
 3 shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults
 4 grounded on this Paragraph IV (COMPLIANCE) prior to ADMINITRATOR's right to terminate this
 5 Agreement on the basis of such default.

6

7 **V. CONFIDENTIALITY**

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

11 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Agreement
 12 are clients of the Orange County HIV services system, and therefore it may be necessary for authorized
 13 staff of ADMINISTRATOR to audit client files, or to exchange information regarding specific clients
 14 with COUNTY or other providers of related services contracting with COUNTY.

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

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

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

29

30 **VI. DEBARMENT AND SUSPENSION CERTIFICATION**

31 A. CONTRACTOR certifies that it and its principals:

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

34 2. Have not within a three-year period preceding this Agreement been convicted of or had a
 35 civil judgment rendered against them for commission of fraud or a criminal offense in connection with
 36 obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract
 37 under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement,

1 theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen
 2 property.

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

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

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

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

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

18 **VII. DELEGATION ASSIGNMENT, AND SUBCONTRACTS**

19 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
 20 prior written consent of COUNTY. CONTRACTOR shall provide written notification of
 21 CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to
 22 ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation.
 23 Any attempted assignment or delegation in derogation of this paragraph shall be void.
 24

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

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

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

1 delegation in derogation of this subparagraph shall be void.

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

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

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

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

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

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

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

24 **VIII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

35 **IX. EXPENDITURE REPORT**

36 A. No later than sixty (60) calendar days following termination of each period or fiscal year of this
37

1 Agreement, CONTRACTOR shall submit to ADMINISTRATOR, for informational purposes only, an
 2 Expenditure and Revenue Report for the preceding fiscal year, or portion thereof. Such report shall be
 3 prepared in accordance with the procedure that is provided by ADMINISTRATOR and GAAP.

4 B. CONTRACTOR may be required to submit periodic Expenditure and Revenue Reports
 5 throughout the term of this Agreement.

7 **X. FACILITIES, PAYMENTS AND SERVICES**

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

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

18 **XI. INDEMNIFICATION AND INSURANCE**

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

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

36 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
 37 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an

1 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
 2 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
 3 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
 4 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and
 5 to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance
 6 must be maintained by CONTRACTOR through the entirety of this Agreement for inspection by
 7 COUNTY representative(s) at any reasonable time.

8 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
 9 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
 10 amount in excess of ~~\$2550,000~~ (\$5,000 for automobile liability) shall specifically be approved by the
 11 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If
 12 CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other
 13 indemnity provision(s) in this Agreement, agrees to all of the following:

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

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

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

23 E. If CONTRACTOR fails to maintain insurance ~~acceptable to COUNTY~~ as required in this
 24 Paragraph XI (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, ~~COUNTY~~
 25 ~~may~~ such failure shall constitute a breach of CONTRACTOR's obligation hereunder and ground for
 26 COUNTY to terminate this Agreement.

27 F. QUALIFIED INSURER

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

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

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

1	<u>Coverage</u>	<u>Minimum Limits</u>
2	Commercial General Liability	\$1,000,000 per occurrence
3		\$2,000,000 aggregate
4	Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
5	Workers <u>Workers'</u> Compensation	Statutory
6	Employers <u>Employers'</u> Liability Insurance	<u>\$1,000,000 per</u>
7	occurrence	
8	Network Security & Privacy Liability	\$1,000,000 per claims made
9	<u>Technology Errors & Omissions</u>	<u>\$1,000,000 per claims made</u>
10	Professional Liability Insurance	\$1,000,000 per claims made
11		\$1,000,000 aggregate
12	<u>Sexual Misconduct Liability</u>	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

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

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:
 - a. An Additional Insured endorsement using ISO form CG ~~2010 or CG 2033~~ 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT.**
 - b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at

1 least as broad evidencing that the CONTRACTOR's insurance is primary and any insurance or self-
2 insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

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

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

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

17 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
18 cancellation and within ten (10) days for non-payment of premium and provide a copy of the cancellation
19 notice to COUNTY. Failure to provide written notice of cancellation ~~may~~ shall constitute a ~~material~~
20 ~~of the Agreement, upon which the~~ CONTRACTOR's obligation hereunder and ground for COUNTY ~~may~~
21 ~~suspend or~~ to terminate this Agreement.

