

1 CONTRACT FOR PROVISION OF  
2 COVID-19 COMMUNITY OUTREACH AND ENGAGEMENT SERVICES  
3 BETWEEN  
4 COUNTY OF ORANGE

5 AND  
6 ORANGE COUNTY ASIAN AND PACIFIC ISLANDER COMMUNITY ALLIANCE, INC.  
7 JULY 1, 2021 THROUGH DECEMBER 31, 2021  
8

9 THIS CONTRACT entered into this July 1, 2021 (effective date), is by and between the COUNTY  
10 OF ORANGE, a political subdivision of State of California (COUNTY), and Orange County Asian and  
11 Pacific Islander Community Alliance, Inc, a California nonprofit corporation (CONTRACTOR).  
12 COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or  
13 collectively as "Parties." This Contract 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:**

17 WHEREAS, on February 26, 2020, the County declared a Local Emergency, and the County's  
18 Health Officer declared a Local Health Emergency in response to COVID-19 emergency and outbreak,  
19 as necessary for the preservation of public health and safety; and

20 WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency in the  
21 State of California concerning the COVID-19 emergency and outbreak; and

22 WHEREAS, on March 12, 2020, Governor Gavin Newsom issued Executive Order N-25-20,  
23 ordering all California residents to heed any orders and guidance of State and local public health  
24 officials, including but not limited to imposition of social distancing measures, to control the spread of  
25 COVID-19; and

26 WHEREAS, on March 18, 2020, the President of the United States proclaimed a national  
27 emergency concerning the COVID-19 outbreak; and

28 WHEREAS, on March 22, 2020, the President of United States declared a major disaster exists in  
29 the State of California and ordered Federal assistance to supplement State and local recovery efforts in the  
30 areas affected by the COVID-19 pandemic; and

31 WHEREAS, the Guide identifies the services/commodities described herein as an eligible cost  
32 during emergencies; and

33 WHEREAS, COUNTY in need of the services/commodities described herein in order to support its  
34 efforts to respond to the COVID-19 pandemic in a manner consistent with the above declarations and  
35 authorities, and any continuing executive orders and declarations as part of the on-going emergencies;  
36 and

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1 WHEREAS, the Guide identifies the services/commodities described herein as an eligible cost  
2 during emergencies; and

3 WHEREAS, Section 601(a) and 601(d) of the Social Security Act, as added by Section 5001 of the  
4 Coronavirus Aid, Relief, and Economic Security Act (CARES Act), provides that payments from the  
5 CARES Act funds may be used to cover certain costs that are necessary expenditures with respect to the  
6 COVID-19 emergency; and

7 WHEREAS, the State of California allocated COVID-19 Epidemiology and Laboratory Capacity  
8 for Prevention and Control of Emerging Infectious Diseases (ELC) Enhancing Detection Expansion  
9 Funding from the Coronavirus Response and Relief Supplemental Appropriations Act of 2021, P.L.  
10 116-260, to provide additional critical support in addressing COVID-19 within Orange County; and

11 WHEREAS, County is in need of the services/commodities described herein in order to support its  
12 efforts to respond to the COVID-19 pandemic in a manner consistent with the above declarations and  
13 authorities, including the CARES Act, and any continuing executive orders and declarations as part of  
14 the on-going emergencies; and

15 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of COVID-19  
16 Community Outreach and Engagement Services described herein to the residents of Orange County; and

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

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

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**REFERENCED CONTRACT PROVISIONS**

**Term:** 07/01/2021-12/31/2021

**Maximum Obligation:** \$1,734,425

**Basis for Reimbursement:** Actual Cost

**Payment Method:** Monthly in Arrears

**CONTRACTOR DUNS Number:** 064521169

**CONTRACTOR TAX ID Number:** 91-2047245

**Notices to COUNTY and CONTRACTOR:**

<p>COUNTY:</p> <p>County of Orange</p> <p>Health Care Agency</p> <p>Contract Services</p> <p>405 West 5th Street, Suite 600</p> <p>Santa Ana, CA 92701-4637</p>	<p>CONTRACTOR:</p> <p>Orange County Asian and Pacific</p> <p>Islander Community Alliance, Inc.</p> <p>12912 Brookhurst St. Ste. 410</p> <p>Garden Grove, CA 92840</p>
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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 Contract:

A. ARRA	American Recovery and Reinvestment Act of 2009
B. CalWORKs	California Work Opportunity and Responsibility for Kids
C. CAP	Corrective Action Plan
D. CCC	California Civil Code
E. CCR	California Code of Regulations
F. CES	Coordinated Entry System
G. CFR	Code of Federal Regulations
H. CHPP	COUNTY HIPAA Policies and Procedures
I. COC	Continuum of Care
J. COI	Certificate of Insurance
K. CPA	Certified Public Accountant
L. DRS	Designated Record Set
M. EEOC	Equal Employment Opportunity Commission
N. EOC	Equal Opportunity Clause
O. FFS	Fee For Service
P. FSC	Family Solutions Collaborative
Q. FTE	Full Time Equivalent
R. GAAP	Generally Accepted Accounting Principles
S. HCA	County of Orange Health Care Agency
T. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
U. HMIS	Homeless Management Information System
V. HSC	California Health and Safety Code
W. HUD	U.S. Department of Housing and Urban Development
X. MH	Mental Health
Y. MHSA	Mental Health Services Act
Z. OCR	Federal Office for Civil Rights
AA. OIG	Federal Office of Inspector General
AB. OMB	Federal Office of Management and Budget
AC. OPM	Federal Office of Personnel Management
AD. P&P	Policy and Procedure
AE. PA DSS	Payment Application Data Security Standard
AF. PATH	Projects for Assistance in Transition from Homelessness
AG. PC	California Penal Code

1	AH. PCI DSS	Payment Card Industry Data Security Standards
2	AI. PHI	Protected Health Information
3	AJ. PII	Personally Identifiable Information
4	AK. PRA	California Public Records Act
5	AL. PSC	Professional Services Contract System
6	AM. SIR	Self-Insured Retention
7	AN. SMA	Statewide Maximum Allowable (rate)
8	AO. SOW	Scope of Work
9	AP. UOS	Units of Service
10	AQ. USC	United States Code
11	AR. WIC	Women, Infants and Children

## 12 **II. ALTERATION OF TERMS**

14 A. This Contract, together with Exhibits A, B, and C attached hereto and incorporated herein by  
15 this reference, fully express the complete understanding of COUNTY and CONTRACTOR with respect  
16 to the services and obligations under this Contract.

