

1 AGREEMENT FOR PROVISION OF
2 TOBACCO CESSATION SERVICES

3 BETWEEN

4 COUNTY OF ORANGE

5 AND

6 AHMC ANAHEIM REGIONAL MEDICAL CENTER

7 JULY 1, 2022 THROUGH JUNE 30, 2025

8
9 THIS AGREEMENT entered into this 1st day of July, 2022 (effective date), is by and between the
10 COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and AHMC
11 ANAHEIM REGIONAL MEDICAL CENTER, a California limited partnership (CONTRACTOR).
12 COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or
13 collectively as "Parties." This Agreement shall be administered by the Director of the COUNTY's Health
14 Care Agency or an authorized designee ("ADMINISTRATOR").

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

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18 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of
19 Tobacco Use Prevention/Cessation Services (OC Region) described herein to the residents of Orange
20 County; and

21 WHEREAS, COUNTY has a commitment to residents of Orange County to reduce smoking
22 prevalence and address emerging tobacco issues in a proactive manner amongst Orange County adults and
23 youth; and

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

26 NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained
27 herein, COUNTY and CONTRACTOR do hereby agree as follows:

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2022 through June 30, 2025

Period One means the period from July 1, 2022 through June 30, 2023

Period Two means the period from July 1, 2023 through June 30, 2024

Period Three means the period from July 1, 2024 through June 30, 2025

Maximum Obligation: \$1,500,000

Period One Maximum Obligation: \$500,000

Period Two Maximum Obligation: \$500,000

Period Three Maximum Obligation: \$500,000

TOTAL MAXIMUM OBLIGATION: \$1,500,000

Basis for Reimbursement: Actual Cost

Payment Method: Payment in Arrears

CONTRACTOR DUNS Number: 07-930-5167

CONTRACTOR TAX ID Number: 90-0454894

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: AHMC Anaheim Regional Medical Center LP
1111 W. La Palma Ave.
Anaheim, CA 92801
Margaret Peterson, PhD – CEO
Margaret.Peterson@ahmchealth.com

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I. ACRONYMS

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

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4	A. AA	Alcoholics Anonymous
5	B. AB 109	Assembly Bill 109, 2011 Public Safety Realignment
6	C. ABC	Allied Behavioral Care
7	D. ACH	Acute Care Hospital
8	E. ADAS	Alcohol and Drug Abuse Services
9	F. ADL	Activities of Daily Living
10	G. ADP	Alcohol and Drug Program
11	H. AE	Advanced Encryption Standard
12	I. AFLP	Adolescent Family Life Program
13	J. AIDS	Acquired Immune Deficiency Syndrome
14	K. AIM	Access for Infants and Mothers
15	L. AMHS	Adult Mental Health Services
16	M. ARRA	American Recovery and Reinvestment Act of 2009
17	N. ASAM PPC	American Society of Addiction Medicine Patient Placement Criteria
18	O. ASI	Addiction Severity Index
19	P. ASIST	Applied Suicide Intervention Skills Training
20	Q. ASO	Administrative Services Organization
21	R. ASRS	Alcohol and Drug Programs Reporting System
22	S. BBS	Board of Behavioral Sciences
23	T. BCP	Business Continuity Plan
24	U. BH	Base Hospital
25	V. BHS	Behavioral Health Services
26	W. CalOMS	California Outcomes Measurement System
27	X. CalWORKs	California Work Opportunity and Responsibility for Kids
28	Y. CAP	Corrective Action Plan
29	Z. CAT	Centralized Assessment Team
30	AA. CCC	California Civil Code
31	AB. CCLD	(California) Community Care Licensing Division
32	AC. CCR	California Code of Regulations
33	AD. CDCR	California Department of Corrections and Rehabilitation
34	AE. CDSS	California Department of Social Services
35	AF. CERC	Children's Emergency Receiving Center
36	AG. CESI	Client Evaluation of Self at Intake
37	AH. CEST	Client Evaluation of Self and Treatment

1	AI. CFDA	Catalog of Federal Domestic Assistance
2	AJ. CFR	Code of Federal Regulations
3	AK. CHDP	Child Health and Disability Prevention
4	AL. CHHS	California Health and Human Services Agency
5	AM. CHPP	COUNTY HIPAA Policies and Procedures
6	AN. CHS	Correctional Health Services
7	AO. CIPA	California Information Practices Act
8	AP. CMPPA	Computer Matching and Privacy Protection Act
9	AQ. COI	Certificate of Insurance
10	AR. CPA	Certified Public Accountant
11	AS. CSI	Client and Services Information
12	AT. CSW	Clinical Social Worker
13	AU. CYBHS	Children and Youth Behavioral Health Services
14	AV. DATAR	Drug Abuse Treatment Access Report
15	AW. DCR	Data Collection and Reporting
16	AX. DD	Dually Diagnosed
17	AY. DEA	Drug Enforcement Agency
18	AZ. DHCS	California Department of Health Care Services
19	BA. D/MC	Drug/Medi-Cal
20	BB. DMV	California Department of Motor Vehicles
21	BC. DoD	US Department of Defense
22	BD. DPFS	Drug Program Fiscal Systems
23	BE. DRC	Probation's Day Reporting Center
24	BF. DRP	Disaster Recovery Plan
25	BG. DRS	Designated Record Set
26	BH. DSM	Diagnostic and Statistical Manual of Mental Disorders
27	BI. DSM-IV	Diagnostic and Statistical Manual of Mental Disorders. 4th Edition
28	BJ. DSM-V	Diagnostic and Statistical Manual of Mental Disorders. 5th Edition
29	BK. EBP	Evidence-Based Practice
30	BL. EDN	Electronic Disease Notification System
31	BM. EEOC	Equal Employment Opportunity Commission
32	BN. EHR	Electronic Health Records
33	BO. ePHI	Electronic Protected Health Information
34	BP. EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
35	BQ. ERC	Emergency Receiving Center
36	BR. FFS	Fee For service
37	BS. FIPS	Federal Information Processing Standards