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

25 #

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

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

32 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
33 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY
34 incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall
35 constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this
36 Agreement ~~may be in breach without further notice to CONTRACTOR, and by~~ COUNTY ~~shall be entitled~~
37 ~~to all legal remedies.~~

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

4 R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

28
 29 **XII. INSPECTIONS AND AUDITS**

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

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

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

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

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

12 **XIII. LICENSES AND LAWS**

13
14 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
15 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, accreditations,
16 waivers, and exemptions necessary for the provision of the services hereunder and required by the laws,
17 regulations and requirements of the United States, the State of California, COUNTY, and all other
18 applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in
19 writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals,
20 permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be
21 cause for termination of this Agreement.

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

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

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

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

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

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

34 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
35 Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
36 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
37 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement; and

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

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

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

- 9 1. ARRA of 2009.
- 10 2. 42 CFR, Public Health, H&SC 121025.
- 11 3. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform
12 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 13 4. HIPAA Privacy Rule, as it may now exist, or be hereafter amended, as applicable.
- 14 5. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 15 6. WIC §15600, et seq., Elder Abuse and Dependent Adult Civil Protection Act.
- 16 7. 45 CFR Part 76, Drug Free Work Place.
- 17 8. CCR, Title 22, Division 6, Community Care Licensing Division.
- 18 9. Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87, October 30,
19 2009).
- 20 10. U.S. Department of Health and Human Services, National Institutes of Health (NIH) Grants
21 Policy Statement (10/13).
- 22 11. U.S. Department of Health and Human Services, Public Health Service, PHS Grant Policy
23 Statement.
- 24 12. Title XXVI of the Public Health Services Act, as amended by the Ryan White HIV/AIDS
25 Treatment Extension Act of 2009 (Public Law 111-87).

26 **XIV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

27 A. Any written information or literature, including educational or promotional materials, distributed
28 by CONTRACTOR to any person or organization for purposes directly or indirectly related to this
29 Agreement must be approved at least thirty (30) days in advance and in writing by ADMINISTRATOR
30 before distribution. For the purposes of this Agreement, distribution of written materials shall include,
31 but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such
32 as the Internet.
33

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

37 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly

1 available social media sites) in support of the services described within this Agreement, CONTRACTOR
 2 shall develop social media policies and procedures and have them available to ADMINISTRATOR upon
 3 reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used
 4 to either directly or indirectly support the services described within this Agreement. CONTRACTOR
 5 shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media
 6 developed in support of the services described within this Agreement. CONTRACTOR shall also include
 7 any required funding statement information on social media when required by ADMINISTRATOR.

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

10 **XV. MAXIMUM OBLIGATION**

11 A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all
 12 agreements for HIV Counseling and Testing Services is as specified in the Referenced Contract Provisions
 13 of this Agreement. This specific Agreement with CONTRACTOR is only one of several agreements to
 14 which this Aggregate Maximum Obligation applies. It therefore is understood by the parties that
 15 reimbursement to CONTRACTOR will be only a fraction of this Aggregate Maximum Obligation.
 16

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

19 **XVI. MINIMUM WAGE LAWS**

20 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
 21 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal
 22 or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to
 23 this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all its
 24 contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR
 25 also pay their employees no less than the greater of the federal or California Minimum Wage.
 26

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

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

34 **XVII. NONDISCRIMINATION**

35 **A. EMPLOYMENT**

36 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
 37

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

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

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

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

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

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

31 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
 32 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
 33 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability,
 34 medical condition, genetic information, marital status, sex, gender, gender identity, gender expression,
 35 age, sexual orientation, or military and veteran status in accordance with Title IX of the Education
 36 Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964
 37 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6,

1 Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the Genetic Information
 2 Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and
 3 regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all
 4 may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph,
 5 Discrimination includes, but is not limited to the following based on one or more of the factors identified
 6 above:

- 7 1. Denying a client or potential client any service, benefit, or accommodation.
- 8 2. Providing any service or benefit to a client which is different or is provided in a different
 9 manner or at a different time from that provided to other clients.
- 10 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
 11 others receiving any service or benefit.
- 12 4. Treating a client differently from others in satisfying any admission requirement or condition,
 13 or eligibility requirement or condition, which individuals must meet in order to be provided any service
 14 or benefit.
- 15 5. Assignment of times or places for the provision of services.

