

AMENDMENT NO. 1

TO

CONTRACT MA-042-23011560

~~FOR THE PROVISION OF~~

SURGE SERVICES FOR EMPLOYEE HEALTH SERVICES

~~BETWEEN~~

~~COUNTY OF ORANGE~~

~~AND~~

~~MARQUEE STAFFING~~

~~AUGUST 17, 2023 THROUGH JUNE 30, 2026~~

~~— THIS CONTRACT~~

This Amendment (“Amendment No. 1”) to Contract No. MA-042-23011560 for Surge Services for Employee Health Services is made and entered into this seventeenth day of August, 2023, which date is by and on April 26, 2024 (“Effective Date”) between the COUNTY OF ORANGE Marquee Staffing (“Contractor”), with a place of business at 2 Venture Ste. 140, Irvine, CA 92618-7390, and the County of Orange, a political subdivision of the State of California (COUNTY), and Marquee Staffing, a California for-profit corporation (CONTRACTOR). COUNTY (“County”), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600, Santa Ana, CA 92701. Contractor and CONTRACTOR County may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Contract shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

~~WITNESSETH:~~

RECITALS

~~WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Surge Services for Employee Health Services as needed; and~~

~~WHEREAS, CONTRACTOR agrees to provide the Parties executed Contract No. MA-042-23011560 for Surge Services for Employee Health Services specified herein at agreed upon County locations or CONTRACTOR locations when applicable, effective July 1, 2023 through June 30, 2026, in an aggregate amount not to exceed \$555,000; 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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<u>Title</u> <u>WHEREAS, the Parties now desire to enter into this Amendment No. 1 to Contract to increase the Total Aggregate Maximum Obligation by \$700,000 from \$555,000 to \$1,255,000, to ensure continuity of services.</u>	
<u>NOW THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, the Parties amend the Contract as follows:</u>	
<u>1. The Contract's Period One Aggregate Maximum Obligation is increased by \$100,000 from \$185,000 to \$285,000, Period Two Aggregate Maximum Obligation is increased by \$300,000 from \$185,000 to \$485,000, and Period Three Aggregate Maximum Obligation is increased by \$300,000 from \$185,000 to \$485,000, for a revised cumulative Total Aggregate Maximum Obligation of \$1,255,000.</u>	
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1 **REFERENCED CONTRACT PROVISIONS**

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3 ~~Master Contract Term: July 1, 2023 through June 30, 2026~~

4 ~~Period One means the period from July 1, 2023 through June 30, 2024~~

5 ~~Period Two means the period from July 1, 2024 through June 30, 2025~~

6 ~~Period Three means the period from July 1, 2025 through June 30, 2026~~

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11 ~~Aggregate Maximum Obligation: \$ 555~~ \$1,255,000

12 Period One Aggregate Maximum Obligation: ~~\$ 185~~ \$285,000

13 Period Two Aggregate Maximum Obligation: ~~\$ 185~~ \$485,000

14 Period Three Aggregate Maximum Obligation: ~~\$ 185~~ \$485,000

14

15 ~~TOTAL AGGREGATE MAXIMUM OBLIGATION: \$ 555~~ \$1,255,000

16

17 ~~Basis for Reimbursement: Fee for Service~~

18

19

20 ~~Payment Method: Payment in Arrears~~

21

22 ~~Contractor DUNS/UEI Number: S4WTDE9ULMW9~~

23

24 ~~Contractor Tax ID Number: 33-0939926~~

24

25

26 ~~Notices to COUNTY and CONTRACTOR:~~

27

1 COUNTY: _____

2 This Amendment No. 1 modifies the Contract only as expressly set forth herein. Wherever there is a
3 conflict in the terms or conditions between this Amendment No. 1 and the Contract, including all previous
4 amendments, the terms and conditions of this Amendment No. 1 prevail. In all other respects, the terms
and conditions of the Contract and its amendments not specifically changed by this Amendment No. 1
remain in full force and effect.

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SIGNATURE PAGE FOLLOWS

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<u>1</u>	G. CFDA	Catalog of Federal Domestic Assistance
<u>2</u>	H. CFR	Code of Federal Regulations
<u>3</u>	I. CHPP	COUNTY HIPAA Policies and Procedures
<u>4</u>	J. CHS	Correctional Health Services
<u>5</u>	K. COI	Certificate of Insurance
<u>6</u>	L. DHCS	California Department of Health Care Services
<u>7</u>	M. D/MC	Drug/Medi-Cal
<u>8</u>	N. DPFS	Drug Program Fiscal Systems
<u>9</u>	O. DRS	Designated Record Set
<u>10</u>	P. EEOC	Equal Employment Opportunity Commission
<u>11</u>	Q. EHR	Electronic Health Records
<u>12</u>	R. EOC	Equal Opportunity Clause
<u>13</u>	S. ePHI	Electronic Protected Health Information
<u>14</u>	T. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
<u>15</u>	U. FFS	Fee For Service
<u>16</u>	V. FSP	Full Service Partnership
<u>17</u>	W. FTE	Full Time Equivalent
<u>18</u>	X. GAAP	Generally Accepted Accounting Principles
<u>19</u>	Y. HCA	Health Care Agency
<u>20</u>	Z. HHS	Federal Health and Human Services Agency
<u>21</u>	AA. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
<u>22</u>	AB. HITECH	Health Information Technology for Economic and Clinical Health Act, Public Law 111-005
<u>23</u>	AC. HSC	California Health and Safety Code
<u>24</u>	AD. IRIS	Integrated Records and Information System
<u>25</u>	AE. ISO	Insurance Services Office
<u>26</u>	AF. LCSW	Licensed Clinical Social Worker

<u>1</u>	AG. MHP	Mental Health Plan
<u>2</u>	AH. MHSA	Mental Health Services Act
<u>3</u>	AI. MSN	Medical Safety Net
<u>4</u>	AJ. NIH	National Institutes of Health
<u>5</u>	AK. NPI	National Provider Identifier
<u>6</u>	AL. OCJS	Orange County Jail System
<u>7</u>	AM. OCPD	Orange County Probation Department
<u>8</u>	AN. OCR	Federal Office for Civil Rights
<u>9</u>	AO. OCSD	Orange County Sheriff's Department
<u>10</u>	AP. OIG	Federal Office of Inspector General
<u>11</u>	AQ. OMB	Federal Office of Management and Budget
<u>12</u>	AR. OPM	Federal Office of Personnel Management
<u>13</u>	AS. PA DSS	Payment Application Data Security Standard
<u>14</u>	AT. PC	, a political subdivision of the State of California Penal Code
<u>15</u>	AU. PCI DSS	Payment Card Industry Data Security Standards
<u>16</u>	AV. PHI	Protected Health Information
<u>17</u>	AW. PII	Personally Identifiable Information
<u>18</u>	AX. PRA	California Public Records Act
<u>19</u>	AY. SIR	Self-Insured Retention
<u>20</u>	AZ. SOW	Scope of Work
<u>21</u>	BA. UOS	Units of Service
<u>22</u>	BB. USC	United States Code
<u>23</u>	BC. WIC	Women, Infants and Children
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H. ALTERATION OF TERMS

8 — A. This Contract, together with Exhibits A and B, attached hereto and incorporated herein, fully
9 expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject
10 matter of this Contract.