1	BT. FQHC	Federally Qualified Health Center
2	BU. FSP	Full Service Partnership
3	BV. FTE	Full Time Equivalent
4	BW. GAAP	Generally Accepted Accounting Principles
5	BX. HAB	Federal HIV/AIDS Bureau
6	BY. HCA	County of Orange Health Care Agency
7	BZ. HHS	Federal Health and Human Services Agency
8	CA. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
9		Law 104-191
10	CB. HITECH Act	Health Information Technology for Economic and Clinical Health Act,
11		Public Law 111-005
12	CC. HIV	Human Immunodeficiency Virus
13	CD. HRSA	Federal Health Resources and Services Administration
14	CE. HSC	California Health and Safety Code
15	CF. IBNR	Incurred But Not Reported
16	CG. ID	Identification
17	CH. IEA	Information Exchange Agreement
18	CI. IMD	Institute for Mental Disease
19	CJ. IOM	Institute of Medicine
20	CK. IRIS	Integrated Records and Information System
21	CL. ISO	Insurance Services Office
22	CM. ITC	Indigent Trauma Care
23	CN. LCSW	Licensed Clinical Social Worker
24	CO. LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
25	CP. LPS	Lanterman/Petris/Short (Act)
26	CQ. LPT	Licensed Psychiatric Technician
27	CR. MAT	Medication Assisted Treatment
28	CS. MEDS	Medi-Cal Eligibility Determination System
29	CT. MFT	Marriage and Family Therapist
30	CU. MH	Mental Health
31	CV. MHIS	Mental Health Inpatient Services
32	CW. MIHS	Medical and Institutional Health Services
33	CX. MHP	Mental Health Plan
34	CY. MHRC	Mental Health Rehabilitation Centers
35	CZ. MHS	Mental Health Specialist
36	DA. MHSA	Mental Health Services Act
37	DB. MORS	Milestones of Recovery Scale

1	DC. MS	Mandatory Supervision
2	DD. MSN	Medical Safety Net
3	DE. MTP	Master Treatment Plan
4	DF. NA	Narcotics Anonymous
5	DG. NIATx	Network Improvement of Addiction Treatment
6	DH. NIH	National Institutes of Health
7	DI. NIST	National Institute of Standards and Technology
8	DJ. NOA	Notice of Action
9	DK. NP	Nurse Practitioner
10	DL. NPDB	National Provider Data Bank
11	DM. NPI	National Provider Identifier
12	DN. NPP	Notice of Privacy Practices
13	DO. OCEMS	Orange County Emergency Medical Services
14	DP. OCJS	Orange County Jail System
15	DQ. OC-MEDS	Orange County Medical Emergency Data System
16	DR. OCPD	Orange County Probation Department
17	DS. OCR	Federal Office for Civil Rights
18	DT. OCSD	Orange County Sheriff's Department
19	DU. OIG	Federal Office of Inspector General
20	DV. OMB	Federal Office of Management and Budget
21	DW. OPM	Federal Office of Personnel Management
22	DX. ORR	Federal Office of Refugee Resettlement
23	DY. P&P	Policy and Procedure
24	DZ. PA DSS	Payment Application Data Security Standard
25	EA. PAF	Partnership Assessment Form
26	EB. PAR	Prior Authorization Request
27	EC. PBM	Pharmaceutical Benefits Management
28	ED. PC	California Penal Code
29	EE. PCI DSS	Payment Card Industry Data Security Standard
30	EF. PCP	Primary Care Provider
31	EG. PCS	Post-Release Community Supervision
32	EH. PHI	Protected Health Information
33	EI. PI	Personal Information
34	EJ. PII	Personally Identifiable Information
35	EK. PRA	California Public Records Act
36	EL. PSAI/ACT	Perinatal Substance Abuse Services Initiative/Assessment and Coordination Team
37		

1	EM. PSC	Professional Services Contract
2	EN. PTRC	Paramedic Trauma Receiving Center
3	EO. QI	Quality Improvement
4	EP. QIC	Quality Improvement Committee
5	EQ. RHAP	Refugee Health Assessment Program
6	ER. RHEIS	Refugee Health Electronic Information System
7	ES. RN	Registered Nurse
8	ET. RSA	Remote Site Access
9	EU. SAPTBG	Substance Abuse Prevention and Treatment Block Grant
10	EV. SD/MC	Short-Doyle Medi-Cal
11	EW. SIR	Self-Insured Retention
12	EX. SMA	Statewide Maximum Allowable (rate)
13	EY. SNF	Skilled Nursing Facility
14	EZ. SR	Supervised Release
15	FA. SRP	Supervised Release Participant
16	FB. SSA	County of Orange Social Services Agency
17	FC. SSI	Supplemental Security Income
18	FD. STP	Special Treatment Program
19	FE. SUD	Substance Use Disorder
20	FF. TAR	Treatment Authorization Request
21	FG. TAY	Transitional Age Youth
22	FH. TB	Tuberculosis
23	FI. TBS	Therapeutic Behavioral Services
24	FJ. TRC	Therapeutic Residential Center
25	FK. TTY	Teletypewriter
26	FL. TUPP	Tobacco Use Prevention Program
27	FM. UMDAP	Uniform Method of Determining Ability to Pay
28	FN. UOS	Units of Service
29	FO. USC	United States Code
30	FP. VOLAGs	Volunteer Agencies
31	FQ. W&IC	California Welfare and Institutions Code
32	FR. WIC	Women, Infants and Children

II. ALTERATION OF TERMS

35 A. This Agreement, together with Exhibit A attached hereto and incorporated herein, fully expresses
 36 the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this
 37 Agreement.