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

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

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

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

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

37 F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state

1 law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR
2 or subcontractor may be declared ineligible for further contracts involving federal, state or county funds.

4 **XVIII. NOTICES**

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

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

10 2. When faxed, transmission confirmed;

11 3. When sent by Email; or

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

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

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

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

25 **XIX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

34 **XX. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 J. CONTRACTOR shall retain all participant, client, and/or patient medical records for seven (7)

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

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

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

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

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

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

17 18 **XXI. RESEARCH AND PUBLICATION**

19 CONTRACTOR shall not utilize information and data received from COUNTY or developed as a
 20 result of this Agreement for the purpose of personal publication.

21 22 **XXII. SEVERABILITY**

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

28 29 **XXIII. SPECIAL PROVISIONS**

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

- 32 1. Making cash payments to intended recipients of services through this Agreement.
- 33 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
 34 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use
 35 of appropriated funds to influence certain federal contracting and financial transactions).
- 36 3. Fundraising.
- 37 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for

1 CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.

2 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body
3 for expenses or services.

4 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,
5 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
6 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.

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

10 8. Severance pay for separating employees.

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

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

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

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

19 13. Supplanting current funding for existing services.

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

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

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

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

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

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

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

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

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

37 C. To the greatest extent practicable, all equipment and products purchased with funds made

1 available through this Agreement should be American-made.

2
3 **XXIV. STATUS OF CONTRACTOR**

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

14
15 **XXV. TERM**

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

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

25 **XXVI. TERMINATION**

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

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

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

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

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

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

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

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

11 D. CONTINGENT FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14 **XXVII. THIRD PARTY BENEFICIARY**

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

18
19 **XXVIII. WAIVER OF DEFAULT OR BREACH**

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

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

3
4 «UC_NAME»«UC_DBA»

5
6 BY: _____ DATED: _____
7 _____
8 _____

9 TITLE: _____
10 _____

11
12 BY: _____ DATED: _____
13 _____
14 _____

15 TITLE: _____
16 _____
17 _____
18 _____

19
20 COUNTY OF ORANGE

21
22 BY: _____ DATED: _____
23 _____

24 HEALTH CARE AGENCY
25 _____
26 _____

27 APPROVED AS TO FORM
28 OFFICE OF THE COUNTY COUNSEL
29 ORANGE COUNTY, CALIFORNIA
30 _____

31
32 BY: _____ DATED: _____
33 _____

34 DEPUTY
35 _____
36 _____
37 _____

If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any

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

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EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 HIV COUNSELING AND TESTING SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 «UC_NAME»«LC_DBA»
 JANUARY 1, ~~2017~~2018 THROUGH DECEMBER 31, ~~2017~~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. Client(s) means an individual seeking HIV counseling and testing services in conjunction with HIV prevention and education services.

D. Client Assessment means data collection form used by HIV counselors to assess and determine Client need for low-level or high-level intervention.

E. CAQ is a self-administered questionnaire that collects Client information to determine current level of risk for contracting HIV and to determine if the Client will receive a low-level or high-level intervention. The CAQ is given to each Client for completion before services are delivered.

F. CAS means CONTRACTOR staff that facilitate and/or conduct the initial Client Assessment process, which determines the level of intervention the Client will be given when receiving an HIV test. CAS may be an HIV Counselor or another trained test site staff (e.g. receptionist, front desk clerk, greeter, outreach worker).

G. CLIA means federal regulations to establish quality standards for laboratory testing to ensure the accuracy, reliability, and timeliness of patient test results. CLIA requires that any facility examining human specimens for diagnosis, prevention, treatment of a disease, or for assessment of health, will register with the Federal CMS and obtain CLIA certification.

H. Confirmed Linkage means a verified patient that has seen a HIV doctor.

I. Conventional Testing means those tests approved by the FDA that utilize Conventional Testing techniques requiring collection of bodily fluids such as blood or oral fluid used to check for the presence of the HIV antibody. Conventional Testing involves an initial risk assessment and a separate disclosure session, usually within one (1) to two (2) weeks after a sample has been collected.