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

III. ASSIGNMENT OF DEBTS

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

IV. COMPLIANCE

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

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

26 — 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
27 compliance program, code of conduct and any compliance related policies and procedures.
CONTRACTOR’s compliance program, code of conduct and any related policies and procedures shall be

~~1 verified by ADMINISTRATOR's Compliance Department to ensure they include all required elements
2 by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to this Contract.~~

~~3 These elements include:~~

- ~~4 a. Designation of a Compliance Officer and/or compliance staff.~~
- ~~5 b. Written standards, policies and/or procedures.~~
- ~~6 c. Compliance related training and/or education program and proof of completion.~~
- ~~7 d. Communication methods for reporting concerns to the Compliance Officer.~~
- ~~8 e. Methodology for conducting internal monitoring and auditing.~~

~~9 #~~

- ~~10 f. Methodology for detecting and correcting offenses.~~
- ~~11 g. Methodology/Procedure for enforcing disciplinary standards.~~

~~12 3. If CONTRACTOR does not provide proof of its own compliance program to
13 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
14 Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty
15 (30) calendar days of execution of this Contract a signed acknowledgement that CONTRACTOR will
16 internally comply with ADMINISTRATOR's Compliance Program and Code of Conduct.
17 CONTRACTOR shall have as many Covered Individuals it determines necessary complete
18 ADMINISTRATOR's annual compliance training to ensure proper compliance.~~

~~19 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any
20 Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR
21 shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures
22 to ADMINISTRATOR within thirty (30) calendar days of execution of this Contract.
23 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable
24 time, which shall not exceed forty five (45) calendar days, and determine if CONTRACTOR's proposed
25 compliance program and code of conduct contain all required elements to the ADMINISTRATOR's
26 satisfaction as consistent with the HCA's Compliance Program and Code of Conduct.
27 ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
CONTRACTOR shall revise its compliance program and code of conduct to meet ADMINISTRATOR's
required elements within thirty (30) calendar days after ADMINISTRATOR's Compliance Officer's
determination and resubmit the same for review by the ADMINISTRATOR.~~

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

~~B. SANCTION SCREENING CONTRACTOR shall screen all Covered Individuals employed or
retained to provide services related to this Contract semi-annually to ensure that they are not designated~~

~~1 as Ineligible Persons, as pursuant to this Contract. Screening shall be conducted against the General
2 Services Administration's Excluded Parties List System or System for Award Management, the Health
3 and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the California
4 Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration's Death Master File
at date of employment, and/or any other list or system as identified by ADMINISTRATOR.~~

~~5 _____ 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees,
6 interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items
or services or who perform billing or coding functions on behalf of ADMINISTRATOR.~~

~~7 CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of
8 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or
9 CONTRACTOR's own compliance program, code of conduct and related policies and procedures if
CONTRACTOR has elected to use its own).~~

~~10 _____ 2. An Ineligible Person shall be any individual or entity who:~~

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

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

~~14 _____ 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
15 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
Contract.~~

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

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

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

~~1~~ ~~7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or~~
~~2~~ ~~entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.~~
~~3~~ ~~Such individual or entity shall be immediately removed from participating in any activity associated with~~
~~4~~ ~~this Contract. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to~~
~~5~~ ~~CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly~~
~~6~~ ~~return any overpayments within forty five (45) business days after the overpayment is verified by~~
~~7~~ ~~ADMINISTRATOR.~~

~~8~~ ~~C. GENERAL COMPLIANCE TRAINING ADMINISTRATOR shall make General Compliance~~
~~9~~ ~~Training available to Covered Individuals.~~

~~10~~ ~~1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR's~~
~~11~~ ~~Compliance Program shall use its best efforts to encourage completion by all Covered Individuals;~~
~~12~~ ~~provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated~~
~~13~~ ~~representative to complete the General Compliance Training when offered.~~

~~14~~ ~~2. Such training will be made available to Covered Individuals within thirty (30) calendar days~~
~~15~~ ~~of employment or engagement.~~

~~16~~ ~~3. Such training will be made available to each Covered Individual annually.~~

~~17~~ ~~4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide~~
~~18~~ ~~copies of training certification upon request.~~

~~19~~ ~~5. Each Covered Individual attending a group training shall certify, in writing, attendance at~~
~~20~~ ~~compliance training. ADMINISTRATOR shall provide instruction on group training completion while~~
~~21~~ ~~CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,~~
~~22~~ ~~CONTRACTOR shall provide copies of the certifications.~~

~~23~~ ~~D. SPECIALIZED PROVIDER TRAINING ADMINISTRATOR shall make Specialized Provider~~
~~24~~ ~~Training, where appropriate, available to Covered Individuals.~~

~~25~~ ~~1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered~~
~~26~~ ~~Individuals relative to this Contract. This includes compliance with federal and state healthcare program~~
~~27~~ ~~regulations and procedures or instructions otherwise communicated by regulatory agencies; including the~~
~~28~~ ~~Centers for Medicare and Medicaid Services or their agents.~~

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

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

~~32~~ ~~4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall~~
~~33~~ ~~provide copies of the certifications upon request.~~

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

~~1 E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS~~

~~2 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care~~
~~3 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner~~
~~4 and are consistent with federal, state and county laws and regulations. This includes compliance with~~
~~5 federal and state health care program regulations and procedures or instructions otherwise communicated~~
~~6 by regulatory agencies including the Centers for Medicare and Medicaid Services or their agents.~~

~~7 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims for~~
~~8 payment or reimbursement of any kind.~~