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

6 **III. ASSIGNMENT OF DEBTS**

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

15 **IV. COMPLIANCE**

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

19 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
20 procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to
21 General Compliance and Annual Provider Trainings.

22 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
23 compliance program, code of conduct and any compliance related policies and procedures.
24 CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall be
25 verified by ADMINISTRATOR's Compliance Department to ensure they include all required elements
26 by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to this
27 Agreement. These elements include:

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

35 3. If CONTRACTOR does not provide proof of its own compliance program to
36 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
37 Program and Code of Conduct, CONTRACTOR shall submit to ADMINISTRATOR within thirty (30)

1 calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR shall
2 internally comply with ADMINISTRATOR's Compliance Program and Code of Conduct.
3 CONTRACTOR shall have as many Covered Individuals it determines necessary complete
4 ADMINISTRATOR's annual compliance training to ensure proper compliance.

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

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

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

29 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees,
30 interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items
31 or services or who perform billing or coding functions on behalf of ADMINISTRATOR.
32 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
33 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or
34 CONTRACTOR's own compliance program, code of conduct and related policies and procedures if
35 CONTRACTOR has elected to use its own).

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

37 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal

1 and state health care programs; or

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

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

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

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

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

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

32 C. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General Compliance
33 Training available to Covered Individuals.

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

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

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

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

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

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

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

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

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

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

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

25 E. MEDI-CAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

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

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

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

37 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in

1 coding of claims and billing, if and when, any such problems or errors are identified.

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

4 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and
5 participate in the quality improvement activities developed in the implementation of the Quality
6 Management Program.

7 7. CONTRACTOR shall comply with the provisions of ADMINISTRATOR's Cultural
8 Competency Plan submitted and approved by the State. ADMINISTRATOR shall update the Cultural
9
10 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
11 §1810.410.subds.(c)-(d).

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

18 19 **V. CONFIDENTIALITY**

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

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

30 31 **VI. CONFLICT OF INTEREST**

32 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions
33 that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation
34 shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision
35 of goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but
36 not be limited to establishing rules and procedures preventing its employees, agents, and
37 subcontractors from providing or offering gifts, entertainment, payments, loans or other

1 considerations which could be deemed to influence or appear to influence COUNTY staff or elected
2 officers in the performance of their duties.

3 4 **VII. COST REPORT**

5 A. CONTRACTOR shall submit separate Cost Reports for each Period, or for a portion thereof, to
6 COUNTY no later than sixty (60) calendar days following the period for which they are prepared or
7 termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance with all
8 applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this
9 Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost
10 centers, services, and funding sources in accordance with such requirements and consistent with prudent
11 business practice, which costs and allocations shall be supported by source documentation maintained by
12 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.

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

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

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

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

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

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

36 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less
37 applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set forth in

1 the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim expenditures to
 2 COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws,
 3 regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is
 4 subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by
 5 CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar
 6 days of submission of the Cost Report or COUNTY may elect to reduce any amount owed
 7 CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

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

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

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

21
 22 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
 23 supporting documentation prepared by _____ for the cost report period
 24 beginning _____ and ending _____ and that, to the best of my knowledge
 25 and belief, costs reimbursed through this Agreement are reasonable and allowable and
 26 directly or indirectly related to the services provided and that this Cost Report is a true,
 27 correct, and complete statement from the books and records of (provider name) in
 28 accordance with applicable instructions, except as noted. I also hereby certify that I
 29 have the authority to execute the accompanying Cost Report.

30
 31 Signed _____
 32 Name _____
 33 Title _____
 34 Date _____"

35 //
 36 //

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

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

6 B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's
7 business prior to completion of this Agreement, and COUNTY agrees to an assignment of the Agreement,
8 the new owners shall be required under the terms of sale or other instruments of transfer to assume
9 CONTRACTOR's duties and obligations contained in this Agreement and complete them to the
10 satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in
11 part, without the prior written consent of COUNTY.

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

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

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

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

33 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
34 CONTRACTOR shall provide written notification within thirty (30) calendar days to
35
36 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
37 governing body of CONTRACTOR at one time.

1 this Agreement, unless COUNTY, on its own initiative, has already rendered such a final decision.

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

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

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

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

21 22 **X. EMPLOYEE ELIGIBILITY VERIFICATION**

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

32 33 **XI. EQUIPMENT**

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

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

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

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

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

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

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

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

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

35 36 **IXII. FACILITIES, PAYMENTS AND SERVICES**

37 CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with

1 this Agreement. COUNTY shall compensate, and authorize, when applicable, said services.
2 CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the
3 minimum number and type of staff which meet applicable federal and state requirements, and which are
4 necessary for the provision of the services hereunder.

6 **XII. INDEMNIFICATION AND INSURANCE**

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

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

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

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

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

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

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

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

12 F. QUALIFIED INSURER

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate

1 Sexual Misconduct Liability \$1,000,000 per occurrence

2
3 H. REQUIRED COVERAGE FORMS

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

6 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00
7 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

8 I. REQUIRED ENDORSEMENTS

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

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

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

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

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

25 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) calendar days of any policy
26 cancellation and within ten (10) calendar days for non-payment of premium and provide a copy of the
27 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach
28 of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate this
29 Agreement.

30 M. If CONTRACTOR's Professional Liability is "Claims Made" policy, CONTRACTOR shall
31 agree to maintain coverage for two (2) years following the completion of the Agreement.

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

34 O. Insurance certificates should be forwarded to the department address listed in the Referenced
35 Contract Provisions.

36 P. If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)
37 calendar days of notification by COUNTY, COUNTY may terminate this Agreement immediately, upon

1 written notice.