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

## 21 **III. ASSIGNMENT OF DEBTS**

23 Unless this Contract is followed without interruption by another Contract between the Parties hereto  
24 for the same services and substantially the same scope, at the termination of this Contract,  
25 CONTRACTOR shall assign to COUNTY any debts owed to CONTRACTOR by or on behalf of  
26 persons receiving services pursuant to this Contract. CONTRACTOR shall immediately notify by mail  
27 each of the relevant Parties, specifying the date of assignment, the County of Orange as assignee, and  
28 the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf  
29 of said persons, shall be immediately given to COUNTY.

## 30 **IV. COMPLIANCE**

32 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established certain policies and  
33 procedures regarding a Compliance Program and Code of Conduct, and offers Annual Provider  
34 Trainings (together, "Compliance Program") for the purpose of ensuring adherence to all rules and  
35 regulations related to federal and state service programs.

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1           1. ADMINISTRATOR shall provide CONTRACTOR a copy of the policies and procedures  
2 relating to ADMINISTRATOR's Compliance Program for CONTRACTOR to implement and comply  
3 with in relation to Covered Individuals performing services under this Contract.

4           2. CONTRACTOR has the option to develop and provide, or make available to,  
5 ADMINISTRATOR copies of its own Compliance Program policies and procedures.  
6 CONTRACTOR's Compliance Program policies and procedures shall be verified by  
7 ADMINISTRATOR's Compliance Department to ensure they include all required elements of the  
8 ADMINISTRATOR's Compliance Program as described in this Compliance Paragraph to this Contract  
9 prior to implementation. These elements include:

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

17           3. If CONTRACTOR does not provide, or make available to ADMINISTRATOR, copies of  
18 its own Compliance Program policies and procedures, CONTRACTOR shall comply with  
19 ADMINISTRATOR's Compliance Program in performing the services hereunder, and shall submit to  
20 the ADMINISTRATOR within thirty (30) calendar days of execution of this Contract a signed  
21 acknowledgement that CONTRACTOR will internally comply with ADMINISTRATOR's Compliance  
22 Program. CONTRACTOR shall have as many Covered Individuals as it determines necessary,  
23 complete ADMINISTRATOR's annual compliance training to ensure proper compliance.

24           4. If CONTRACTOR elects to have its own Compliance Program, then CONTRACTOR shall  
25 submit, or make available to ADMINISTRATOR copies of that Compliance Program policies and  
26 procedures within thirty (30) calendar days of execution of this Contract. ADMINISTRATOR's  
27 Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not  
28 exceed forty-five (45) calendar days, and determine if CONTRACTOR's proposed Compliance  
29 Program contains all required elements to the ADMINISTRATOR's satisfaction as consistent with the  
30 HCA's Compliance Program. ADMINISTRATOR shall inform CONTRACTOR of any missing  
31 required elements and CONTRACTOR shall revise its Compliance Program to meet  
32 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's  
33 Compliance Officer's determination and resubmit the same to ADMINISTRATOR for review.

34           5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the  
35 CONTRACTOR's Compliance Program contains all required elements, CONTRACTOR shall ensure  
36 that all Covered Individuals relative to this Contract are made aware of CONTRACTOR's Compliance  
37 Program and contact information for the ADMINISTRATOR's Compliance Program.



1 B. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General  
2 Compliance Training available to Covered Individuals.

3 1. CONTRACTORS that have acknowledged that they will comply with  
4 ADMINISTRATOR's Compliance Program shall use their best efforts to encourage completion by all  
5 Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one  
6 (1) designated representative to complete ADMINISTRATOR's General Compliance Training when  
7 offered.

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

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

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

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

17 C. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized  
18 Provider Training, where appropriate, available to Covered Individuals.

19 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered  
20 Individuals relative to this Contract. This includes compliance with federal and state program  
21 regulations and procedures or instructions otherwise communicated by regulatory agencies.

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

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

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

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

31 D. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a  
32 breach of the Contract on the part of CONTRACTOR and be grounds for COUNTY to terminate the  
33 Contract.

#### 34 **V. CONFIDENTIALITY**

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

1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Contract are Participants of COVID-19 Outreach and Engagement Services, and therefore it may be necessary for authorized staff of ADMINISTRATOR to audit Participants files, or to exchange information regarding specific Participants with COUNTY or other providers of related services contracting with COUNTY.

2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Contract.

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

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

## **VI. CONFLICT OF INTEREST**

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

## **VII. CORRECTIVE ACTION PLAN**

A. CONTRACTOR shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within an acceptable timeframe as determined by ADMINISTRATOR notice, ADMINISTRATOR reserves the right to reduce and/or withhold payments until such time as the CAP is resolved to the satisfaction of the ADMINISTRATOR. Failure to resolve the CAP to ADMINISTRATOR's satisfaction will constitute a material breach and be grounds for termination of this Contract.

### **VIII. COST REPORT**

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

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

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

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

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

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

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

C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set forth in the Referenced Contract Provisions of this Contract. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and

COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

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

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

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

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

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

#### **IX. DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONTRACTOR certifies that it and its principals:

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

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

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

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

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

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

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

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

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

B. CONTRACTOR agrees that if there is an assignment of this Contract by CONTRACTOR, as defined below, prior to completion of this Contract, and COUNTY agrees to such assignment, the new owners shall be required under the terms of sale or such other instruments of transfer for the assignment to assume CONTRACTOR's duties and obligations contained in this Contract and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the assignment. COUNTY reserves the right to immediately terminate the Contract in the event COUNTY determines,

1 in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to COUNTY for the  
 2 provision of services under the Contract. Any attempted assignment in derogation of this subparagraph  
 3 shall be void.

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

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

15 3. Governmental Entity Assignment. If CONTRACTOR is a governmental organization, any  
 16 change to another structure, including a change in more than fifty percent (50%) of the composition of  
 17 its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month  
 18 period of time, shall be deemed an assignment for purposes of this paragraph.

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

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

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

32 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY  
 33 pursuant to this Contract.

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

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

D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's status with respect to a mere name change. CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR's performance under the Contract, as well as any potential conflicts of interest between CONTRACTOR and County that may arise prior to or during the period of Contract performance.

## **XI. DISPUTE RESOLUTION**

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

1. CONTRACTOR shall submit to the County Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract.

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

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Contract, including the provision of services. CONTRACTOR's failure to proceed diligently shall constitute a material breach and be grounds for termination of this Contract.