J. CIF means the State form used in HIV counseling and testing to document a Client's behavior.

K. HIV is the virus that causes AIDS

1 L. High-Risk Client means the populations identified within the categories listed below in the last
2 twelve (12) months that are eligible to receive high-level intervention counseling and testing:

- 3 1. Transgender person
- 4 2. Men having sex with men
- 5 3. Persons having sex with male sex partners known to have sex with a male
- 6 4. Persons having sex in exchange for drugs, money, other items, or services
- 7 5. Persons having sex with a sex worker partner
- 8 6. Persons having sex with a partner who injects drugs
- 9 7. Persons having sex with an HIV positive partner
- 10 8. Person having anal receptive sex
- 11 9. Injection drug user
- 12 10. Stimulant drug user
- 13 11. Person diagnosed with gonorrhea or syphilis

14 M. Inventory Report is a report on the number of tests completely in a given period and includes a
15 log of the number of test kits available.

16 N. LEO means the COUNTY's designated data system for HIV testing data.

17 O. Low-Risk Client means populations that are not identified within the categories listed for high-
18 risk populations.

19 P. No-Show Client Follow-up means a process in which a counselor takes action to contact a Client
20 who tested confidentially, either by telephone or mail, in an attempt to have Client return for his/her HIV
21 test result.

22 Q. PS means the process whereby the sex and/or needle sharing partner(s) of a HIV infected person
23 is/are notified by the infected individual or by PS staff regarding possible exposure to HIV. PS includes
24 three (3) methods of notification:

- 25 1. Self - Client notifies a partner him/herself.
- 26 2. Dual Notification - Client notifies a partner with PS staff present.
- 27 3. Anonymous Third Party Notification – PS staff notifies a partner anonymously based on
28 partner information provided by Client.

29 R. Rapid Testing means the preliminary screening test approved by the FDA that uses blood from a
30 finger stick or oral fluid to determine the presence of HIV antibodies and produces results in
31 approximately twenty (20) minutes.

32 S. Referral means the process by which immediate Client needs for care and supportive services are
33 assessed and prioritized, and Clients are provided with assistance in accessing HIV services.

34 T. Result Disclosure means a session during which a Client receives HIV test results that focuses on
35 the meaning of the test results, plans for protecting future health, and strategies to avoid future HIV
36 transmission.

37 //

1 U. Test Kit means the OraQuick rapid HIV test kit used to determine the presence of HIV antibodies.

2 V. Test Processing means the steps taken to test a specimen for HIV antibodies either through
3 Conventional Testing in a lab or through Rapid Testing.

4 W. Unit of Service means one HIV counseling and testing services using CDPH approved Test kits.

5 X. Verified Medical Referral means a document or verbal communication with the Client that
6 verifies Client Referral to medical care and treatment if Client’s HIV test is positive.

7
8 **II. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) INFORMATION**

9 A. This Agreement includes federal funds paid to CONTRACTOR. The CFDA number(s) and
10 associated information for federal funds paid through this Agreement are specified below:

11
12 CFDA Year: ~~2017~~2018

13 CFDA#: 93.940

14 Program Title: HIV Prevention Program (indirect)

15 Federal Agency: Centers for Disease Control and Prevention

16 Award Name: HIV Prevention Program (indirect)

17 Amount: \$100,000 (estimated)

18
19 B. CONTRACTOR may be required to have an audit conducted in accordance with 31 USC 7501 –
20 7507, as well as its implementing regulations under 2 CFR Part 200. CONTRACTOR shall be responsible
21 for complying with any federal audit requirements within the reporting period specified by 31 USC 7501
22 – 7507, as well as its implementing regulations under 2 CFR Part 200.

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

25
26 **III. PAYMENTS**

27 A. COUNTY shall pay CONTRACTOR monthly in arrears on a fee-for-service basis as specified in
28 the Services Paragraph of this Exhibit A to the Agreement, as follows:

29 1. \$10 per unit of service provided to low risk clients service with a cap for reimbursement
30 limited to no more than 720 tests in a 12-month period;

31 2. \$10 per unit of service provided to moderate risk clients;

32 3. \$45 per unit of service provided to high risk clients; and

33 provided, however, the total of such payments and all payments to the agreement to which the aggregate
34 maximum obligation applies shall not exceed the COUNTY's aggregate maximum obligation as set forth
35 in the Referenced Contract Provisions of the Agreement. CONTRACTOR shall submit monthly

36 //

37 billings for said services and billings shall include Counseling and Testing services provided along with

1 supporting documentation required by ADMINISTRATOR.