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

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

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

14 T. SUBMISSION OF INSURANCE DOCUMENTS

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

16 a. Prior to the start date of this Agreement.

17 b. No later than the expiration date for each policy.

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

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

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

25 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
26 pursuant to any and all agreements between COUNTY and CONTRACTOR until such time that the
27 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
28 submitted to ADMINISTRATOR.

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

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

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

XV. LICENSES AND LAWS

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

B. CHILD SUPPORT OBLIGATIONS

10
11 1. CONTRACTOR certifies it is in full compliance with all applicable federal and State
12 reporting requirements regarding its employees and with all lawfully served Wage and Earnings
13 Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the
14 term of the Agreement with the County of Orange. Failure to comply shall constitute a material breach of
15 the Agreement and failure to cure such breach within sixty (60) calendar days of notice from COUNTY
16 shall constitute grounds for termination of the Agreement.

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

- 20 1. ARRA of 2009.
 - 21 2. Trafficking Victims Protection Act of 2000.
 - 22 3. CFR, Title 42, Public Health.
- 23

XVI. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

24
25 A. Any written information or literature, including educational or promotional materials, distributed
26 by CONTRACTOR to any person or organization for purposes directly or indirectly related to this
27 Agreement must be approved at least thirty (30) calendar days in advance and in writing by
28 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written
29 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,
30 and electronic media such as the Internet.

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

35 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
36 available social media sites) in support of the services described within this Agreement, CONTRACTOR
37 shall develop social media policies and procedures and have them available to ADMINISTRATOR upon

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

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

8 9 **XIII. MAXIMUM OBLIGATION**

10 A. The Total Maximum Obligation of COUNTY for services provided in accordance with this
 11 Agreement, and the separate Maximum Obligations for each period under this Agreement, are as specified
 12 in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

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

15 16 **XIII. MINIMUM WAGE LAWS**

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

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

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

31 32 **XIX. NONDISCRIMINATION**

33 **A. EMPLOYMENT**

34 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals (as defined
 35 in the “Compliance” paragraph of this Agreement) shall not unlawfully discriminate against any employee
 36 or applicant for employment because of his/her race, religious creed, color, national origin, ancestry,
 37 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,

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

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

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

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

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

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

28 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
29 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
30 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability,
31 medical condition, genetic information, marital status, sex, gender, gender identity, gender expression,
32 age, sexual orientation, or military and veteran status in accordance with Title IX of the Education
33 Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964
34 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6,
35 Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information Nondiscrimination Act of
36 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and regulations promulgated
37 pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be

1 hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, discrimination
2 includes, but is not limited to the following based on one or more of the factors identified above:

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

12 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Clients
13 through a written statement that CONTRACTOR’s and/or subcontractor’s Clients may file all complaints
14 alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and
15 ADMINISTRATOR.

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

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

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

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

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

1
2 **XX. NOTICES**

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

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

8 2. When faxed, transmission confirmed;

9 3. When sent by Email; or

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

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

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

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

22
23 **XXI. NOTIFICATION OF DEATH**

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

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

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

32 2. WRITTEN NOTIFICATION

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

36 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
37 report hand delivered, faxed, and/or sent via encrypted email, within forty-eight (48) hours of becoming

1 aware of the death due to terminal illness of any person served pursuant to this Agreement.

2 c. When notification via encrypted email is not possible or practical CONTRACTOR must
3 hand deliver or must fax said notification to a number approved by COUNTY in writing.

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

8 9 **XXII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

17 18 **XIIII. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

24 C. CONTRACTOR shall ensure all appropriate state and federal standards of documentation,
25 preparation, and confidentiality of records related to Client records are met at all times.

26 D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the
27 commencement of the Agreement, unless a longer period is required due to legal proceedings such as
28 litigations and/or settlement of claims.

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

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

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

36 H. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out
37 of, this Agreement, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR all

1 information that is requested by the PRA request.

2
3 **XIV. RESEARCH AND PUBLICATION**

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

7
8 **XVV. SEVERABILITY**

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

14
15 **XVI. SPECIAL PROVISIONS**

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

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

37 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR

1 shall not use the funds provided by means of this Agreement for the following purposes:

- 2 1. Funding travel or training (excluding mileage or parking).
- 3 2. Making phone calls outside of the local area unless documented to be directly for the purpose
- 4 of Client care.
- 5 3. Payment for grant writing, consultants, certified public accounting, or legal services.
- 6 4. Purchase of artwork or other items that are for decorative purposes and do not directly
- 7 contribute to the quality of services to be provided pursuant to this Agreement.

8

9 **XVIII. STATUS OF CONTRACTOR**

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

21

22 **XVIII. TERM**

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

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

31

32 **XIX. TERMINATION**

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

1 and/or the Agreement could be terminated.

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

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

18 C. CONTINGENT FUNDING

- 19 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 20 a. The continued availability of federal, state and county funds for reimbursement of
21 COUNTY's expenditures, and
 - 22 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
23 approved by the Board of Supervisors.
- 24 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
25 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
26 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated funding,
27 CONTRACTOR shall not be obligated to accept the renegotiated terms.

28 D. In the event this Agreement is suspended or terminated prior to the completion of the term as
29 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its
30 sole discretion, reduce the Maximum Obligation of this Agreement to be consistent with the reduced term
31 of the Agreement.

32 E. In the event this Agreement is terminated CONTRACTOR shall do the following:

- 33 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is
34 consistent with recognized standards of quality care and prudent business practice.
- 35 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
36 performance during the remaining contract term.
- 37 3. Until the date of termination, continue to provide the same level of service required by this

1 Agreement.

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

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

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

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

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

17 9. Provide written notice of termination of services to each Client being served under this
18 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
19 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar days
20 period.