~~9 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also~~
~~10 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which~~
~~11 accurately describes the services provided and must ensure compliance with all billing and documentation~~
~~12 requirements.~~

~~13 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in~~
~~14 coding of claims and billing, if and when, any such problems or errors are identified.~~

~~15 5. CONTRACTOR shall promptly return any overpayments within forty five (45) business~~
~~16 days after the overpayment is verified by the ADMINISTRATOR.~~

~~17 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and~~
~~18 participate in the quality improvement activities developed in the implementation of the Quality~~
~~19 Management Program.~~

~~20 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural~~
~~21 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural~~
~~22 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,~~
~~23 §1810.410.subds.(c)-(d).~~

~~24 F. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a~~
~~25 breach of the Contract on the part of CONTRACTOR and grounds for COUNTY to terminate the~~
~~26 Contract. Unless the circumstances require a sooner period of cure, CONTRACTOR shall have thirty~~
~~27 (30) calendar days from the date of the written notice of default to cure any defaults grounded on this~~
~~28 Compliance Paragraph prior to ADMINISTRATOR's right to terminate this Contract on the basis of such~~
~~29 default.~~

~~30 **V. CONFIDENTIALITY**~~

~~31 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio~~
~~32 and/or video recordings, in accordance with all applicable federal, state and county codes and regulations,~~
~~33 as they now exist or may hereafter be amended or changed.~~

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

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

VI. CONFLICT OF INTEREST

~~5 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that
6 could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall
7 apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of goods
8 and services provided under this Contract. CONTRACTOR's efforts shall include, but not be limited to
9 establishing rules and procedures preventing its employees, agents, and subcontractors from providing or
10 offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence
11 or appear to influence COUNTY staff or elected officers in the performance of their duties.~~

VII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS

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

~~17 B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's
18 business prior to completion of this Contract, and COUNTY agrees to an assignment of the Contract, the
19 new owners shall be required under the terms of sale or other instruments of transfer to assume
20 CONTRACTOR's duties and obligations contained in this Contract and complete them to the satisfaction
21 of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the
22 prior written consent of COUNTY.~~

~~23 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any
24 other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the
25 composition of the Board of Directors within a two (2) month period of time, shall be deemed an
26 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
27 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.~~

~~28 2. If CONTRACTOR is a for-profit organization, any change in the business structure, including
29 but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
30 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
31 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR at
32 one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
33 delegation in derogation of this subparagraph shall be void.~~

~~34 3. If CONTRACTOR is a governmental organization, any change to another structure, including
35 a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of
36 Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
37~~

~~1 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
2 this subparagraph shall be void.~~

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

~~7 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
8 CONTRACTOR shall provide written notification within thirty (30) calendar days to ADMINISTRATOR
9 when there is change of less than fifty percent (50%) of Board of Directors or any governing body of
10 CONTRACTOR at one time.~~

~~11 6. COUNTY reserves the right to immediately terminate the Contract in the event COUNTY
12 determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to
13 COUNTY for the provision of services under the Contract.~~

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

~~19 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the
20 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor
21 subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR
22 has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.~~

~~23 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
24 pursuant to this Contract.~~

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

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

~~28 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's
29 status with respect to name changes that do not require an assignment of the Contract. CONTRACTOR is
30 also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation
31 against COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR's performance
32 under the Contract, as well as any potential conflicts of interest between CONTRACTOR and County that
33 may arise prior to or during the period of Contract performance. While CONTRACTOR will be required
34 to provide this information without prompting from COUNTY any time there is a change in
35 CONTRACTOR's name, conflict of interest or litigation status, CONTRACTOR must also provide an
36 update to COUNTY of its status in these areas whenever requested by COUNTY.~~

VIII. DISPUTE RESOLUTION

~~— A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be brought to the attention of the County Procurement Officer by way of the following process:~~

~~1. CONTRACTOR shall submit to the County Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless COUNTY, on its own initiative, has already rendered such a final decision.~~

~~2. CONTRACTOR's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, CONTRACTOR shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes COUNTY is liable.~~

~~— B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Contract, including the delivery of goods and/or provision of services. CONTRACTOR's failure to proceed diligently shall be considered a material breach of this Contract.~~

~~— C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.~~

~~— D. This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.~~

IX. EMPLOYEE ELIGIBILITY VERIFICATION

~~— CONTRACTOR attests that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors and consultants performing work under this Contract meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered~~

~~1 employees, subcontractors and consultants for the period prescribed by the law.~~

~~2 #~~

~~3 #~~

~~4 **X. EQUIPMENT**~~

~~5 — A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property
6 of a Relatively Permanent nature with significant value, purchased in whole or in part by
7 ADMINISTRATOR to assist in performing the services described in this Contract. "Relatively Permanent"
8 is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000 or over,
9 including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital
Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and
other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained
PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to
phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of
Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated
according to GAAP.~~

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

~~16 — C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY the
17 cost of the approved Equipment purchased by CONTRACTOR. To "expense," in relation to Equipment,
18 means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of
19 expensed Equipment shall be vested with COUNTY.~~

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

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

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

~~28 — G. Unless this Contract is followed without interruption by another agreement between the Parties
29 for substantially the same type and scope of services, at the termination of this Contract for any cause,
30 CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Contract.~~

~~31 — H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper
32 use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.~~

XI. EXPENDITURE AND REVENUE REPORT

~~— A. No later than sixty (60) calendar days following termination of each period or fiscal year of this Contract, CONTRACTOR shall submit to ADMINISTRATOR, for informational purposes only, an Expenditure Report for the preceding fiscal year, or portion thereof. Such report shall be prepared in accordance with the procedure that is provided by ADMINISTRATOR and GAAP.~~

~~— B. CONTRACTOR may be required to submit periodic Expenditure Reports throughout the term of the Contract.~~

XII. FACILITIES, PAYMENTS, AND SERVICES

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

XIII. INDEMNIFICATION AND INSURANCE

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

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

~~— C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less~~

~~1 than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the
2 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and
3 to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance
4 must be maintained by CONTRACTOR through the entirety of this Contract for inspection by COUNTY
5 representative(s) at any reasonable time.~~

~~6 — D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand
7 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of
8 CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved,
9 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this
10 Contract, agrees to all of the following:~~

~~11 — 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
12 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
13 subcontractor's performance of this Contract, CONTRACTOR shall defend the COUNTY at its sole cost
14 and expense with counsel approved by Board of Supervisors against same; and~~