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

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

1 agree to waive any and all rights to request that an action be transferred for adjudication to another  
2 county.

### 3 **XII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

### 14 **XIII. EQUIPMENT**

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

26 B. CONTRACTOR shall obtain ADMINISTRATOR's written approval prior to purchase of any  
27 Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, CONTRACTOR  
28 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting  
29 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.  
30 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each  
31 purchased asset in an Equipment inventory.

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

36 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part  
37 with funds paid through this Contract, including date of purchase, purchase price, serial number, model



1 and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall  
2 include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if  
3 any.

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

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

11 G. Unless this Contract is followed without interruption by another Contract between the Parties  
12 for substantially the same type and scope of services, at the termination of this Contract for any cause,  
13 CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this  
14 Contract.

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

#### 17 18 **XIV. FACILITIES, PAYMENTS AND SERVICES**

19 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance  
20 with this Contract. COUNTY shall compensate, and authorize, when applicable, said services.  
21 CONTRACTOR shall operate continuously throughout the term of this Contract with at least the  
22 minimum number and type of staff which meet applicable federal and state requirements, and which are  
23 necessary for the provision of the services hereunder. Service disruptions must be reported to COUNTY  
24 immediately and be approved in writing by the ADMINISTRATOR

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

#### 29 30 **XV. INDEMNIFICATION AND INSURANCE**

31 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,  
32 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special  
33 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board  
34 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,  
35 including but not limited to personal injury or property damage, arising from or related to the services,  
36 products or other performance provided by CONTRACTOR pursuant to this Contract. If judgment is  
37 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the

1 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and  
 2 COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall  
 3 request a jury apportionment.

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

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

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

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

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

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

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

36 F. QUALIFIED INSURER

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles (4 passengers or less)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made

#### H. REQUIRED COVERAGE FORMS

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

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

#### I. REQUIRED ENDORSEMENTS

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

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

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

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

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

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

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

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

L. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

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

N. If CONTRACTOR's Network Security & Privacy Liability is a "Claims Made" policy, CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Contract.

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

P. Insurance certificates should be forwarded to COUNTY at the address specified in the Referenced Contract Provisions of this Contract.

Q. If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/departments purchasing division, the Contract may be terminated by County without penalty.

R. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or

1 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to  
2 adequately protect COUNTY.

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

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

11 U. SUBMISSION OF INSURANCE DOCUMENTS

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

13 a. Prior to the start date of this Contract.

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

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

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

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

22 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
23 pursuant to any and all Contracts between COUNTY and CONTRACTOR until such time that the  
24 required COI and endorsements that meet the insurance provisions stipulated in this Contract are  
25 submitted to ADMINISTRATOR.

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

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

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

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## **XVI. INSPECTIONS AND AUDITS**

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Comptroller General of the United States, or any other of their authorized representatives, shall to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, and Participant records, of CONTRACTOR that are directly pertinent to this Contract, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which they are provided.

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

### **C. AUDIT RESPONSE**

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

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

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

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

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## **XVII. LICENSES AND LAWS**

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

B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. The applicable provisions of laws, regulations, and requirements for the provision of services under this Contract shall include, but not be limited to, the following:

1. ARRA of 2009.
2. Trafficking Victims Protection Act of 2000.
3. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
4. CCR, Title 9, Rehabilitative and Developmental Services.
5. CCR, Title 17, Public Health.
6. CCR, Title 22, Social Security.
7. CFR, Title 42, Public Health.
8. CFR, Title 45, Public Welfare.
9. USC Title 42. Public Health and Welfare.
10. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
11. 42 USC §1857, et seq., Clean Air Act.
12. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
13. 31 USC 7501.70, Federal Single Audit Act of 1984.
14. McKinney-Vento Homeless Assistance Act
15. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Contract must be approved at least thirty (30) business days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Contract, distribution of written

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1 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,  
2 and electronic media such as the Internet.

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

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

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

#### 18 19 **XIX. MAXIMUM OBLIGATION**

20 A. The Maximum Obligation of COUNTY for services provided in accordance with this Contract  
21 is as specified in the Referenced Contract Provisions of this Contract.

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

#### 24 25 **XX. MINIMUM WAGE LAWS**

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

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

35 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,  
36 where applicable, shall comply with the prevailing wage and related requirements, as provided for in  
37 //



1 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the  
2 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

## 4 **XXI. NONDISCRIMINATION**

### 5 **A. EMPLOYMENT**

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

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

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

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

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

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

37 //

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

- 14 1. Denying a Participant or potential Participant any service, benefit, or accommodation.
- 15 2. Providing any service or benefit to a Participant which is different or is provided in a  
 16 different manner or at a different time from that provided to other Participants.
- 17 3. Restricting a Participant in any way in the enjoyment of any advantage or privilege enjoyed  
 18 by others receiving any service and/or benefit.
- 19 4. Treating a Participant differently from others in satisfying any admission requirement or  
 20 condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
 21 any service and/or benefit.
- 22 5. Assignment of times or places for the provision of services.

23 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all  
 24 Participants through a written statement that CONTRACTOR's and/or subcontractor's Participants may  
 25 file all complaints alleging discrimination in the delivery of services with CONTRACTOR,  
 26 subcontractor, and ADMINISTRATOR.

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

31 a. COUNTY shall establish a formal resolution and grievance and appeals process in the  
 32 event informal processes do not yield a resolution.

33 b. Throughout the problem resolution and grievance and appeals process, Participant  
 34 rights shall be maintained, including access to the COUNTY's grievance and appeals process at any  
 35 point in the process.

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2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, has the right to request a State Fair Hearing.

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

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

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

## **XXII. NOTICES**

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

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

2. When faxed, transmission confirmed;

3. When sent by E-Mail; or

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

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

C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such

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occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

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

### **XXIII. NOTIFICATION OF DEATH**

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

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

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

#### **2. WRITTEN NOTIFICATION**

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

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

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

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

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

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

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

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## **XXV. PARTICIPANT'S RIGHTS**

A. CONTRACTOR shall post the current HMIS privacy notice as well as the Orange County Continuum of Care Grievance and Appeals poster in locations readily available to Participants and staff. Grievance and Appeal forms must be available in the threshold languages and envelopes must be readily accessible to Participants to take without having to request the form or envelope.

B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an internal grievance and appeals processes approved by ADMINISTRATOR, to which the participant shall have access.