2 B. CONTRACTOR's billings shall be on a form approved or provided by ADMINISTRATOR and
3 shall include information required by ADMINISTRATOR. Billings are due by the twentieth (20th)
4 calendar day of each month following the month in which services were performed under this Agreement.
5 Billings received after the due date may not be paid within the same month. COUNTY should release
6 payments to CONTRACTOR no later than twenty-one (21) business days after receipt of the correctly
7 completed billing form.

8 C. All billings to COUNTY shall be supported at CONTRACTOR's facility, by source
9 documentation including, but are not limited to, ledgers, books, vouchers, journals, time sheets, payrolls,
10 appointment schedules, Client data cards, schedules for allocating costs, invoices, bank statements,
11 canceled checks, receipts, receiving records, and records of services provided. ADMINISTRATOR may
12 require CONTRACTOR to submit documentation in support of the monthly billing.

13 D. CONTRACTOR acknowledges and agrees the funding to be received from COUNTY is
14 contingent upon CONTRACTOR satisfactorily providing the activities and reports as specified in the
15 Services and Reports Paragraphs of this Exhibit A to the Agreement.

16 E. ADMINISTRATOR may withhold or delay any payment or partial payment if CONTRACTOR
17 fails to comply with any provision of this Agreement, including, but are not limited to, CONTRACTOR's
18 obligations with respect to data collection, reporting requirements, correcting deficiencies, or delays in
19 progressing satisfactorily in achieving all the terms of the Agreement.

20 F. CONTRACTOR shall not claim reimbursement for services provided beyond the expiration
21 and/or termination of the Agreement, except as may otherwise be provided under the Agreement.

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

24 **IV. REPORTS**

25
26 A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial
27 and/or programmatic reports as requested by ADMINISTRATOR concerning CONTRACTOR's
28 activities as they relate to the Agreement. ADMINISTRATOR will be specific as to the nature of the
29 information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

30 B. FISCAL - CONTRACTOR shall submit monthly Expenditure Reports to ADMINISTRATOR.
31 Reports shall be on a form provided or approved by ADMINISTRATOR. Expenditure Reports shall
32 include the Units of Service provided and actual costs for each of CONTRACTOR's program(s) or cost
33 center(s) described in the Services Paragraph of this Exhibit A to the Agreement. Reports are due to
34 ADMINISTRATOR no later than the twentieth (20th) calendar day of the month following the month in
35 //
36 which services were performed under the Agreement, unless otherwise agreed to in writing by
37 ADMINISTRATOR.

1 C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR.
 2 These reports shall be on a form provided or approved by ADMINISTRATOR and shall include staff by
 3 position, actual staff hours worked, and the employees’ names, and date staff has taken Compliance
 4 Training in accordance with the Compliance Paragraph of the Agreement. These reports shall be due to
 5 ADMINISTRATOR no later than the twentieth (20th) calendar day following the end of each month,
 6 unless otherwise agreed to in writing by ADMINISTRATOR.

7 D. PROGRAMMATIC – CONTRACTOR shall submit a bi-annual narrative report of services
 8 provided to ADMINISTRATOR. Reports shall be on forms provided or approved by
 9 ADMINISTRATOR and are due to ADMINISTRATOR on January ~~20, 2017~~26, 2018 and July ~~21,~~
 10 ~~2017~~23, 2018.

11 E. DATA REPORTING – CONTRACTOR shall fully comply with ADMINISTRATOR’s
 12 requirements for data reporting for Prevention funded services. For purposes of the Agreement, data
 13 reporting shall be defined as collecting data on approved forms for all ~~interventions~~testing encounters and
 14 entering data into the COUNTY’s designated data system inclusive of LEO by the fifteenth (15th)
 15 calendar day of each month for ~~interventions~~testing encounters completed in the prior month.

16 1. CONTRACTOR shall maintain documentation related to HIV activities (CAQs and CIFs –
 17 Batching Forms) for a period of seven (7) years after the termination of this agreement, and shall be made
 18 available to the County or State (or their authorized representatives) for audit purposes.

19 2. CONTRACTOR shall provide an Inventory Report (HIV Batching Report) by the fifth (5th)
 20 calendar day of each month, for services completed in the prior month.