~~15 — 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any
16 duty to indemnify or hold harmless; and~~

~~17 — 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to
18 which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be
19 interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.~~

~~20 — E. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of
21 this Contract, the COUNTY may terminate this Contract.~~

~~22 — F. QUALIFIED INSURER~~

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

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

~~31 — G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
32 limits and coverage as set forth below:~~

~~33 #~~

~~34 #~~

Coverage

Minimum Limits

- 1 ~~Commercial General Liability \$1,000,000 per occurrence~~
- 2 ~~\$2,000,000 aggregate~~
- 3
- 4 ~~Automobile Liability including coverage \$1,000,000 per occurrence~~
- 5 ~~for owned, non-owned and hired vehicles~~
- 6 ~~(4 passengers or less)~~
- 7
- 8 ~~Workers' Compensation Statutory~~
- 9
- 10 ~~Employers' Liability Insurance \$1,000,000 per occurrence~~
- 11
- 12 ~~Network Security & Privacy Liability \$1,000,000 per claims made~~
- 13
- 14 ~~Professional Liability Insurance \$1,000,000 per claims made~~
- 15 ~~\$1,000,000 aggregate~~

16 ~~H. REQUIRED COVERAGE FORMS~~

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

21 ~~I. REQUIRED ENDORSEMENTS~~

- 22 ~~1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:~~
- 23 ~~a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT.**~~
- 24
- 25 ~~b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.~~
- 26
- 27

~~1~~ 2. The Network Security and Privacy Liability policy shall contain the following endorsements
~~2~~ which shall accompany the COI:

~~3~~ a. An Additional Insured endorsement naming the *County of Orange, its elected and*
~~4~~ *appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.

~~5~~ b. A primary and non-contributing endorsement evidencing that the Contractor's insurance
~~6~~ is primary and any insurance or self insurance maintained by the County of Orange shall be excess and
~~7~~ non-contributing.

~~8~~ J. All insurance policies required by this Contract shall waive all rights of subrogation against the
~~9~~ County of Orange, its elected and appointed officials, officers, agents and employees when acting within
~~10~~ the scope of their appointment or employment.

~~11~~ K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
~~12~~ all rights of subrogation against the *County of Orange, its elected and appointed officials,*
~~13~~ *officers, agents and employees*, or provide blanket coverage, which will state ***AS REQUIRED BY***
~~14~~ ***WRITTEN AGREEMENT.***

~~15~~ L. All insurance policies required by this Contract shall waive all rights of subrogation against the
~~16~~ County of Orange, its elected and appointed officials, officers, agents and employees when acting within
~~17~~ the scope of their appointment or employment.

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

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

~~25~~ O. The Commercial General Liability policy shall contain a "severability of interests" clause also
~~26~~ known as a "separation of insureds" clause (standard in the ISO-CG-0001 policy).

~~27~~ P. Insurance certificates should be forwarded to the agency/department address listed on the
~~28~~ solicitation.

~~29~~ Q. If the Contractor fails to provide the insurance certificates and endorsements within seven (7)
~~30~~ days of notification by CEO/Purchasing or the agency/department purchasing division, award may be
~~31~~ made to the next qualified vendor.

~~32~~ R. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance
~~33~~ of any of the above insurance types throughout the term of this Contract. Any increase or decrease in
~~34~~ insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect
~~35~~ COUNTY.

~~36~~ S. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
~~37~~ CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with

~~1 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this
2 Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to
3 all legal remedies.~~

~~4 T. The procuring of such required policy or policies of insurance shall not be construed to limit
5 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this
6 Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.~~

~~7 U. SUBMISSION OF INSURANCE DOCUMENTS~~

~~8 1. The COI and endorsements shall be provided to COUNTY as follows:~~

~~9 a. Prior to the start date of this Contract.~~

~~10 b. No later than the expiration date for each policy.~~

~~11 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
12 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.~~

~~13 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
14 the Referenced Contract Provisions of this Contract.~~

~~15 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
16 provisions stipulated in this Contract by the above specified due dates, ADMINISTRATOR shall have
17 sole discretion to impose one or both of the following:~~

~~18 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
19 pursuant to any and all Contracts between COUNTY and CONTRACTOR until such time that the
20 required COI and endorsements that meet the insurance provisions stipulated in this Contract are
21 submitted to ADMINISTRATOR.~~

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

~~26 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
27 CONTRACTOR's monthly invoice.~~

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

XIV. INSPECTIONS AND AUDITS

~~A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
of the State of California, the Secretary of the United States Department of Health and Human Services,
the Comptroller General of the United States, or any other of their authorized representatives, shall have
access to any books, documents, and records, including but not limited to, financial statements, general
ledgers, relevant accounting systems, medical and Client records, of CONTRACTOR that are directly~~

~~1~~ pertinent to this Contract, for the purpose of responding to a beneficiary complaint or conducting an audit,
~~2~~ review, evaluation, or examination, or making transcripts during the periods of retention set forth in the
~~3~~ Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable
~~4~~ times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in
~~5~~ which they are provided.

~~6~~ — B. CONTRACTOR shall actively participate and cooperate with any person specified in
~~7~~ Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Contract
~~8~~ and shall provide the above mentioned persons adequate office space to conduct such evaluation or
~~9~~ monitoring.

~~10~~ — C. **AUDIT RESPONSE**

~~11~~ 1. Following an audit report, in the event of non compliance with applicable laws and
~~12~~ regulations governing funds provided through this Contract, COUNTY may terminate this Contract as
~~13~~ provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
~~14~~ appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in
~~15~~ writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

~~16~~ 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
~~17~~ by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
~~18~~ funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
~~19~~ the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
~~20~~ is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
~~21~~ provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
~~22~~ reimbursement due COUNTY.

~~23~~ — D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file with
~~24~~ ADMINISTRATOR, an annual, independent, organization wide audit of related expenditures as may be
~~25~~ required during the term of this Contract.

~~26~~ — E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen
~~27~~ (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial,
~~28~~ programmatic or any other type of audit of CONTRACTOR's operations, whether or not the cost of such
~~29~~ operation or audit is reimbursed in whole or in part through this Contract.

~~30~~ **XV. LICENSES AND LAWS**

~~31~~ — A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
~~32~~ the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations,
~~33~~ waivers, and exemptions necessary for the provision of the services hereunder and required by the laws,
~~34~~ regulations and requirements of the United States, the State of California, COUNTY, and all other
~~35~~ applicable governmental agencies.