1. CONTRACTOR's grievance and appeals processes shall incorporate COUNTY's grievance, appeals, participants' rights, and/or utilization management guidelines and procedures. The participant has the right to utilize either or both grievance and appeals process(es) simultaneously in order to resolve their dissatisfaction.

C. The Parties agree that Participants have recourse to initiate an expression of dissatisfaction to CONTRACTOR, file a grievance, file an appeal, and file a complaint.

## **XXVI. PAYMENT CARD COMPLIANCE**

Should CONTRACTOR conduct credit/debit card transactions in conjunction with their business with COUNTY, on behalf of COUNTY, or as part of the business that they conduct, CONTRACTOR covenants and warrants that it is currently PA DSS and PCI DSS compliant and will remain compliant during the entire duration of this Contract. CONTRACTOR agrees to immediately notify COUNTY in the event CONTRACTOR should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) business days of the commencement of any such interruption. Upon demand by COUNTY, CONTRACTOR shall provide to COUNTY written certification of CONTRACTOR's PA DSS and/or PCI DSS compliance.

## **XXVII. RECORDS MANAGEMENT AND MAINTENANCE**

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

1. CONTRACTOR shall maintain records that are adequate to substantiate the services for which claims are submitted for reimbursement under this Contract and the charges thereto. Such records shall include, but not be limited to, individual housing plans, case management plans and utilization review records.

2. CONTRACTOR shall keep and maintain records of each service rendered to each participant, the identity of the participant to whom the service was rendered, the date the service was rendered, and such additional information as ADMINISTRATOR may require.

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1           3. CONTRACTOR shall maintain books, records, documents, accounting procedures and  
2 practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature  
3 claimed to have been incurred in the performance of this Contract and in accordance with County  
4 policies of reimbursement and GAAP.

5           B. CONTRACTOR shall implement and maintain acceptable administrative, technical and  
6 physical safeguards to ensure the privacy and security of health related and/or personally identifying  
7 information CONTRACTOR collects from participants. If there is an unauthorized use of disclosure of  
8 participant's health related and/or personally identifying information in possession of CONTRACTOR,  
9 CONTRACTOR shall (i) immediately notify ADMINISTRATOR of such unauthorized use of  
10 disclosure and (ii) mitigate, to the extent practicable, the known harmful effect of any such unauthorized  
11 use or disclosure.

12           C. CONTRACTOR's participant records shall be maintained in a secure manner. CONTRACTOR  
13 shall maintain participant records and must establish and implement written record management  
14 procedures.

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

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

23           F. To the extent CONTRACTOR is subject to PRA, CONTRACTOR shall notify  
24 ADMINISTRATOR of any PRA requests related to, or arising out of, this Contract, within forty-eight  
25 (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the  
26 PRA request.

27           G. CONTRACTOR may retain participant documentation electronically in accordance with the  
28 terms of this Contract and common business practices. If documentation is retained electronically,  
29 CONTRACTOR shall, in the event of an audit or site visit:

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

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

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

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37 //

**XXVIII. RESEARCH AND PUBLICATION**

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

**XXIX. REVENUE**

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

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

C. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by persons other than individuals or groups eligible for services pursuant to this Contract.

**XXX. SEVERABILITY**

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

**XXXI. SPECIAL PROVISIONS**

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

1. Making cash payments to intended recipients of services through this Contract.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.

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

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

7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at [www.opm.gov](http://www.opm.gov).

8. Severance pay for separating employees.

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

10. Supplanting current funding for existing services.

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

1. Funding travel or training (excluding program-related mileage or parking).

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

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

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

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

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

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

8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's Participants outside of program Scope of Services.

## **XXXII. STATUS OF CONTRACTOR**

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



course and scope of their employment. CONTRACTOR, its agents, employees, consultants, volunteers, interns, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

### **XXXIII. TERM**

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

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

### **XXXIV. TERMINATION**

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

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

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

#### **C. CONTINGENT FUNDING**

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

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

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

D. In the event this Contract is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its sole discretion, reduce the Not To Exceed Amount of this Contract to be consistent with the reduced term of the Contract.

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

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

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

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

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

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

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

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

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

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

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1                                   **XXXV. THIRD PARTY BENEFICIARY**

2           Neither Party hereto intends that this Contract shall create rights hereunder in third parties  
3 including, but not limited to, any subcontractors or any Participants provided services pursuant to this  
4 Contract.

5                                   **XXXVI. WAIVER OF DEFAULT OR BREACH**

6           Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any  
7 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this  
8 Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any  
9 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this  
10 Contract.

11  
12                                   **XXXVII. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

13           (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract  
14 work which may require or involve the employment of laborers or mechanics shall require or permit any  
15 such laborer or mechanic in any workweek in which he or she is employed on such work to work in  
16 excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate  
17 not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in  
18 such workweek.

19           (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the  
20 clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor  
21 shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the  
22 United States (in the case of work done under contract for the District of Columbia or a territory, to such  
23 District or to such territory), for liquidated damages. Such liquidated damages shall be computed with  
24 respect to each individual laborer or mechanic, including watchmen and guards, employed in violation  
25 of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which  
26 such individual was required or permitted to work in excess of the standard workweek of forty hours  
27 without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

28           (3) *Withholding for unpaid wages and liquidated damages.* The County shall upon its own action or  
29 upon written request of an authorized representative of the Department of Labor withhold or cause to be  
30 withheld, from any moneys payable on account of work performed by the contractor or subcontractor  
31 under any such contract or any other Federal contract with the same prime contractor, or any other  
32 federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held  
33 by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities  
34 of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause  
35 set forth in paragraph (2) of this section.

36           (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set  
37 forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to

1 include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for  
 2 compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1)  
 3 through (4) of this section.

#### 5 **XXXVIII. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL**

##### 6 **ACT**

##### 7 **Clean Air Act**

8 1. The Contractor agrees to comply with all applicable standards, orders or regulations issued  
 9 pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

10 2. The Contractor agrees to report each violation to the County and understands and agrees  
 11 that the County will, in turn, report each violation as required to assure notification to the Federal  
 12 Emergency Management Agency, and the appropriate Environmental Protection Agency Regional  
 13 Office.

14 3. The Contractor agrees to include these requirements in each subcontract exceeding  
 15 \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### 16 **Federal Water Pollution Control Act**

17 1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued  
 18 pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

19 2. The Contractor agrees to report each violation to the County and understands and agrees  
 20 that the County will, in turn, report each violation as required to assure notification to the Federal  
 21 Emergency Management Agency, and the appropriate Environmental Protection Agency Regional  
 22 Office.