21 F. QUALITY MANAGEMENT

22 1. CONTRACTOR providing Rapid Testing shall develop and maintain a written Quality
 23 Assurance Plan and site-specific testing protocol as specified in Subparagraph IV.G. of this Exhibit A to
 24 the Agreement. CONTRACTOR shall submit the Plan and protocol in a form approved or provided by
 25 ADMINISTRATOR within thirty (30) business days ~~prior~~after to the initiation of each contract term of
 26 the Agreement or as requested by the ADMINIASTRATOR.

27 2. ADMINISTRATOR may request from CONTRACTOR, a written QI plan that addresses and
 28 identifies deficiencies in services and propose a corrective action to remedy said deficiencies,
 29 CONTRACTOR shall submit the QI plan to ADMINISTRATOR within fifteen (15) calendar days of the
 30 request. The QI plan shall be on a form provided or approved by ADMINISTRATOR and shall be
 31 implemented upon ADMINISTRATOR’s approval of the QI plan.

32 3. 3. ~~CONTRACTOR shall develop a targeted HIV testing plan. CONTRACTOR shall~~
 33 ~~submit the Plan in a form approved or provided by ADMINISTRATOR within thirty (30) business days~~
 34 ~~prior to the initiation of each contract term of the Agreement.~~

35 #

36 4. CONTRACTOR shall ensure that all staff have an initial Test Kit Competency exam and an
 37 annual exam to be submitted to the ADMINISTRATOR at least thirty (30) business days after the

1 initiation of each contract term of the Agreement or as requested by the ADMINISTRATOR.

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

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

8 9 **V. SERVICES**

10 A. CONTRACTOR shall provide HIV counseling and testing services using CDPH approved Test
11 Kits, provided to CONTRACTOR by ADMINISTRATOR, free of charge, to Clients.

12 B. CONTRACTOR shall provide HIV counseling and testing services at CDPH/OA approved
13 laboratories or via CLIA-waived Rapid Testing in accordance with all laws, regulations, and guidelines
14 to provide said services.

15 C. CONTRACTOR shall obtain blood specimen via phlebotomy or finger stick as the primary
16 source for testing. CONTRACTOR shall contact the COUNTY's HIV Counseling Test Site Coordinator
17 or designee for pre-approval of any exception(s) to this requirement.

18 D. CONTRACTOR shall inform Clients that HIV counseling and testing services are voluntary and
19 free. CONTRACTOR shall explain that the validity and accuracy of the antibody test prior to seeking
20 consent to perform Test Processing.

21 E. CONTRACTOR shall provide anonymous and/or confidential HIV counseling and testing
22 services to Clients at perceived risk for HIV, and provide Client-focused prevention, counseling and
23 assessment of Client's needs regarding HIV transmission, personal risk behaviors, risk reduction planning,
24 and Referral to other services.

25 F. CONTRACTOR shall provide test results in person.

26 G. CONTRACTOR shall develop and maintain a comprehensive written protocol for the provision
27 of the following HIV counseling and testing services:

- 28 1. HIV counseling and testing for High-Risk populations;
- 29 2. CAQ/CIF process compliance;
- 30 3. Conventional Testing and/or Rapid Testing using CDPH approved Test Kits, provided to
31 CONTRACTOR by ADMINISTRATOR process protocols, including confirmatory testing process;
- 32 4. No-Show Client Follow-up process;
- 33 5. Test Result Disclosure process, including confidentiality;
- 34 6. Referral list with contact information for HIV positive, HIV negative, and High-Risk Clients;
- 35 7. PS process; and
- 36 8. Verification of Medical Visit Referral process.

1 H. CONTRACTOR shall track and report the following performance outcome objectives in the
2 monthly programmatic reports:

3 1. Objective 1: Overall HIV seropositivity rate among Clients testing positive for the first time
4 and must include a minimum of one percent (1%) of all Clients tested during the term of the Agreement.

5 2. Objective 2: Ninety-five percent (95%) of Clients who test positive shall receive disclosure
6 notification. CONTRACTOR shall have in place plans to measure and improve the rate of completed
7 counseling, testing, and linkages to prevention interventions.

8 3. Objective 3: At least eighty-four percent (84%) of persons newly identified HIV positive,
9 who received their test results, have document Verified Medical Referral.

10 4. Objective 4: At least ninety-four percent (94%) of the persons who are newly identified HIV
11 positive are offered Partner Services.