~~36~~ — B. **ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

~~1. CONTRACTOR certifies it is in full compliance with all applicable federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within sixty (60) calendar days of notice from the COUNTY shall constitute grounds for termination of the Contract.~~

~~2. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days of the award of this Contract:~~

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

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

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

XVI. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

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

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

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

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

XVII. MAXIMUM OBLIGATION

~~— A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with all agreements for COVID-19 Services for Employees is as specified in the Referenced Contract Provisions of this Contract. This specific Contract with CONTRACTOR is only one of several agreements to which this Aggregate Maximum Obligation applies. It therefore is understood by the Parties that reimbursement to CONTRACTOR will be only a fraction of this Aggregate Maximum Obligation.~~

XVIII. MINIMUM WAGE LAWS

~~— A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its Covered Individuals (as defined within the “Compliance” paragraph of this Contract) that directly or indirectly provide services pursuant to this Contract, in any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals providing services pursuant to this Contract be paid no less than the greater of the federal or California Minimum Wage.~~

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

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

XIX. NONDISCRIMINATION

~~— A. EMPLOYMENT~~

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

~~2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or~~

~~1 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
2 recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection
3 for training, including apprenticeship.~~

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

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

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

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

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

~~1. Denying a Client or potential Client any service, benefit, or accommodation.~~

~~2. Providing any service or benefit to a Client which is different or is provided in a different
manner or at a different time from that provided to other Clients.~~

~~3. Restricting a Client in any way in the enjoyment of any advantage or privilege enjoyed by
others receiving any service and/or benefit.~~

~~1. 4. Treating a Client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service and/or benefit.~~

~~2. 5. Assignment of times or places for the provision of services.~~

~~3. C. COMPLAINT PROCESS CONTRACTOR shall establish procedures for advising all Clients through a written statement that CONTRACTOR's and/or subcontractor's Clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR.~~

~~4. 1. Whenever possible, problems shall be resolved informally and at the point of service. CONTRACTOR shall establish an internal informal problem resolution process for Clients not able to resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.~~

~~5. 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.~~

~~6. D. PERSONS WITH DISABILITIES CONTRACTOR and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.~~

~~7. E. RETALIATION Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.~~

~~8. F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Contract may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or COUNTY funds.~~

XX. NOTICES

~~9. A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract shall be effective:~~

~~10. 1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR;~~

~~11. 2. When faxed, transmission confirmed;~~

~~3. When sent by Email; or~~

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

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

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

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

XXI. NOTIFICATION OF DEATH

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

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

~~1. TELEPHONE NOTIFICATION — CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract; notice need only be given during normal business hours.~~

~~2. WRITTEN NOTIFICATION~~

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

~~b. TERMINAL ILLNESS — CONTRACTOR shall notify ADMINISTRATOR by written report hand delivered, faxed, sent via encrypted email, within forty eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Contract.~~

~~c. When notification via encrypted email is not possible or practical CONTRACTOR may hand deliver or fax to a known number said notification.~~

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

XXII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

~~1~~ — A. ~~CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in whole~~
~~2~~ ~~or in part by the COUNTY, except for those events or meetings that are intended solely to serve clients~~
~~3~~ ~~or occur in the normal course of business.~~

~~4~~ — B. ~~CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of~~
~~5~~ ~~any applicable public event or meeting. The notification must include the date, time, duration, location~~
~~6~~ ~~and purpose of the public event or meeting. Any promotional materials or event related flyers must be~~
~~7~~ ~~approved by ADMINISTRATOR prior to distribution.~~

XXIII. RECORDS MANAGEMENT AND MAINTENANCE

~~8~~ — A. ~~CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of~~
~~9~~ ~~this Contract, prepare, maintain and manage records appropriate to the services provided and in~~
~~10~~ ~~accordance with this Contract and all applicable requirements.~~

~~11~~ — 1. ~~CONTRACTOR shall maintain records that are adequate to substantiate the services for~~
~~12~~ ~~which claims are submitted for reimbursement under this Contract and the charges thereto. Such records~~
~~13~~ ~~shall include, but not be limited to, individual patient charts and utilization review records.~~

~~14~~ — 2. ~~CONTRACTOR shall maintain books, records, documents, accounting procedures and~~
~~15~~ ~~practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature~~
~~16~~ ~~claimed to have been incurred in the performance of this Contract and in accordance with Medicare~~
~~17~~ ~~principles of reimbursement and GAAP.~~

~~18~~ — 3. ~~CONTRACTOR shall ensure the maintenance of medical records required by §70747~~
~~19~~ ~~through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical~~
~~20~~ ~~necessity of the service, and the quality of care provided. Records shall be maintained in accordance with~~
~~21~~ ~~§51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.~~

~~22~~ — B. ~~CONTRACTOR shall implement and maintain administrative, technical and physical safeguards~~
~~23~~ ~~to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of PHI in~~
~~24~~ ~~violation of the HIPAA, federal and state regulations. CONTRACTOR shall mitigate to the extent~~
~~25~~ ~~practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal or state~~
~~26~~ ~~regulations and/or COUNTY policies.~~

~~27~~ — C. ~~CONTRACTOR's participant, client, and/or patient records shall be maintained in a secure~~
~~28~~ ~~manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish and~~
~~29~~ ~~implement written record management procedures.~~

~~30~~ — D. ~~CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the~~
~~31~~ ~~termination of the contract, unless a longer period is required due to legal proceedings such as litigations~~
~~32~~ ~~and/or settlement of claims.~~

~~33~~ — E. ~~CONTRACTOR shall retain all client and/or patient medical records for ten (10) years following~~
~~34~~ ~~discharge of the participant, client and/or patient.~~

~~F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single location, identified by CONTRACTOR.~~

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

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

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

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

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

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

~~1. Have documents readily available within twenty four (24) hour notice of a scheduled audit or site visit.~~

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

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

~~J. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. CONTRACTOR shall, upon discovery of a Breach of privacy and/or security of PII and/or PHI by CONTRACTOR, notify federal and/or state authorities as required by law or regulation, and copy ADMINISTRATOR on such notifications.~~

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

XXIV. RESEARCH AND PUBLICATION

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

1 publication.