23 3. The Contractor agrees to include these requirements in each subcontract exceeding  
 24 \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### 26 **XXXIX. SUSPENSION AND DEBARMENT**

27 (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As  
 28 such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. §  
 29 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or  
 30 disqualified (defined at 2 C.F.R. § 180.935).

31 (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C,  
 32 and must include a requirement to comply with these regulations in any lower tier covered transaction it  
 33 enters into.

34 (3) This certification is a material representation of fact relied upon by County. If it is later  
 35 determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,  
 36 subpart C, in addition to remedies available to County, the Federal Government may pursue available  
 37 remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **XL. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. Contractor must execute the certification, as provided in Attachment C.

#### **XLI. PROCUREMENT OF RECOVERED MATERIALS**

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

1. Competitively within a timeframe providing for compliance with the contract performance schedule;

2. Meeting contract performance requirements; or

3. At a reasonable price.

ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **XLII. ACCESS TO RECORDS**

(1) The Contractor agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**XLIII. DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**XLIV. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**XLV. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

**XLVI. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

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

3  
4 ORANGE COUNTY ASIAN AND PACIFIC ISLANDER COMMUNITY ALLIANCE, INC.

5  
6  
7 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

8  
9 TITLE: \_\_\_\_\_

10  
11 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

12  
13 TITLE: \_\_\_\_\_

14  
15  
16  
17 COUNTY OF ORANGE

18  
19  
20 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

21 HEALTH CARE AGENCY

22  
23  
24  
25  
26 APPROVED AS TO FORM

27 OFFICE OF THE COUNTY COUNSEL

28 ORANGE COUNTY, CALIFORNIA

29  
30  
31 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

32 DEPUTY

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

EXHIBIT A  
TO THE CONTRACT FOR PROVISION OF  
COVID-19 COMMUNITY OUTREACH AND ENGAGEMENT SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
ORANGE COUNTY ASIAN AND PACIFIC ISLANDER COMMUNITY ALLIANCE, INC.  
JULY 1, 2021 THROUGH DECEMBER 31, 2021

**I. BUDGET**

A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this Exhibit A to the Agreement and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

	<u>TOTAL</u>
<b>ADMINISTRATION COSTS</b>	
—Indirect Costs	<u>\$157,675</u>
<b>SUBTOTAL</b>	<b>\$157,675</b>
<b>ADMINISTRATION COSTS</b>	
<b>PROGRAM COSTS</b>	
—Salaries	\$182,486
—Benefits	\$47,444
—Subcontractors	\$1,140,000
—Supplies	\$6,100
—Lease	\$15,000
—Communications & Media	\$42,000
<b>Buys</b>	
—Printing	\$12,000
—Training for 200 CHA	\$100,000
—Travel/Mileage	\$6,720
—Consultant	\$25,000
<b>SUBTOTAL PROGRAM COSTS</b>	<b>\$1,576,750</b>
<b>TOTAL GROSS COSTS</b>	<b>\$1,734,425</b>
<b>TOTAL REVENUE</b>	<b>\$1,734,425</b>



**TOTAL MAXIMUM  
OBLIGATION** **\$1,734,425**

<u>TOTAL</u>
<u>ADMINISTRATION COSTS</u>
Indirect Costs <u>\$294,040</u>
<u>SUBTOTAL ADMINISTRATION</u>
<u>COSTS</u> <u>\$294,040</u>
<u>PROGRAM COSTS</u>
Salaries <u>\$381,351</u>
Benefits <u>\$99,149</u>
Subcontractors <u>\$2,180,000</u>
Supplies <u>\$10,100</u>
Lease <u>\$30,000</u>
Communications & Media <u>\$55,000</u>
Buys <u>\$15,000</u>
Printing <u>\$130,000</u>
Training for CHA <u>\$14,785</u>
Travel/Mileage <u>\$25,000</u>
Consultant <u>\$2,940,385</u>
<u>SUBTOTAL PROGRAM COSTS</u> <u>\$2,940,385</u>
<u>TOTAL GROSS COSTS</u> <u>\$3,234,425</u>
<u>TOTAL REVENUE</u> <u>\$3,234,425</u>
<u>TOTAL AMOUNT NOT TO</u>
<u>EXCEED</u> <u>\$3,234,425</u>

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

1 from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to  
 2 obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification  
 3 Request(s) may result in disallowance of those costs.

4 C. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete  
 5 financial records of its cost and operating expenses. Such records will reflect the actual cost of the type  
 6 of service for which payment is claimed. Any apportionment of or distribution of costs, including  
 7 indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and will  
 8 be made in accordance with GAAP.

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

## 11 **II. PAYMENTS**

12  
 13 A. COUNTY shall pay CONTRACTOR monthly upon receipt of an approved invoice and  
 14 Expenditure and Revenue Report. All payments are interim payments only, and subject to Final  
 15 Settlement in accordance with the Cost Report Paragraph of the Agreement for which CONTRACTOR  
 16 shall be reimbursed for the actual cost of providing the services hereunder; provided, however, the total  
 17 of such payments do not exceed the Maximum Obligation as specified in the Referenced Contract  
 18 Provisions of the Agreement, and provided further, CONTRACTOR's costs are reimbursable pursuant  
 19 to COUNTY, state, and federal regulations. ADMINISTRATOR may, at its discretion, pay  
 20 supplemental invoices for any month for which the provisional amount specified above has not been  
 21 fully paid.

22 1. In support of the monthly invoices, CONTRACTOR shall submit an Expenditure and  
 23 Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement.  
 24 ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to  
 25 CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

26 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 27 provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may  
 28 reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the  
 29 year-to-date provisional amount payments to CONTRACTOR's and the year-to-date actual cost  
 30 incurred by CONTRACTOR.

31 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 32 provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR  
 33 may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to  
 34 exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and  
 35 the year-to-date actual cost incurred by CONTRACTOR.

36 B. CONTRACTOR's invoicing shall be on a form approved or supplied by ADMINISTRATOR  
 37 and provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th)

day of each month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice.

C. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Agreement.

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

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

### **III. REPORTS**

A. CONTRACTOR shall maintain records and make statistical reports as required by ADMINISTRATOR.

#### **B. FISCAL**

1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will report actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. The reports will be received by ADMINISTRATOR no later than the twentieth (20th) day following the end of the month being reported. CONTRACTOR must request in writing any extensions to the due date of the monthly required reports. If an extension is approved by ADMINISTRATOR, the total extension will not exceed more than five (5) calendar days.