12 5. Objective 5: At least ninety-five percent (95%) of persons who are newly identified HIV-
13 positive are referred to HIV ~~prevention counseling~~ preventionservices

14 I. CONTRACTOR shall ensure that CAQs and CIFs are thoroughly, timely, and accurately
15 completed by designated Clients. CONTRACTOR shall use the CDPH/OA HIV CIF or other approved
16 procedure for the collection of the required demographic and reimbursement information for High-Risk
17 Clients.

18 J. CONTRACTOR shall establish a written non-smoking policy which shall be reviewed and
19 approved by ADMINISTRATOR. At a minimum, the non-smoking policy shall specify that the facility
20 is “smoke free” and designate smoking areas outside the facility.

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

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

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

34 #

35 **VI. STAFFING**

36 A. CONTRACTOR shall provide the following staff in accordance with CDPH/OA guidelines to
37 provide the services specified in the Services Paragraph of this Exhibit A to the Agreement.

1 1. HIV Counselor – at a minimum, must be certified by CDPH/OA. Responsibilities include,
2 but are not limited to:

- 3 a. Framing session;
- 4 b. Conducting Client risk assessments;
- 5 c. Obtaining informed consent;
- 6 d. Explaining anonymous or confidential test types, and names reporting;
- 7 e. Conducting Client-centered counseling per CDPH/OA protocol and training to assist
8 Client in behavior modification and risk reduction;
- 9 f. Explaining the testing process;
- 10 g. Administering the Rapid Testing or collecting samples for Conventional Testing;
- 11 h. Addressing Client questions and concerns, if necessary;
- 12 i. Disclosing negative and positive HIV results to Clients and conducting disclosure
13 counseling per CDPH/OA protocol and training;
- 14 j. Making appropriate Referrals for both High-Risk negative Clients and HIV positive
15 Clients;
- 16 k. Providing Referrals to HIV positive Clients who do not have private medical insurance
17 for medical care and other Referrals as appropriate; and
- 18 l. Correctly documenting services using appropriate data collection forms, e.g., CAQ, CIF,
19 consent form, lab slip, etc.

20 2. Basic Counselor Skills Testing (BCST) 2. ~~CAS~~ – counseling and testing staff
21 interacting with Clients should, at a minimum, have the following knowledge, skills, and abilities:

- 22 a. Communication skills – ability to communicate with Clients in simple, clear, and neutral
23 terms, and be comfortable communicating with Clients in a clinic setting;
- 24 b. Basic HIV knowledge – familiarity and knowledge of common HIV language,
25 terminology and phrases; and understand basic HIV concepts as they relate to HIV testing services and/or
26 prevention;
- 27 c. Successful completion of ~~CAS~~BCST training – familiarity and knowledge of the CAQ
28 form (i.e. use/purpose, meaning of terms in questions, etc.) and Client Assessment process; and
- 29 d. Knowledge of HIV counseling and Testing Processes, protocol, and staff roles – ability
30 to explain the process to a Client (e.g. explaining where the Client will go and with whom, what will
31 happen, and approximately how long it will take); explain what types of HIV testing are available (rapid,
32 conventional, confidential and anonymous); and understand the limitation of their role and the process for
33 transitioning the Client to other appropriate staff when necessary.

34 #

- 35 3. ~~CAS~~Counselor will be responsible for, but are not limited to, the following:
- 36 a. Distributing the CAQ to Clients arriving for HIV tests,
- 37 b. Briefly explaining the CAQ form,

1 c. Giving clear instructions to the Client on how to complete the CAQ form and what to do
2 upon completion,

3 d. Answering any Client questions regarding the CAQ form and how to complete it
4 (e.g. clarification of terms, the meaning of questions), and

5 e. ~~Scoring the CAQ form.~~^[MS1]

6 B. CONTRACTOR shall have a minimum of two (2) counselors on duty at all times during posted
7 testing hours and special events.

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

10 D. CONTRACTOR may augment staff with volunteers, and CONTRACTOR shall provide
11 supervision of volunteers. CONTRACTOR shall ensure that volunteers performing counseling and
12 testing services meet CDPH/OA certification requirements, and at all times, maintain CDPH/OA
13 continuing annual education and training equivalent to the job duties volunteer is performing.