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XXV. REVENUE

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~~— A. THIRD PARTY REVENUE — CONTRACTOR shall make every reasonable effort to obtain all available third party reimbursement for which persons served pursuant to this Contract may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary charges.~~

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

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XXVI. SEVERABILITY

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

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XXVII. SPECIAL PROVISIONS

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

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~~—— 1. Making cash payments to intended recipients of services through this Contract.~~

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~~—— 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).~~

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~~—— 3. Fundraising.~~

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~~—— 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.~~

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~~—— 5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.~~

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

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~~—— 7. Paying an individual salary or compensation for services at a rate in excess of the current~~

~~Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.~~

~~8. Severance pay for separating employees.~~

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

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

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

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

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

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

XXVIII. STATUS OF CONTRACTOR

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

XXIX. TERM

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

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

~~**XXX. TERMINATION**~~

~~— A. CONTRACTOR shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe as determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is resolved and/or the Contract could be terminated.~~

~~— B. COUNTY may terminate this Contract immediately, upon written notice, on the occurrence of any of the following events:~~

~~— 1. The loss by CONTRACTOR of legal capacity.~~

~~— 2. Cessation of services.~~

~~— 3. The delegation or assignment of CONTRACTOR's services, operation or administration to another entity without the prior written consent of COUNTY.~~

~~— 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty required pursuant to this Contract.~~

~~— 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Contract.~~

~~— 6. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Contract.~~

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

~~— C. CONTINGENT FUNDING~~

~~— 1. Any obligation of COUNTY under this Contract is contingent upon the following:~~

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

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

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

~~— D. In the event this Contract is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its~~

~~1 sole discretion, reduce the Not To Exceed Amount of this Contract to be consistent with the reduced term
2 of the Contract.~~

~~3 E. In the event this Contract is terminated CONTRACTOR shall do the following:~~

~~4 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is
5 consistent with recognized standards of quality care and prudent business practice.~~

~~6 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
7 performance during the remaining contract term.~~

~~8 3. Until the date of termination, continue to provide the same level of service required by this
9 Contract.~~

~~10 4. If Clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
11 upon request, all Client information and records deemed necessary by ADMINISTRATOR to effect an
12 orderly transfer.~~

~~13 5. Assist ADMINISTRATOR in effecting the transfer of Clients in a manner consistent with
14 Client's best interests.~~

~~15 6. If records are to be transferred to COUNTY, pack and label such records in accordance with
16 directions provided by ADMINISTRATOR.~~

~~17 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
18 supplies purchased with funds provided by COUNTY.~~

~~19 8. To the extent services are terminated, cancel outstanding commitments covering the
20 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
21 commitments which relate to personal services. With respect to these canceled commitments,
22 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims
23 arising out of such cancellation of commitment which shall be subject to written approval of
24 ADMINISTRATOR.~~

~~25 9. Provide written notice of termination of services to each Client being served under this
26 Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
27 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar
day period.~~

~~F. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days' written
notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
exclusive and are in addition to any other rights and remedies provided by law or under this Contract.~~

XXXI. THIRD PARTY BENEFICIARY

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

XXXII. WAIVER OF DEFAULT OR BREACH

1 ~~Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any~~
2 ~~subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this~~
3 ~~Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default~~
4 ~~or any breach by CONTRACTOR shall not be considered a modification of the terms of this Contract.~~

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~~IN WITNESS WHEREOF, the parties have executed this Contract, in the County of Orange, State of California.~~

CONTRACTOR: MARQUEE STAFFING

BY: _____ DATED: _____

TITLE: _____

COUNTY OF ORANGE

BY: _____ DATED: _____

PURCHASING AGENT/DESIGNEE

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~~If CONTRACTOR 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.~~

~~EXHIBIT A~~
~~TO CONTRACT FOR THE PROVISION OF~~
~~SURGE SERVICES FOR EMPLOYEE HEALTH SERVICES~~
~~BETWEEN~~
~~COUNTY OF ORANGE~~
~~AND~~
~~MARQUEE STAFFING~~
~~AUGUST 17, 2023 THROUGH JUNE 30, 2026~~

~~**I. TARGET POPULATION**~~

~~— A. Surge Services shall be provided to County of Orange Employee Health Services which serves COUNTY's employees from twenty three (23) agencies.~~

~~— B. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Target Population Paragraph of this Exhibit A to the Contract.~~

~~**II. PAYMENTS**~~

~~— A. For reimbursement of Surge Services provided in accordance with this Exhibit A to the Contract, CONTRACTOR shall submit its invoices to ADMINISTRATOR monthly in arrears. Invoices and all supporting documentation shall be submitted by CONTRACTOR to ADMINISTRATOR by the 20th day of the calendar month following the reporting period. Each reporting period consists of a calendar month. CONTRACTOR's invoice shall be on a form approved or supplied by ADMINISTRATOR and provide such information as is required by ADMINISTRATOR. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after the receipt of the correctly completed and approved invoice form.~~

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

~~— C. COUNTY shall reimburse CONTRACTOR monthly in arrears as fee for service at the following agreed upon rates:~~

Surge Services	Hourly Rates
Registered Nurse (RN)	\$90.00

Licensed Vocational Nurse (LVN)	\$63.00
Medical Assistant (MA) — Non X-Ray Technician	\$44.00

~~D. CONTRACTOR and ADMINISTRATOR agree that additional Surge Services may be needed throughout the term of the Contract. Should additional Surge Services be required, other than those listed in Subparagraph C above, ADMINISTRATOR shall approve the Surge Service on a case-by-case basis and determine an appropriate hourly rate.~~

~~E. ADMINSTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the contract.~~

~~F. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Contract, except as may otherwise be provided under the Contract, or specifically agreed upon between CONTRACTOR and ADMINISTRATOR.~~

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

III. SERVICES

~~A. CONTRACTOR shall provide Surge Staffing Services at Employee Health Services facilities or other COUNTY designated facilities on an as-needed basis that include the following:~~

~~1. CONTRACTOR shall provide experienced front and back office Medical Assistants for temporary staffing need in the EHS medical occupational health clinic as requested by Employee Health Services.~~

~~2. CONTRACTOR shall provide experienced LVN's and RN's for in office and/or mobile nursing services during seasonal need, multi-agency surge hiring, and community and workplace communicable disease case surges.~~

~~3. CONTRACTOR staff shall administer vaccinations and/or screening tests to COUNTY employees.~~

~~4. CONTRACTOR staff shall conduct fit testing of COUNTY employees, as well as other duties as assigned by EHS Director or staff.~~

~~5. CONTRACTOR staff shall participate in COUNTY employee communicable disease investigations, including conducting and completing employee case investigation and contact interviews.~~

