



<b><u>PARAGRAPH</u></b>	<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
Title Page .....		1
Contents .....		2
Referenced Contract Provisions .....		3
I.Acronyms .....		4
II.Alteration of Terms .....		9
III.Assignment Of Debts .....		9
IV.Compliance .....		9
V.Confidentiality .....		12
VI.Delegation, Assignment and Subcontracts .....		12
VII.Employee Eligibility Verification .....		13
VIII.Facilities, Payments, and Services.....		14
IX.Indemnification and Insurance .....		14
X.Inspections and Audits .....		18
XI.Licenses and Laws.....		18
XII.Maximum Obligation .....		20
XIII.Minimum Wage Laws .....		20
XIV.Nondiscrimination .....		20
XV.Notices .....		23
XVI.Research And Publication .....		23
XVII.Right To Work and Minimum Wage Laws .....		24
XVIII.Severability .....		25
XIX.Special Provisions .....		25
XX.Status of Contractor .....		26
XXI.Term .....		26
XXII.Termination .....		26
XXIII.Third Party Beneficiary .....		28
XXIV.Waiver of Default or Breach .....		28
Signature Page .....		29
 <b><u>EXHIBIT A</u></b>		
I. Definitions .....		1
II. Medical Records .....		1
III. Payments.....		3
IV. Reports.....		7
V. Services.....		8
 <b><u>EXHIBIT B</u></b>		<b><u>PAGE</u></b>
I. Business Associate Contract.....		1

**REFERENCED CONTRACT PROVISIONS****Term:** July 1, 2016 through June 30, 2019

Period One means the period July 1, 2016 through June 30, 2017

Period Two means the period July 1, 2017 through June 30, 2018

Period Three means the period July 1, 2018 through June 30, 2019

~~**Maximum Obligation:**~~~~Period One Maximum Obligation: \$300,000~~~~Period Two Maximum Obligation: 300,000~~~~Period Three Maximum Obligation: 300,000~~~~TOTAL MAXIMUM OBLIGATION: \$900,000~~**Maximum Obligation:**

Period One Maximum Obligation: \$ 400,000

Period Two Maximum Obligation: 400,000

Period Three Maximum Obligation: 400,000

TOTAL MAXIMUM OBLIGATION: \$1,200,000"

**Basis for Reimbursement:** Fee-for Service**Payment Method:** Payment in Arrears**Notices to COUNTY and CONTRACTOR:**

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

**CONTRACTOR:** Occupational Health Centers of California, a Medical Corporation  
 dba Concentra Medical Centers  
 Attn: Office of the General Counsel  
 5080 Spectrum Drive, #1200 West Tower  
 Addison, TX 75001  
 Todd Doolittle  
[Todd\\_Doolittle@concentra.com](mailto:Todd_Doolittle@concentra.com)  
 Legal\_Contracts@concentra.com (for legal information only)

## I. ACRONYMS

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

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

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

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

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

1	EM. PSC	Professional Services Contract
2	EN. PTRC	Paramedic Trauma Receiving Center
3	EO. QI	Quality Improvement
4	EP. QIC	Quality Improvement Committee
5	EQ. RHAP	Refugee Health Assessment Program
6	ER. RHEIS	Refugee Health Electronic Information System
7	ES. RN	Registered Nurse
8	ET. RSA	Remote Site Access
9	EU. SAPTBG	Substance Abuse Prevention and Treatment Block Grant
10	EV. SD/MC	Short-Doyle Medi-Cal
11	EW. SIR	Self-Insured Retention
12	EX. SMA	Statewide Maximum Allowable (rate)
13	EY. SNF	Skilled Nursing Facility
14	EZ. SR	Supervised Release
15	FA. SRP	Supervised Release Participant
16	FB. SSA	County of Orange Social Services Agency
17	FC. SSI	Supplemental Security Income
18	FD. STP	Special Treatment Program
19	FE. SUD	Substance Use Disorder
20	FF. TAR	Treatment Authorization Request
21	FG. TAY	Transitional Age Youth
22	FH. TB	Tuberculosis
23	FI. TBS	Therapeutic Behavioral Services
24	FJ. TRC	Therapeutic Residential Center
25	FK. TTY	Teletypewriter
26	FL. TUPP	Tobacco Use Prevention Program
27	FM. UMDAP	Uniform Method of Determining Ability to Pay
28	FN. UOS	Units of Service
29	FO. USC	United States Code
30	FP. VOLAGs	Volunteer Agencies
31	FQ. W&IC	California Welfare and Institutions Code
32	FR. WIC	Women, Infants and Children
33	//	
34	//	
35	//	
36	//	
37	//	



## 1 II. ALTERATION OF TERMS

2 A. This Agreement, together with Exhibits A through D attached hereto and incorporated herein,  
3 fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the  
4 subject matter of this Agreement.