21 F. COUNTY may terminate this Agreement, without cause, upon thirty (30) calendar days' written
22 notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
23 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
24

25 **XXX. THIRD PARTY BENEFICIARY**

26 Neither party hereto intends that this Agreement shall create rights hereunder in third parties
27 including, but not limited to, any subcontractors or any clients provided services pursuant to this
28 Agreement.
29

30 **XXXI. WAIVER OF DEFAULT OR BREACH**

31 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
32 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
33 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
34 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
35 Agreement.
36
37

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

3
4 AHMC ANAHEIM REGIONAL MEDICAL CENTER

5 DocuSigned by:
6 BY: Dr. Margaret Peterson 743558ADB90E42F... DATED: 4/7/2022

7
8 TITLE: CEO

9
10
11 BY: _____ DATED: _____

12
13 TITLE: _____

14
15
16
17
18 COUNTY OF ORANGE

19
20
21 BY: _____ DATED: _____

22 HEALTH CARE AGENCY

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

28
29 DocuSigned by:
30 BY: Brittany McLean 9713A4061D4343D... DATED: 4/8/2022

31 DEPUTY

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

EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 TOBACCO CESSATION SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 AHMC ANAHEIM REGIONAL MEDICAL CENTER
 JULY 1, 2022 THROUGH JUNE 30, 2025

I. SERVICE AREA IDENTIFICATION

CONTRACTOR agrees to provide Tobacco Cessation Services throughout Orange County (OC), California. The OC Region is defined in the TUPP Cessation Provider Manual.

II. BUDGET

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

	<u>PERIOD</u> <u>ONE</u>	<u>PERIOD</u> <u>TWO</u>	<u>PERIOD</u> <u>THREE</u>	<u>TOTAL</u>
PROGRAM				
Salaries	\$327,808	\$327,808	\$327,808	\$ 983,424
Benefits	110,365	110,365	110,365	331,095
Services and Supplies	61,827	61,827	61,827	185,481
Professional Services	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
SUBTOTAL PROGRAM COST	\$500,000	\$500,000	\$500,000	\$1,500,000
TOTAL COST	\$500,000	\$500,000	\$500,000	\$1,500,000
REVENUE				
TSR	<u>\$500,000</u>	<u>\$500,000</u>	<u>\$500,000</u>	<u>\$1,500,000</u>
TOTAL REVENUE	\$500,000	\$500,000	\$500,000	\$1,500,000
MAXIMUM OBLIGATION	\$500,000	\$500,000	\$500,000	\$1,500,000

B. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds between budgeted line items within a program, for the purpose of meeting specific program needs or for providing continuity of care to its participants, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing

1 Modification Request to ADMINISTRATOR for consideration, in advance, which shall include a
2 justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the
3 sustaining annual impact of the shift as may be applicable to the current contract period and/or future
4 contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification
5 Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of
6 CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing
7 Modification Request(s) may result in disallowance of those costs.

8 C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Budget
9 Paragraph to this Exhibit A to the Agreement.

10 11 **III. DEFINITIONS**

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

14 1. Action Plan means a plan that clearly describes how performance outcomes will be achieved.
15 The Action Plan includes, at minimum, performance outcomes, strategies, activities and evaluation; it
16 documents strategies and action steps that will be used to create change in any identified issues area.

17 2. TUPP Provider Manual means the manual developed by ADMINISTRATOR to describe the
18 specific services to be performed by CONTRACTOR. The TUPP Provider Manual provides guidance,
19 goals, objectives, terminology, and evaluation components.

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

22 23 **IV. PAYMENTS**

24 A. COUNTY shall pay CONTRACTOR monthly, in arrears, for the actual costs of providing
25 services described hereunder, less revenues which are actually received by CONTRACTOR. All
26 payments are interim payments only and are subject to Final Settlement in accordance with the Cost Report
27 Paragraph of the Agreement for which CONTRACTOR shall be reimbursed for the actual cost of
28 providing the services hereunder; provided, however, the total of such payments does not exceed
29 COUNTY's Total Maximum Obligation and, provided further, CONTRACTOR's costs are reimbursable
30 pursuant to County, State and/or Federal regulations. ADMINISTRATOR may, at its discretion, pay
31 supplemental billings for any month in which the interim payment amount specified above has not been
32 fully paid.

33 1. In support of the monthly billing, CONTRACTOR shall submit an Expenditure and Revenue
34 Report, which shall have other information including but not limited to, staffing, units of service, and any
35 other information requested by ADMINISTRATOR, as specified in the Reports Paragraph of this Exhibit
36 A to the Agreement. ADMINISTRATOR shall use the Expenditure and Revenue Report to determine
37 payment to CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

1 to ADMINISTRATOR by the twentieth (20th) calendar day of each month following the end of the month
2 being reported.

3 3. Staffing Report – CONTRACTOR shall submit Staffing Reports to ADMINISTRATOR in
4 support of the monthly invoice. These reports shall be on a form approved or provided by
5 ADMINISTRATOR and shall, at a minimum include actual hours worked by each staff member. These
6 reports are due to ADMINISTRATOR by twentieth (20th) calendar day of each month following the end
7 of the month being reported and are to be submitted in conjunction with the monthly Expenditure and
8 Revenue and Year-End Projection Reports.

9 B. PROGRAMMATIC

10 1. CUMULATIVE PROGRAMMATIC REPORTS – CONTRACTOR shall submit quarterly
11 cumulative programmatic reports to ADMINISTRATOR. These reports shall be on a form provided by
12 ADMINISTRATOR. The final programmatic report shall include a process evaluation that shall contain,
13 but not be limited to, an analysis of the effectiveness of strategies used in conducting outreach and tobacco
14 use prevention activities, the overall effectiveness of the program, and changes/recommendations for
15 future projects. The due dates for these reports are identified in the TUPP Provider Manual.