~~6.~~

~~7. CONTRACTOR staff shall enter COUNTY employee information into web-based systems and/or databases as well as review and upload employee laboratory test results. Staff shall also be responsible for providing information in oral or written format to the EHS Director and/or nurses.~~

~~8. CONTRACTOR staff shall not retain or store PHI or PII related materials or any equipment~~

~~1 not specifically issued or allocated to them, outside COUNTY's physical and technical environment. Only
2 ADMINISTRATOR approved electronic formats shall be permissible for the retention and/or transfer of
3 sensitive or secure information or data.~~

~~4 — B. CONTRACTOR shall coordinate with EHS staff regarding all staffing requests to ensure all
5 requirements under this Contract are met.~~

~~6 — C. CONTRACTOR staff shall report and be accountable to COUNTY supervisors, coordinating
7 their work assignments and schedules, and work in adherence with both COUNTY and staffing agency
8 reporting requirements.~~

~~9 — D. CONTRACTOR staff shall work in full cooperation with EHS staff contacts, as well as defer to
10 staffing agency recruiter as applicable.~~

~~11 — E. All CONTRACTOR staff shall be responsible for consistent and professional workplace conduct.~~

~~12 — F. CONTRACTOR shall follow all applicable health, safety and practice guidelines issued by the
13 State Department of Health Services; CONTRACTOR shall also follow any local Health Orders or
14 Agency and/or COUNTY work requirements.~~

~~15 — G. CONTRACTOR shall coordinate with each selected staff given an EHS assignment to provide
16 the following information:~~

~~17 — 1. Complete Job Description~~

~~18 — 2. Performance Expectations~~

~~19 — 3. Length of Assignment~~

~~20 — 4. Location of Assignment~~

~~21 — 5. Parking Location~~

~~22 — 6. Working Hours / Lunch Schedule~~

~~23 — 7. Name of Reporting Supervisor~~

~~24 — 8. Dress Code~~

~~25 — H. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Services
26 Paragraph of this Exhibit A to the Contract.~~

IV. PERFORMANCE OBJECTIVES

~~27 — A. CONTRACTOR shall meet the following Performance Objectives at least ninety-eight percent
(98%) of the time:~~

~~1. Be able to provide appropriately licensed and experienced temporary medical staff on an
ongoing basis within two (2) weeks of request by COUNTY, or on a timeline agreed upon by COUNTY
and CONTRACTOR.~~

~~2. Have the capacity and provide consistent full-time and/or part-time nursing staff and medical
assistants for up to three (3) months or more as needed for Employee Health Services.~~

~~3. Provide nursing staff, which shall include licensed nurses with a Bachelor of Science in Nursing (BSN), Registered Nurses (RN), Licensed Vocational Nurses (LVN) and Medical Assistants (MA), who can consistently report to the same assignment at Employee Health Services clinic or for mobile services deployment for disease investigations and/or clinical services.~~

~~4. Provide medical staff as above with reliable transportation to ensure consistent deployment of staff to multiple employee worksite locations reliably and timely.~~

~~B. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Performance Objectives Paragraph of this Exhibit A to the Contract.~~

V. RECORDS

~~A. ACTIVITY RECORDS — CONTRACTOR shall maintain adequate records of its services provided in sufficient detail to permit an evaluation of services. Records shall include detailed staffing logs for services as well as an activity log for any applicable technical assistance. Additional log detail shall include service dates and times, service locations, number of employees receiving or having received services the number of staff utilized for each service event. Event logs shall include any issues that occurred at the service event, including but not limited to client complaints or inappropriate behavior, actions or non-compliance by either clients or staff.~~

~~B. FINANCIAL RECORDS — CONTRACTOR shall prepare and maintain accurate and complete financial records of its costs and operating expenses. Such records shall reflect the actual costs of the type of service for which payment is claimed. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and shall be made in accordance with generally accepted principles of accounting.~~

~~C. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Records Paragraph of this Exhibit A to the Contract.~~

VI. REPORTS

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

~~B. FISCAL — Monthly reports, submitted with CONTRACTOR's billings, which shall include, at a minimum, the number of services provided.~~

~~C. CONTRACTOR shall electronically submit a monthly charges summary report to ADMINISTRATOR and designated COUNTY staff, in support of the monthly invoice. These reports shall be on a form provided or approved by ADMINISTRATOR and shall include rates, types of service~~

~~1 and units of service provided. Reports are due to ADMINISTRATOR no later than the twentieth (20th)~~
~~2 calendar day of the month following the month in which services were performed under the Contract,~~
~~3 unless otherwise agreed to in writing by ADMINISTRATOR.~~

~~4 — D. PROGRAMMATIC — Periodic programmatic reports on forms provided or approved by~~
~~5 ADMINISTRATOR, which shall include, a description of CONTRACTOR's progress in implementing~~
~~6 the provisions of this Contract; any pertinent facts or interim findings; staff changes; and status of licenses~~
~~7 and/or certifications. CONTRACTOR shall report on whether it is progressing satisfactorily in achieving~~
~~8 all the terms of the Contract, and if not, shall specify what steps will be taken to achieve satisfactory~~
~~9 progress. These periodic programmatic reports shall be submitted according to the timeline specified by~~
~~10 ADMINISTRATOR.~~

~~11 — E. ADDITIONAL REPORTS — CONTRACTOR shall make additional reports, as required by~~
~~12 ADMINISTRATOR, concerning CONTRACTOR's activities as they affect the services hereunder.~~
~~13 ADMINISTRATOR will be specific as to the nature of information requested and allow thirty (30)~~
~~14 calendar days for CONTRACTOR to respond.~~

~~15 — F. All records and reports submitted to ADMINISTRATOR shall become the property of COUNTY.~~

~~16 — G. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Reports~~
~~17 Paragraph of this Exhibit A to the Contract.~~

VII. STAFFING

~~18 — A. CONTRACTOR shall be able to provide an available pool of qualified, licensed or certified~~
~~19 candidates to meet the medical staffing needs of the County and complete assignments at the direction of~~
~~20 Employee Health Services, as needed, including the following:~~

~~21 — 1. Licensed RN~~

~~22 — 2. Licensed RN, LVN or experienced front office or back office MA~~

~~23 — 3. CONTRACTOR shall provide any and all necessary staff licensure and/or certifications upon~~
~~24 request from COUNTY.~~

~~25 — B. CONTRACTOR must screen and pass all potential staffing candidates before placing with HCA.~~
~~26 HCA reserves the right to reject any prospective staff referred by CONTRACTOR. Screenings for this~~
~~27 Contract shall include the following:~~

~~1 — Tuberculosis (TB) clearance — Candidates must provide TB test results either from two (2)~~
~~consecutive years (no more than twelve (12) months apart), the most recent within the last twelve (12)~~
~~months, or two (2) step TB testing (initial test and 2nd test one to four (1-4) weeks after the first test)~~
~~completed within the last twelve (12) months.~~

~~2 — For TB Previous Positive reactors, proof of a positive TB skin test is required. If there is no~~
~~proof, candidate needs to be re-tested. Candidate will also be required to provide a report from a chest x-~~

1 ray within the last twelve (12) months.