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

## 9 III. ASSIGNMENT OF DEBTS

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

## 18 IV. COMPLIANCE

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

21 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA  
22 policies and procedures relating to HCA's Compliance Program, HCA's Code of Conduct and General  
23 Compliance Trainings.  
24

25 2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of  
26 Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct  
27 have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as  
28 described in subparagraphs below.

29 3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct;  
30 the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award  
31 of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's  
32 Compliance Program and Code of Conduct.

33 4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it  
34 shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures  
35 to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.  
36 ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program  
37 and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to

1 meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and  
 2 Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain  
 3 all required elements.

4 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the  
 5 CONTRACTOR's Compliance Program and Code of Conduct contains all required elements,  
 6 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of  
 7 CONTRACTOR's Compliance Program, Code of Conduct and related policies and procedures.

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

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

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

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

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

37 //

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

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

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

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

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

1. CONTRACTOR shall use its best efforts to encourage completion by Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete all Compliance Trainings when offered.

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

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

4. Each Covered Individual attending training shall certify, in writing, attendance at compliance training. CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

//

//

## **V. CONFIDENTIALITY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

## **VII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

//

//

//

## **VIII. FACILITIES, PAYMENTS AND SERVICES**

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

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

## **IX. INDEMNIFICATION AND INSURANCE**

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

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

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor

and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection by COUNTY representative(s) at any reasonable time.

D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply, indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

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

#### F. QUALIFIED INSURER

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:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Employee Dishonesty	\$1,000,000 per occurrence
Professional Liability Insurance	\$5,000,000 per claims made \$5,000,000 aggregate

//

Sexual Misconduct Liability

\$1,000,000 per occurrence

#### H. REQUIRED COVERAGE FORMS

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

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

I. REQUIRED ENDORSEMENTS – The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds.

2. A primary 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.

3. If Contractor's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

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

K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the COUNTY may suspend or terminate this Agreement.

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

1. 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.

2. 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.

N. 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).



O. 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 Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

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

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

#### R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

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

//

## **X. INSPECTIONS AND AUDITS**

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly pertinent to this Agreement, 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 Agreement. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, 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 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.

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

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 Agreement.

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 Agreement.

## **XI. LICENSES AND LAWS**

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Agreement, 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 Agreement.

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

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

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

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

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

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

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

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

19 C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and  
20 requirements as they exist now or may be hereafter amended or changed.

21 1. CONTRACTOR shall comply with the applicable terms and conditions of the "Contract for  
22 Low Income Health Program; Contract No. 11-15909-OR-10" between COUNTY and the California  
23 Department of Health Care Services ("Department"). COUNTY shall provide CONTRACTOR with a  
24 copy of any new or amended contract with Department as soon as it is available. CONTRACTOR shall  
25 notify ADMINISTRATOR within thirty (30) calendar days of any inability of CONTRACTOR to  
26 comply with the terms and conditions of COUNTY's contract with Department.

27 2. CONTRACTOR shall comply with all requirements of Section 114 of the Clean Air Act, as  
28 amended, and Section 308 of the Federal Water Pollution Control Act respectively relating to  
29 inspection, monitoring, entry, reports, and information, as well as other requirements specified in  
30 Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all  
31 regulations and guidelines issued thereunder.

32 3. CONTRACTOR shall not perform services required by this Agreement in a facility listed  
33 on the EPA List of Violating Facilities unless and until the EPA eliminates the name of such facility  
34 from such listing.

35 4. CONTRACTOR shall use its best efforts to comply with clean air standards and clean  
36 water standards at the facility in which services required by this Agreement are being performed.

37 //

D. CONTRACTOR attests, to the best of its knowledge, that all hospital-based physicians providing services at CONTRACTOR, under this Agreement, are and will continue to be as long as this Agreement remains in effect, the holders of currently valid licenses to practice medicine in the State of California and are members in "good standing" of the medical staff of CONTRACTOR's facility.

## **XII. MAXIMUM OBLIGATION**

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

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

## **XIII. MINIMUM WAGE LAWS**

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

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

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

## **XIV. NONDISCRIMINATION**

### **A. EMPLOYMENT**

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

1 not unlawfully discriminate against any employee or applicant for employment because of his/her race,  
 2 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,  
 3 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual  
 4 orientation, or military and veteran status.

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

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

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

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

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

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

37 //

1 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one  
2 or more of the factors identified above:

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

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

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

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

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

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

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

## **XV. NOTICES**

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Agreement 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 Agreement or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

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

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

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

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

## **XVI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

//

//

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

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

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

## **XVII. 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 Agreement for the purpose of personal or professional research, or for publication.

## **XVIII. RIGHT TO WORK AND MINIMUM WAGE LAWS**

A. In accordance with the United States Immigration Reform and Control Act of 1986, CONTRACTOR shall require its employees directly or indirectly providing service pursuant to this Agreement, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. CONTRACTOR shall also require and verify that its contractors, subcontractors, or any other persons providing services pursuant to this Agreement, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

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

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

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

//

//



## **XIX. SEVERABILITY**

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

## **XX. SPECIAL PROVISIONS**

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

1. Making cash payments to intended recipients of services through this Agreement.
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, or members of the Board of Directors or governing body.
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.