16 2. INTERVENTION REPORT FORM (IRF) – CONTRACTOR shall submit on a format
17 provided by ADMINISTRATOR, a monthly intervention report form documenting progress toward
18 Tobacco Cessation project performance outcomes. These reports are due to ADMINISTRATOR by the
19 tenth (10th) calendar day of the month following the report month.

20 3. MONTHLY NARRATIVE REPORTS – CONTRACTOR shall submit a monthly narrative
21 report documenting progress toward project performance outcomes set forth in the TUPP Provider Manual,
22 project successes, and plans for the following month. These reports are due to ADMINISTRATOR by the
23 fifth (5th) calendar day of each month following the end of the month being reported. CONTRACTOR
24 shall use the monthly Tobacco Settlement Revenue narrative format provided by ADMINISTRATOR.
25 The first monthly narrative report is due to ADMINISTRATOR by August 5, 2022.

26 C. ADDITIONAL REPORTS - CONTRACTOR shall make additional reports as required by
27 ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder. These
28 reports shall be on forms approved or provided by ADMINISTRATOR. ADMINISTRATOR shall be
29 specific as to the nature of the information requested and, when possible, shall allow thirty (30) calendar
30 days for CONTRACTOR to respond.

31 D. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely
32 completion, and coordination of all reports and services provided pursuant to this Agreement.
33 CONTRACTOR shall review the reasonableness and accuracy of information prior to making any
34 recommendation, or incorporating such data into any report required hereunder.

35 E. All reports, drawings, specifications, data, and other incidental work or materials furnished by
36 CONTRACTOR hereunder shall become and remain the property of COUNTY, and may be used by
37 COUNTY as it may require, without any additional cost to COUNTY.

1 F. CONTRACTOR shall not use reports produced as the result of providing Tobacco Cessation
2 Services or data obtained for the purpose of producing such reports without the express written consent of
3 ADMINISTRATOR. All reports shall indicate that the County of Orange Health Care Agency – Tobacco
4 Use Prevention Program funds CONTRACTOR’s services.

5 G. EVALUATION TOOLS - ADMINISTRATOR shall provide all evaluation tools to
6 CONTRACTOR and train CONTRACTOR staff on protocols for implementation of evaluation tools.

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

9 10 **VI. SERVICES**

11 A. CONTRACTOR shall provide Tobacco Cessation Services in accordance with this Exhibit A to
12 the Agreement, and in support of COUNTY’s cessation plan and goals as defined in the TUPP Provider
13 Manual provided by ADMINISTRATOR. ADMINISTRATOR reserves the right to revise and update
14 the TUPP Provider Manual as needed. ADMINISTRATOR shall notify CONTRACTOR of changes to
15 the TUPP Provider Manual within three (3) business days of said changes.

16 B. PERFORMANCE OBJECTIVES - PERIOD ONE - CONTRACTOR shall meet the following
17 performance objectives and complete the detailed activities specified in the TUPP Provider Manual for
18 cessation services by June 30, 2023:

19 1. Adult Services:

20 a. At least one thousand (1,000) adult tobacco and/or vape users from Orange County annually
21 will participate in an in-person, telephone, and/or virtual individualized cessation counseling session that
22 is sixty (60) minutes in length. Each participant shall receive a scheduling call and three (3) follow-up
23 calls at thirty (30), ninety (90) and one hundred eighty (180) calendar days after completing the service.
24 Thirty-three percent (33%) of the participants shall report an abstinence from tobacco and/or vape use six
25 (6) months after completing the service.

26 b. At least eight hundred (800) adult tobacco and/or vape users from Orange County annually
27 will participate in an in-person or virtual one-time seminar that is one and a half (1 ½) hours in length, or
28 two (2) seminars that are each forty-five (45) minutes in length. Each participant shall receive a
29 scheduling call and three (3) follow-up calls at thirty (30), ninety (90) and one hundred eighty (180)
30 calendar days after completing the service. Thirty-three percent (33%) of the participants shall report
31 abstinence from tobacco and/or vape use six (6) months after completing the service.

32 c. At least two hundred (200) adult tobacco and/or vape users from Orange County annually will
33 participate in a series of five (5) sixty (60) minute in-person or virtual cessation sessions. An individual
34 must attend at least three (3) cessation classes to be counted as a participant. Each participant shall receive
35 a follow-up call at thirty (30), ninety (90) and one hundred eighty (180) calendar days after completing
36 the service. Thirty-three percent (33%) of the participants shall report abstinence from tobacco and/or
37 vape use six (6) months after completing the service.

1 2. Youth Services:

2 a. At least one hundred (100) youth tobacco and/or vape users from Orange County
3 annually will participate in a series of five (5) in-person or virtual cessation sessions, which are at least
4 forty five (45) minutes in length. An individual has to attend at least three (3) cessation classes to be
5 counted as a participant. Each participant shall receive a follow-up call at thirty (30), ninety (90) and one
6 hundred eighty (180) calendar days after completing the service. At least forty-five percent (45%) of the
7 youth shall report abstinence from tobacco and/or vape use six (6) months after completing the service.

8 b. At least four hundred (400) youth tobacco and/or vape users from Orange County
9 annually will participate in a one-time in-person or virtual seminar that is at least one (1) hour long. Each
10 participant shall receive a follow-up call at thirty (30), ninety (90) and one hundred eighty (180) calendar
11 days after completing the service. At least forty-five percent (45%) of the youth shall report abstinence
12 from tobacco and/or vape use six (6) months after completing the service.