2. CONTRACTOR shall submit monthly Year-End Projection Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will report anticipated year-end actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. Such reports will include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. Year-End Projection Reports will be submitted in conjunction with the Monthly Expenditure and Revenue Reports.

C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will, at a minimum, report the actual FTEs of the positions stipulated in the Staffing Paragraph of this Exhibit A to the Agreement and will include the employees' names, licensure status, monthly salary, hire and/or

1 termination date and any other pertinent information as may be required by ADMINISTRATOR. The  
 2 reports will be received by ADMINISTRATOR no later than twenty (20) calendar days following the  
 3 end of the month being reported. If an extension is approved by ADMINISTRATOR, the total  
 4 extension will not exceed more than five (5) calendar days.

5 D. PROGRAMMATIC – CONTRACTOR may be required to submit weekly and/or monthly  
 6 reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by,  
 7 ADMINISTRATOR. ADMINISTRATOR may request additional program reports of CONTRACTOR  
 8 in order to determine the quality and nature of services provided hereunder. ADMINISTRATOR will  
 9 be specific as to the nature of information requested and may allow up to thirty (30) calendar days for  
 10 CONTRACTOR to respond to request.

11 E. ADDITIONAL REPORTS – CONTRACTOR shall submit additional reports as reasonably  
 12 required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the duties and  
 13 purposes contained in the Agreement. ADMINISTRATOR will provide CONTRACTOR with at least  
 14 thirty (30) calendar days' notice if such additional reports are required and shall explain any procedures  
 15 for reporting the required information.

16 F. CONTRACTOR shall report all special incidents to ADMINISTRATOR and shall submit a  
 17 written Special Incident Report in accordance with the Notices Paragraph of the Agreement. Special  
 18 incidents shall include, but are not limited to, Participant's suicide or attempted suicide, serious injury,  
 19 death, criminal behavior, or any other incident which may expose COUNTY or CONTRACTOR to  
 20 liability.

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

## 23 **IV. SERVICES**

### 24 **A. SCOPE OF SERVICES**

#### 25 **1. Overview**

26 a. The goal of this initiative is to increase community understanding and engagement in  
 27 public health including COVID-19 vaccines, testing, case interviews, contact tracing, and other COVID-  
 28 19 topics among the vulnerable population. Contractor is encouraged to reach diverse communities  
 29 within the primary audience(s) for community engagement must include one or more of the priority  
 30 populations established in conjunction with OCHCA following a national/state/local guideline for equity  
 31 and equality.

#### 32 **2. Program Description Summary**

33 a. County requires Contractor that shall use culturally relevant, linguistically appropriate,  
 34 and timely community engagement activities to learn about community questions and needs related to  
 35 public health initiatives; work with HCA and its partners to address those community needs; and  
 36

37 //

1 connect communities to information and resources related to COVID-19 vaccines, testing, case  
2 interviews, contact tracing, and other public health topics.

3 b. CONTRACTOR, pursuant to requirements set forth in this Scope of Services shall  
4 provide COVID-19 Community Outreach and Engagement to individuals in the Orange County  
5 community to help mitigate the threat of COVID-19.

#### 6 B. TARGET POPULATION AND ELIGIBILITY REQUIREMENTS

7 1. The CONTRACTOR shall serve vulnerable populations in the County of Orange which  
8 include, but is not limited to:

9 a. Culturally specific communities (ie. LatinX, Asian, Black, Native Americans, Native  
10 Hawaiians, and Pacific Islanders)

11 b. Undocumented individuals;

12 c. Low-income/economically disadvantaged individuals;

13 d. Tribes/Indigenous People;

14 e. Geographically and culturally isolated individuals;

15 f. Chronically-ill and/or Disabled; and

16 g. Sexual and gender minorities, including the LGBTQ+ population

17 2. The CONTRACTOR is to confirm eligibility and review of supporting forms for  
18 Participants to ensure they meet the eligible criteria as established by the COUNTY.

#### 19 D. PROGRAM DESCRIPTION

##### 20 1. Essential Requirements

21 a. Outreach: CONTRACTOR shall promote and publicize public health initiatives  
22 including COVID-19 prevention, testing and vaccination within the priority population through various  
23 culturally responsive approaches that meet the needs of the prioritized populations, which may include  
24 media and social media, telephonic contacts, population-specific messaging, place of worships, in-  
25 person individual or small group events, virtual workshops gatherings, and door-to-door or  
26 neighborhood-based outreach. Messaging shall be aligned with OCHCA guidelines. Contractor should  
27 collaborate with the HCA to develop and or review materials to be used for campaigns and education,  
28 providing feedback on materials developed by the County within a mutually agreeable timeframe and  
29 desired frequency. Written and verbal communications shall be available (minimally) in English,  
30 Spanish and Vietnamese, Chinese (traditional), Arabic, Korean and Farsi. County can assist with  
31 translation. Contractor will notify the Health Care Agency about any promotional materials, media  
32 inquiries or other public communication, including communication with elected officials in a timely  
33 manner. Contractor shall implement a dedicated telephone line to facilitate outreach efforts.

34 b. Engagement: CONTRACTOR shall use existing networks, community leaders, faith  
35 leaders, community health professionals, and others to engage communities. Engagement services are  
36 intended to ensure equitable access to public health resources, COVID-19 testing and/or vaccination

37 //

1 services and navigating community residents through pre, during and post- testing and vaccination  
2 processes.

3 1) Directly register and collect required demographics of those meeting the specific  
4 eligibility and prioritized individuals; to be coordinated and mutually agreed upon with HCA.

5 2) Use HCA's preferred virtual scheduling system and/or other registration platforms  
6 as identified by County to complete registration process.

7 3) Provide support in rectifying any errors identified by County and/or its scheduling  
8 system service provider.

9 4) If appropriate, assist in reminders including continued preventive measure  
10 practices, second dose vaccine appointments, and encouraging use of social support services.

11 5) Provide or facilitate translation and/or interpretation support services for the  
12 purpose of communicating with ethnic and non- or limited-English speaking communities to provide  
13 literacy, language assistance and setting up user accounts to access testing and vaccination services.

14 6) Collaborate with HCA partners utilizing all options available (walk-up, drive-thru,  
15 community clinics, home test kits, rapid testing, etc.) to ensure prioritized populations receive access to  
16 public health resources such as COVID-19 testing and vaccinations.