14 E. CONTRACTOR shall insure that all staff performing phlebotomy activities, including limited
15 phlebotomy, have and maintain current California phlebotomy certification as indicated in California
16 Business and Professions Code 1246 a and Health and Safety Code 120580.

17 F. CONTRACTOR shall ensure that its employees, interns, and volunteers complete the appropriate state
18 mandated trainings prior to service delivery. CONTRACTOR must submit to ADMINISTRATOR documents
19 verifying completion of all required training.

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

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EXHIBIT B
TO AGREEMENT FOR PROVISION OF
HIV COUNSELING AND TESTING SERVICES
BETWEEN
COUNTY OF ORANGE
AND

«UC_NAME»«LC_DBA»

JANUARY 1, ~~2017~~2018 THROUGH DECEMBER 31, ~~2017~~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, and

1 requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with
 2 respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant
 3 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 of
 8 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 that
 21 an unauthorized person to whom the disclosure was made would not reasonably have been able to retain
 22 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 Privacy
 35 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 45
4 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with
5 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 and
8 environmental hazards, and unauthorized intrusion.

9 9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable
10 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 his
16 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 methodology
30 specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

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

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

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

37 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business

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

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

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

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

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

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

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

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

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

35 //

36 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR
 37 § 164.528.

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

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

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

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

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

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

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

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

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

9 D. SECURITY RULE

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

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

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

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

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

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

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

37 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it

1 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Paragraph
2 E below and as required by 45 CFR § 164.410.

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

6 E. DATA SECURITY REQUIREMENTS

7 1. Personal Controls

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

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

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

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

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35 2. Technical Security Controls

36 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
37 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of

1 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
 2 is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full
 3 disk unless approved by the COUNTY.

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

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

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

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

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

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

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

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

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

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

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

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

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

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

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

3 3. Audit Controls

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

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

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

17 4. Business Continuity/Disaster Recovery Control

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

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

30 5. Paper Document Controls

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

37 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR

1 or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall be
2 escorted and such PHI shall be kept out of sight while visitors are in the area.

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

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

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

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

21 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

37 b. Any other information that COUNTY is required to include in the notification to

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

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

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

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

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

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

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

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

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

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

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

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33 requests for further information, or follow-up information after report to COUNTY, when such request is
 34 made by COUNTY.

35 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or other
 36 costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs in
 37 addressing the Breach and consequences thereof, including costs of investigation, notification,

1 remediation, documentation or other costs associated with addressing the Breach.

2 **G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

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

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

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

12 1) The Disclosure is required by law; or

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

17 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
18 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
19 CONTRACTOR.

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

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

24 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
25 required by law.

26 **H. PROHIBITED USES AND DISCLOSURES**

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

32 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
33 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
34 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC §
35 17935(d)(2).

36 **I. OBLIGATIONS OF COUNTY**

37 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of privacy

1 practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
2 CONTRACTOR's Use or Disclosure of PHI.

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

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

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

11 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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EXHIBIT C
TO AGREEMENT FOR PROVISION OF
HIV COUNSELING AND TESTING SERVICES
BETWEEN
COUNTY OF ORANGE
AND

«UC_NAME»«LC_DBA»

JANUARY 1, ~~2017~~2018 THROUGH DECEMBER 31, ~~2017~~2018

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

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

A. DEFINITIONS

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

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

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

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

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

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

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

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

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 information,
 5 and a civil or an authorized investigative demand. It also includes Medicare conditions of participation
 6 with respect to health care providers participating in the program, and statutes or regulations that require
 7 the production of information, including statutes or regulations that require such information if payment
 8 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 Agreement
 16 provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if
 17 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 required
 21 by this Personal Information Privacy and Security Contract or as required by applicable state and federal
 22 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 security
 28 program that include administrative, technical and physical safeguards appropriate to the size and
 29 complexity of CONTRACTOR's operations and the nature and scope of its activities, which incorporate
 30 the requirements of Paragraph (c), below. CONTRACTOR will provide COUNTY with its current
 31 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 DHCS
 34 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 DHCS
14 PII agree to the same requirements for privacy and security safeguards for confidential data that apply to
15 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 DHCS
26 PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS
27 with a list of all employees, contractors and agents who have access to DHCS PII, including employees,
28 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 CIPA
31 including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI,
32 production of DHCS PI, disclosure of a security breach involving DHCS PI and notice of such breach to
33 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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