13 3. Cessation Promotion Services:

14 a. Set up and maintain 1-866-NEW-LUNG telephone line to receive tobacco and vape
15 cessation calls in the following language: English, Spanish, Vietnamese, Korean and Farsi.
16 Cessation services offered include 1) adult individual counseling; 2) cessation seminars; and 3) five (5)
17 cessation sessions. The line will be available during regular business hours, Monday through Friday, from
18 8:00 am to 5:00 pm. Calls will be tracked by using a "Cessation Line Caller Track Form" to build a
19 database of all calls received by the helpline.

20 b. Recruit and maintain at least three hundred (300) locations annually to provide cessation
21 materials and/or referrals to 1-866-NEW-LUNG line. Locations may include, but are not limited to: health
22 care professionals and/or allied health care professionals, dental offices, educational institutions, work
23 sites, veteran's organizations, lesbian, gay, bisexual, transgender, questioning (LGBTQ) serving
24 organizations, businesses, community organizations, behavioral health facilities, homeless-serving
25 facilities, substance use treatment facilities, sober living facilities and medical facilities that provide
26 services to mothers and/or expectant mothers and youth sites. At least two hundred (200) of these
27 locations will be located in high-priority geographic areas in Orange County designated by TUPP.

28 c. Purchase a minimum of fifteen (15) types of promotional and incentive materials and
29 disseminate at least one thousand (1,000) materials annually, focusing on promotion of the 1-866-NEW-
30 LUNG line and increasing quit attempts of tobacco and/or vape use. These materials shall support the
31 promotion of the other objectives focused on adults and youth. At least eight (8) of the
32 promotional/incentive materials shall be available in the following languages: Spanish, Vietnamese,
33 Korean and Farsi.

34 d. Develop at least one (1) ad annually in each of the following languages - English,
35 Spanish, Vietnamese, Korean, and Farsi - and place ads in local media and/or social media sites annually
36 in high priority cities as designated by TUPP to promote the 1-866-NEW-LUNG line and cessation
37 services aimed at the general public.

1 C. PERFORMANCE OBJECTIVES – PERIODS TWO AND THREE

2 1. The performance objectives and complete actions plans for Periods Two and Three shall be
3 developed in coordination with TUPP staff and will be based upon Period One process outcomes to ensure
4 program's quality and effectiveness. Performance objectives and complete action plans for Period Two
5 and Period Three shall be included in the TUPP Manual.

6 D. MEETINGS

7 1. CONTRACTOR and ADMINISTRATOR shall meet at least once a month to discuss
8 program and strategic issues. ADMINISTRATOR and CONTRACTOR shall agree to the meeting dates
9 in writing.

10 2. CONTRACTOR shall invite ADMINISTRATOR to all regional meetings scheduled by
11 CONTRACTOR.

12 3. CONTRACTOR's Executive Director, Project Coordinator, or designee who has authority
13 to make decisions, shall participate in meetings related to the provision of services pursuant to this
14 Agreement, when requested by ADMINISTRATOR.

15 E. PATENTS AND COPYRIGHT MATERIALS

16 1. Unless otherwise expressly provided in this Agreement, CONTRACTOR shall be solely
17 responsible for clearing the right to use any patented or copyrighted materials in the performance of this
18 Agreement.

19 2. CONTRACTOR agrees that COUNTY shall have a royalty-free, non-exclusive right to use,
20 reproduce, and disseminate all such material.

21 3. CONTRACTOR agrees and does hereby grant to COUNTY for all purposes a royalty-free,
22 non-exclusive and irrevocable license throughout the world to reproduce, to prepare derivative works, to
23 distribute copies, to perform, to display or to otherwise use, duplicate, or dispose of any work, data or
24 material in any manner, which is created, produced, developed, or delivered as part of this Agreement,
25 but which is not considered a "work made for hire." CONTRACTOR agrees that the COUNTY shall
26 have authority to grant such license to others.

27 4. CONTRACTOR agrees that if CONTRACTOR enters into any agreements with other parties
28 to perform the work required under this Agreement, that CONTRACTOR shall require that each
29 agreement include clauses granting COUNTY:

30 a. A royalty-free, non-exclusive, and irrevocable license throughout the world to reproduce,
31 to prepare derivative works, to distribute copies, to perform, to display or to otherwise use, duplicate, or
32 dispose of "works made for hire" or, any work, data or material "not made for hire" under this Agreement.

33 F. CONTRACTOR shall collaborate with tobacco prevention providers funded by COUNTY to
34 promote the activities and services described within this Agreement.

35 G. ADMINISTRATOR may conduct periodic reviews of CONTRACTOR to evaluate performance
36 in meeting the terms of this Agreement. ADMINISTRATOR will notify CONTRACTOR in writing of
37 any issue(s) or concern(s) related to the provision of services pursuant to this Agreement, and may request

1 a plan of corrective action. Corrective action plans may address, but are not limited to performance
2 outcomes, preventative strategies, and/or action plans. CONTRACTOR shall submit a written plan of
3 corrective action for approval within two (2) weeks of request by ADMINISTRATOR. CONTRACTOR
4 may request in advance and in writing, an extension to the due date for a corrective action plan. Approval
5 of the request shall be at the sole discretion of ADMINISTRATOR.

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

11 I. SOCIAL MEDIA - If a project related to social media is to be used, CONTRACTOR shall
12 develop necessary policies and procedures and keep them on file.

13 J. CONTRACTOR agrees to comply with the terms and requirements as directed in the
14 Cessation/Prevention Provider Manual.

15 K. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Services
16 Paragraph to this Exhibit A to the Agreement.

17 18 **VII. STAFFING**

19 A. CONTRACTOR shall provide services pursuant to this Agreement by recruiting, hiring, and
20 maintaining administrative and program staff who have the requisite qualifications and experience to
21 provide tobacco cessation services under this Agreement.