17 c. Education: Contractor shall provide education services shall include, but not limited to  
18 the verbal education, dissemination of educational written materials and demonstrations (e.g. healthy  
19 hygiene, proper hand washing, wearing mask correctly, sanitation technique, etc.) on topics to help  
20 promote welfare, protect spread of disease and hazards and ensure access to health including but not  
21 limited to when, where and how to seek services and addressing fears and reducing stigma. Topics  
22 include, but is not limited to, the following:

23 1) Prevention, good hygiene and infection control;  
24 2) Testing and treatment for COVID-19;  
25 3) Household, schools and workplace safety;  
26 4) Health literacy including infection identification, interventions and mitigation;  
27 5) Social services and community resources including assistance available for  
28 quarantine or isolation if one cannot safely quarantine or isolate at home;

29 6) Importance of contact tracing (including addressing any concerns related to contact  
30 tracing); and

31 7) General FAQs.

32 d. Social Support: CONTRACTOR shall provide referral for and linkage to services  
33 which shall include, but is not limited to the following:

34 1) Identifying social needs;  
35 2) Testing and vaccination services;  
36 3) Mental health services to address any concerns related to emotional wellbeing;  
37 4) Social support services to include isolation and quarantine support and planning

1 (e.g. transportation, food essentials, financial assistance, temporary housing referrals, etc.);

2 5) Contract tracing support services including gathering contact with whom they have  
3 interacted with, addressing concerns/fears and identifying potential close contact/exposure;

4 6) General medical supports if individual experience adverse side effects after  
5 vaccination;

6 7) Providing assistance to help link individual experience adverse side effects after  
7 vaccination;

8 8) Provide emotional accompaniment through the outreach, engagement and  
9 education process;

10 9) Follow-up services for individuals or families who appear to have symptoms or are  
11 known to have testing positive for COVID-19, including but not limited to:

12 a) Confirm testing for those who are symptomatic.

13 b) Confirm linkage to referrals made.

14 c) Remind individuals/families about quarantine and isolation.

15 d) Assessing additional referral needs.

16 e. Program and Services: CONTRACTOR shall provide medical and non-medical  
17 services and programs to improve health outcomes of the vulnerable populations.

18 1) Contractor is solely responsible for the program and services and assuring all  
19 services are compliant with laws and public health and medical standards.

20 2) Contractor will provide properly licensed and qualified medical, administrative and  
21 support staff in an amount sufficient enough to assure high quality services to be provided in a  
22 consistent and safe manner

23 3) Contractor will assure proper consenting of patients and required notification are  
24 provided to patients

25 4) Any unforeseen circumstances causing a disruption in services should be reported  
26 immediately to the partners and CONTRACTOR shall notify anyone with an impacted appointment as  
27 soon as possible to reschedule them to the extent possible.

28 f. Collaborative and Capacity Building: CONTRACTOR shall convene a broad and  
29 diverse public/private cross-sector coalition of community-based, faith-based, and grassroots  
30 organizations with community leaders and other stakeholders to respond to and prepare for emerging  
31 COVID-19 challenges, including issues of disparities and inequities. CONTRACTOR shall identify  
32 these community partners, their needs, and assets. CONTRACTOR shall participate in calls to receive  
33 updated COVID-19 information, relay community needs and questions to the County, and strategize  
34 about community engagement work. Contractor shall be responsible for implementation of trainings  
35 and guidance on how to outreach, educate, encourage testing and vaccination, and provide support with  
36 resources. CONTRACTOR shall disseminate training resources and supports to community partners

37 //

1 and organizations. CONTRACTOR shall consistently invite and engage with organizations typically  
2 not engaged with the County to broaden reach into the most vulnerable and impacted communities.

3 g. Changes to the Scope of Work: Any substantive changes to scheduling, capacity,  
4 service model, programs and services, registration processes, staffing composition, and any other factor  
5 with potential to impact the quality or quantity of services, need to be agreed to by both parties prior to  
6 implementation. The County reserves the right to terminate the agreement immediately for any  
7 violation of the agreement deemed by the County to create risk to the public or County. Any  
8 substantive changes to funding availability that threaten the ability of Contractor to perform agreed upon  
9 services shall be discussed immediately with the County and Contractor may terminate services with  
10 less than two weeks' notice, if needed. HCA reserves the right to make minor adjustments and adjust  
11 priority populations and add miscellaneous services upon mutual agreement by both parties. No  
12 material adjustments made to the Scope of Work will be authorized without prior written approval of the  
13 County. Non-material adjustments may be made with the written, including email, approval of the  
14 County assigned Deputy Purchasing Agent.

15 h. Contractor shall target the vulnerable zip codes listed in Attached E to address health  
16 inequities and obtain vaccinations, provide tests, and education and support to vulnerable populations as  
17 identified by the COUNTY.

#### 18 E. PERFORMANCE MEASURES AND MONITORING

19 1. The following performance measures will be a requirement of this Contract.

20 a. CONTRACTOR will encourage ongoing collaborations between a multiple  
21 community-based organizations and community-led groups with shared interest in public health issues

22 b. COUNTY in coordination with the CONTRACTOR will conduct on-site or virtual  
23 visits or desk monitoring to ensure programmatic compliance at least once during the contract term.  
24 Monitoring visits may include, but are not limited to:

25 1) Review of client file documentation including patient impact case studies  
26 2) Review of policies and procedures and consistent adherence to PROGRAM  
27 practices

28 3) Interviews with program staff  
29 4) Expenditures and Revenue reports along with supplemental documentation

30 c. Contractor will achieve the following performance outcomes for the COVID-19  
31 Community Outreach and Engagement Services:

32 1) Frequency of one-on-one/door-to-door interactions with community  
33 2) Number of community/neighborhood events held  
34 3) Number of linkages and referrals offered/delivered including but not limited to  
35 COVID-19 testing and vaccination services, transportation, housing, financial, mental, food and other  
36 community programs and services

37 //



2. The COUNTY shall monitor the performance of CONTRACTOR against the goals, outcomes, milestones and performance standards required herein, as determined by COUNTY, will constitute non-compliance with this Contract for which COUNTY may immediately terminate the Contract. If action to correct such substandard performance is not taken by the CONTRACTOR within the time period specified by COUNTY, payment(s) will be denied in accordance with the provisions contained in the Contract.

3. COUNTY shall periodically evaluate the CONTRACTOR'S progress in complying with the terms of this Contract. CONTRACTOR shall cooperate fully during such monitoring. COUNTY shall report the findings of each monitoring to Operator.