2 ~~3. Measles, Mumps, Rubella (MMR), Varicella, TDAP and seasonal Flu Candidates must be~~
3 ~~up to date with all vaccinations.~~

4 ~~4. Sanction Screening Candidates must be sanction screened to ensure they are not designated~~
5 ~~as an ineligible person. Applicant must keep screening results on file for the period defined in the Contract.~~
6 ~~Screening shall be completed using the General Services Administration's Excluded Parties List System~~
7 ~~or System for Award Management, The Health and Humans Services/Office of Inspector General List of~~
8 ~~Excluded Individuals/Entities, and the California Medi-Cal Suspended and Ineligible Provider List and~~
9 ~~/or any other as identified by the Administrator. The links are:~~

- 10 ~~a) System for Award Management: <https://www.sam.gov/portal/SAM/%20-%201#1#1>~~
- 11 ~~b) HHS Inspector General List: <https://exclusions.oig.hhs.gov/Default.aspx>~~
- 12 ~~c) California Medi-Cal Suspended and Ineligible provider list:~~
13 ~~<http://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp>~~

14 ~~5. CONTRACTOR must keep all screening results and vaccination records on file for the period~~
15 ~~designated by ADMINISTRATOR.~~

16 ~~C. All staffing placed on assignment with COUNTY shall be able to meet the following physical~~
17 ~~requirements:~~

- 18 ~~1. Ability to stand for prolonged durations, as well as be able to stoop, squat or kneel.~~
- 19 ~~2. Ability to walk for several average length blocks, negotiate stairs and potentially uneven~~
20 ~~surfaces.~~
- 21 ~~3. Ability to lift and carry up to twenty five (25) pounds.~~
- 22 ~~4. Ability to push and pull a laden rolling cart.~~

23 ~~D. CONTRACTOR shall ensure that all CONTRACTOR's staff have reliable transportation to~~
24 ~~COUNTY work locations. In the event that CONTRACTOR's assigned staff do not have reliable~~
25 ~~transportation, CONTRACTOR shall provide said staff with a means for reporting on time to assigned~~
26 ~~work locations or alternatively, provide qualified alternate staff that do have reliable transportation to~~
27 ~~complete the assignment in lieu of the assigned staff for the remaining duration of the staffing assignment~~
28 ~~within seven (7) calendar days or sooner.~~

29 ~~E. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to modify the Staffing~~
30 ~~Paragraph of this Exhibit A to the Contract.~~

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EXHIBIT B

TO CONTRACT FOR PROVISION OF
SURGE SERVICES FOR EMPLOYEE HEALTH SERVICES

BETWEEN

COUNTY OF ORANGE

AND

MARQUEE STAFFING
AUGUST 17, 2023 THROUGH JUNE 30, 2026

I. BUSINESS ASSOCIATE CONTRACT**A. GENERAL PROVISIONS AND RECITALS**

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

2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Contract 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 Contract, 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 Contract.

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 Contract 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, as it exists now or be hereafter updated with notice to CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.~~

~~B. DEFINITIONS~~

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

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

~~a. Breach excludes:~~

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

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

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

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

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

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

~~2 of 9~~

~~EXHIBIT B~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~EXHIBIT B~~

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

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

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

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

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

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

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

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

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

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

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

~~7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524.~~

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~~County of Orange, Health Care Agency~~

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

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

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

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

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

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

~~D. SECURITY RULE~~

~~1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.~~

~~2. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.~~

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

~~E. BREACH DISCOVERY AND NOTIFICATION~~

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

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

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

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

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

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

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

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

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

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

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

~~6 of 9~~

~~EXHIBIT B~~

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

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

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

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

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

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

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

~~F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR~~

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

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

~~7 of 9~~

~~EXHIBIT B~~

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

~~_____ 1) The Disclosure is required by law; or~~

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

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

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

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

~~_____ 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.~~

~~_____ G. OBLIGATIONS OF COUNTY~~

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

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

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

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

~~_____ H. BUSINESS ASSOCIATE TERMINATION~~

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

~~EXHIBIT B~~

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

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

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

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

~~_____ b. CONTRACTOR shall retain no copies of the PHI.~~

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

~~_____ 3. The obligations of this Business Associate Contract shall survive the termination of the Contract.~~

~~_____ I. County contact information: to direct communications to the above referenced county staff, contractor shall initiate contact as indicated herein. COUNTY reserves the right to make changes to the contact information below by verbal or written notice to contractor. Said changes shall not require an amendment to this exhibit or the agreement to which it is incorporated.~~

~~ADMINISTRATOR Program Manager~~

~~County of Orange~~

~~Health Care Agency~~

~~600 W. Santa Ana Boulevard, Suite 405~~

~~Santa Ana, California 92701~~

~~Attention: Stephanie Plowman~~

~~E-mail: splowman@ochca.com~~

~~Telephone: (714) 565-3782~~

~~ADMINISTRATOR Contract Manager~~

~~County of Orange~~

~~Health Care Agency~~

~~405 W. 5th Street, Suite 600~~

~~Santa Ana, California 92701~~

~~Attention: Lynn Miles~~

~~E-mail: lymiles@ochca.com~~

~~Telephone: (714) 834-3137~~

~~ADMINISTRATOR Privacy Officer~~

~~County of Orange~~

~~Orange County Information Technology (OCIT)~~

~~1055 N. Main Street~~

~~Santa Ana, California 92701~~

~~Attention: Linda Le~~

~~E-mail: linda.le@ocit.ocgov.com~~

~~Telephone: (714) 834-4082~~

~~ADMINISTRATOR Information Security Officer~~

~~County of Orange~~

~~Health Care Agency~~

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~~EXHIBIT B~~

Print Name	Title
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Signature	Date
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