22 B. CONTRACTOR shall perform a pre-employment screening of any person who will provide
23 services pursuant to this Agreement. All staff, including volunteers and interns, shall meet the following
24 requirements prior to providing any service pursuant to this Agreement:

25 1. No person, within the preceding two (2) years, shall have been convicted of any criminal
26 offense other than a traffic violation.

27 2. No person, within the preceding two (2) years, shall have been found guilty of any crime
28 related to the use of drugs or alcohol.

29 3. No person, at any time, shall have been found guilty of any crime involving moral turpitude
30 by a court of law.

31 4. No person shall be on parole or probation.

32 C. All individuals working directly with youth must submit fingerprints and pass a background
33 check, prior to providing services pursuant to this Agreement. CONTRACTOR shall submit to
34 ADMINISTRATOR copies of the results for each individual that has successfully passed the background
35 check. CONTRACTOR shall keep copies for its records.

36 D. All individuals working directly with youth shall obtain an Activity Supervisor Clearance
37 Certificate issued by the Commission on Teacher Credentialing, prior to assuming a paid or volunteer

1 position to supervise, direct, or coach a pupil activity program sponsored by or affiliated with a school
 2 district. The application to obtain a certificate is available at the Commission on Teacher Credentialing
 3 website at <http://www.ctc.ca.gov/credentials/apply.html>. CONTRACTOR shall submit to
 4 ADMINISTRATOR copies of the certificates for each individual who has successfully obtained an
 5 Activity Supervisor Clearance Certificate. Contractor shall keep copies for its records.

6 E. Separate from the Code of Conduct specified in the Compliance Paragraph of this Agreement,
 7 CONTRACTOR shall establish a written Code of Conduct for employees, subcontractors, volunteers,
 8 interns, and the Board of Directors which shall include, but not be limited to, standards related to the use
 9 of drugs and/or alcohol; staff-participant relationships; prohibition of sexual conduct with participants;
 10 and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees,
 11 subcontractors, volunteers, interns, and the Board of Directors shall agree in writing to maintain the
 12 standards set forth in the Code of Conduct.

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

19 G. CONTRACTOR shall, at a minimum, provide the following paid staffing expressed in Full-Time
 20 Equivalent (FTEs), which shall be equal to an average of forty (40) hours of work per week:

<u>POSITION</u>	<u>FTEs</u>
PROGRAM STAFF	
Tobacco Cessation Coordinator	1.00
Tobacco Cessation Specialists	<u>5.90</u>
TOTAL FTEs	6.90

28 H. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours, of
 29 any staffing changes; including vacancies associated with termination, resignation, and/or notice of
 30 resignation; leaves of absence; promotions; temporary FTE changes; and internal or external temporary
 31 staffing assignment requests that occur during the term of the Agreement. CONTRACTOR's notification
 32 to ADMINISTRATOR shall provide appropriate information regarding the staffing change, such as but
 33 not limited to employee name(s), position title(s), date(s) of resignation/separation, date(s) of
 34 hire/promotion, FTE adjustments, leave timeframes/estimates, internships, jobs duties, and description of
 35 recruitment activity for replacement staff.

36 I. CONTRACTOR may augment the above paid staff with volunteers and/or part-time student
 37 interns; provided, however, CONTRACTOR shall provide supervision as specified in the respective job

1 descriptions or work contracts.

2 J. CONTRACTOR shall maintain personnel files for each paid or unpaid staff member, both
3 administrative and programmatic, which shall include as appropriate and applicable, but not be limited to,
4 an application for employment, qualifications for the positions, job description, documentation of
5 bicultural/bilingual capabilities, pay rate, evaluations justifying pay increases, and copies of pertinent
6 training certifications pursuant to the terms of this Agreement.

7 K. EVALUATION – CONTRACTOR shall collaborate with ADMINISTRATOR for the
8 development of evaluation design, evaluation tools, and to create databases.

9 L. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing
10 Paragraph to this Exhibit A to the Agreement.

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1 EXHIBIT B
2 TO AGREEMENT FOR PROVISION OF
3 TOBACCO CESSATION SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 AHMC ANAHEIM REGIONAL MEDICAL CENTER LP
8 JULY 1, 2022 THROUGH JUNE 30, 2025

9
10 **I. BUSINESS ASSOCIATE CONTRACT**

11 **A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

1 respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant
2 to the Agreement.

3 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
30 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
31 and to make information related to such Disclosures available as would be required for COUNTY to
32 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR
33 § 164.528.

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

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

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

7 D. SECURITY RULE

8 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and
9 maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §
10 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
12 CONTRACTOR shall follow generally accepted system security principles and the requirements of the
13 HIPAA Security Rule pertaining to the security of electronic PHI.

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

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

20 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

36 b. Any other information that COUNTY is required to include in the notification to
37 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or

1 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period
2 set forth in 45 CFR § 164.410 (b) has elapsed, including:

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

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

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

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

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

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

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

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

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

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

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

37 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

10 1) The Disclosure is required by law; or

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

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

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

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

22 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
23 required by law.

24 G. OBLIGATIONS OF COUNTY

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

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

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

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

36 H. BUSINESS ASSOCIATE TERMINATION

37 1. Upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the

1 requirements of this Business Associate Contract, COUNTY shall:
2 a. Provide an opportunity for CONTRACTOR to cure the material breach or end the
3 violation within thirty (30) business days; or
4 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure
5 the material breach or end the violation within (30) days, provided termination of the Agreement is
6 feasible.
7 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
8 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or
9 received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.
10 a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents
11 of CONTRACTOR.
12 b. CONTRACTOR shall retain no copies of the PHI.
13 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
14 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
15 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
16 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
17 further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible,
18 for as long as CONTRACTOR maintains such PHI.
19 3. The obligations of this Business Associate Contract shall survive the termination of the
20 Agreement.
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