#### F. REPORTING REQUIREMENTS

1. CONTRACTOR is required to submit reporting on monthly and quarterly basis in a form acceptable to the COUNTY. Monthly reports will be due by the tenth (10) day of the following month of services rendered, unless otherwise approved by COUNTY. The reporting shall support the COUNTY in evaluating the CONTRACTOR's performance as it related to Participant data, program linkages and units of services.

#### G. FILE MAINTENANCE AND DOCUMENTATION

1. CONTRACTOR shall prepare all applicable files and perform all administrative management tasks, as indicated in the CONTRACT.

2. CONTRACTOR Shall maintain all records required by the federal regulations specified in 24 CFR 570.503(b)(2), 570.506, 570.507, 570.508 that are pertinent to the activities to be funded under this CONTRACT.

3. Records providing a full description of each activity undertaken.

4. Financial records as required by 24 CFR 570.502, and OMB Circular A-87; and

5. Other records necessary to document compliance with Subpart K of 24 CFR 570.

6. Annual Audit Submission: Independent audits to be performed by a Certified Public Accountant, which shall include an audit of funds received from the COUNTY, in accordance with applicable regulatory requirements. Copies of each required audit report must be provided to the COUNTY within thirty (30) days after the date received by the Operator.

7. Retention: Operator shall retain all records pertinent to expenditures incurred under this Contract for a period of five (5) years after the termination of all activities funded under this Contract, or after the resolution of all federal audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this Contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

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## V. STAFFING

A. CONTRACTOR shall provide effective administrative management of the budget, staffing, recording, and reporting portion of the agreement with the COUNTY. If administrative responsibilities are delegated to subcontractors, the CONTRACTOR must ensure that any subcontractor(s) possess the qualifications and capacity to perform all delegated responsibilities. Responsibilities include but are not limited to the following:

1. Designate the responsible position(s) in your organization for managing the funds allocated to this program;
  2. Maximize the use of the allocated funds;
  3. Ensure timely and accurate reporting;
  4. Maintain appropriate staffing levels;
  5. Ensure staff possess the qualification and capacity to perform responsibilities tied to the staff's position.
  6. Effectively communicate and monitor the program for its success;
  7. Maintain communication between the CONTRACT key staff and Program Administrators;
- and,
8. Act quickly to identify and solve problems.

B. CONTRACTOR shall make its best effort to ensure that services provided pursuant to the Contract are provided in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall ensure that documents are maintain of such efforts which may include, but are not limited to, records of participation in COUNTY sponsored or other applicable trainings; recruitment and hiring policies and procedures; copies of literature in multiple languages as appropriate, and descriptions of measures taken to enhance accessibility for, and sensitivity to individuals who are physically challenged.

C. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in Full-Time Equivalents (FTEs) continuously throughout the term of the Agreement. One (1) FTE shall be equal to an average of forty (40) hours work per week.

<u>PROGRAM</u>	<u>FTEs</u>
<del>—Executive Director</del>	<del>.30</del>
<del>—Operations Director</del>	<del>.20</del>
<del>—Program Manager</del>	<del>1.0</del>
<del>—Outreach Coordinator</del>	<del>1.75</del>
<del>—Community Resource Coordinator</del>	<del>.75</del>
<del>—Patient Navigator</del>	<del>1.35</del>
<del>—Communications Coordinator</del>	<del>.75</del>

<del>Health Policy Specialist</del>	<del>.40</del>
<del>Subcontractors</del>	<del>28.5</del>
<del>SUBTOTAL PROGRAM</del>	<del>35.0</del>
<del>TOTAL FTEs</del>	<del>35.0</del>

<u>PROGRAM</u>	<u>FTEs</u>
Executive Director	.30
Operations Director	.20
Program Manager	1.0
Outreach Coordinator	1.75
Community Resource Coordinator	.75
Patient Navigator	.75
Communications Coordinator	1
Health Policy Specialist	.40
Subcontractors	28.5
<u>SUBTOTAL PROGRAM</u>	<u>35.25</u>
<u>TOTAL FTEs</u>	<u>35.25</u>

D. CONTRACTOR shall maintain personnel files for each staff member, including the Executive Director and other administrative positions, which will include, but not be limited to, an application for employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if applicable), pay rate and evaluations justifying pay increases.

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

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EXHIBIT B  
TO THE CONTRACT FOR PROVISION OF  
COVID-19 COMMUNITY OUTREACH AND ENGAGEMENT SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
ORANGE COUNTY ASIAN AND PACIFIC ISLANDER COMMUNITY ALLIANCE, INC.  
JULY 1, 2021 THROUGH DECEMBER 31, 2021

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

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

**A. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

## B. TERMS OF CONTRACT

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

### 2. Responsibilities of CONTRACTOR

CONTRACTOR agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT C  
TO AGREEMENT FOR PROVISION OF  
COVID-19 COMMUNITY OUTREACH AND ENGAGEMENT SERVICES  
BETWEEN  
COUNTY OF ORANGE  
AND  
ORANGE COUNTY ASIAN AND PACIFIC ISLANDER COMMUNITY ALLIANCE, INC.  
JULY 1, 2021 THROUGH DECEMBER 31, 2021

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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



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

#### B. DEFINITIONS

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

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

##### a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 11 D. SECURITY RULE

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

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

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

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

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

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

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

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

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

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

9 E. DATA SECURITY REQUIREMENTS

10 1. Personal Controls

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

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

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

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

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2. Technical Security Controls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 7 3. Audit Controls

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

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

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

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

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

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

### 34 5. Paper Document Controls

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

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

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

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

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

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

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

## 25 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

3. CONTRACTOR's notification shall include, to the extent possible:
- a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
  - b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
    - 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
    - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.
5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY consistent with this Paragraph F and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to COUNTY pursuant to Subparagraph F.2 above.
8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests
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1 for further information, or follow-up information after report to COUNTY, when such request is made  
2 by COUNTY.

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

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

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

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

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

17 1) The Disclosure is required by law; or

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

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

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

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

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

#### 32 H. PROHIBITED USES AND DISCLOSURES

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

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

#### I. OBLIGATIONS OF COUNTY

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

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

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

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

#### J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

b. CONTRACTOR shall retain no copies of the PHI.

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

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

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## EXHIBIT D

**I. CERTIFICATION REGARDING ANTI-LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Date

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Name and Title of Contractor's Authorized Official