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

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

//

**XXI. 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 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement 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, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, 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.

**XXII. TERM**

A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided in this Agreement; provided, however, 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 Agreement on a weekend or holiday may be performed on the next regular business day.

**XXIII. TERMINATION**

A. Either party may terminate this Agreement, without cause, upon one hundred eighty (180) calendar days' written notice given the other party.

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

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

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

//

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

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

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

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

#### D. CONTINGENT FUNDING

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

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

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

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

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

F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D. above, 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 Agreement.

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

5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with client'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.

G. 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 Agreement.

#### **XXIV. THIRD PARTY BENEFICIARY**

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

#### **XXV. WAIVER OF DEFAULT OR BREACH**

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

//

//

//

//

//

//

//

//

//

//

//

//

//

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

3  
 4 OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA, A MEDICAL CORPORATION  
 5 DBA CONCENTRA MEDICAL CENTERS

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

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

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

13  
 14 TITLE: \_\_\_\_\_

15  
 16  
 17  
 18  
 19 COUNTY OF ORANGE

20  
 21  
 22 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

23 HEALTH CARE AGENCY

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

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

31 DEPUTY

32  
 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 AGREEMENT FOR PROVISION OF  
PHYSICAL EXAMINATION SERVICES  
WITH  
OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA, A MEDICAL CORPORATION  
DBA CONCENTRA MEDICAL CENTERS  
JULY 1, 2016 THROUGH JUNE 30, 2019

**I. DEFINITIONS**

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

A. 'B' Reader is a person who is qualified to read x-rays, as defined by the National Institute of Occupational Safety and Health (NIOSH) standards.

B. Electronic Transmittal Form (ETF) is a summary of services provided on a daily basis.

C. Encounter Form (EF) is an electronic form provided to CONTRACTOR, by ADMINISTRATOR, authorizing Physical Examination Services to be provided for persons referred to CONTRACTOR by ADMINISTRATOR. The Encounter Form is used by CONTRACTOR to record in detail the services provided, and total costs for each person referred for Physical Examination Services.

D. Physical Examination Services are professional services that may include but not limited to Pre-Placement Physical Examination, Periodic Physical Examination and other services as defined in the Agreement.

E. Pre-Placement Physical Examination is a medical examination provided to applicants for COUNTY employment, and to other COUNTY employees requiring a physical examination as a pre-condition to promotion or transfer.

F. Periodic Physical Examination is a medical examination provided at variable time intervals to COUNTY management employees, and to COUNTY employees as required by law or special circumstances.

G. Remote Secure Access (RSA) Token is a security device which allows an individual user to access the HCA computer network.

**II. MEDICAL RECORDS**

A. For each new patient receiving a Pre-Placement Physical Examination, CONTRACTOR shall create a medical record, which shall include, but not be limited to, summary of medical examination, medical history, physical examination findings, laboratory and other tests results, physician notes, and when applicable, recommendations of appropriate work restrictions. The chart, all tests reviewed, and recommendations for work restrictions shall be signed by the examining physician.

//

1 1. Medical records shall be stored in reinforced end 8" tab fastener manila folders, 3/4 inch  
2 capacity with 2-hole punch centered on top of page. Number labels (last 2 digits of social security  
3 number) shall be placed on lower mid-to-left side of folder tab.

4 2. Documents shall be placed in the medical record on the right side of the folder in the  
5 following order:

6 a. Summary of medical examination (completed and signed by occupational health  
7 physician).

8 b. Physical Examination (completed and signed by examining physician).

9 c. Medical history questionnaire (completed by examining physician and signed by  
10 applicant/employee).

11 d. Tuberculosis (TB), vaccine, lab, treadmill, test results.

12 e. California Department of Motor Vehicles (DMV) forms, if any.

13 f. Copy of applicant/employee's verified picture identification.

14 3. A blank Summary Sheet, to be used by ADMINISTRATOR, shall be placed in the medical  
15 record on the left side of the folder.

16 B. For each patient receiving a Periodic Physical Examination, or procedures and other services,  
17 CONTRACTOR shall create a medical record and shall place the documents in the same order as the  
18 Pre-Placement Physical Examination medical record, but shall not place the documents in a folder.

19 C. CONTRACTOR shall assign an identification (I.D.) number for each patient which shall be the  
20 last four (4) digits of the social security number. The I.D. number shall be included on all tests results  
21 and medical record documents including x-rays.

22 D. All records of services performed by CONTRACTOR and maintained at its premises will be  
23 available only on a need-to-know basis to CONTRACTOR's authorized personnel and physicians who  
24 performed services pursuant to the Agreement. CONTRACTOR shall maintain security of all medical  
25 data and medical records to ensure that unauthorized individuals do not have access to such medical  
26 records.

27 E. CONTRACTOR agrees that if and when a individual should ever request their medical records,  
28 CONTRACTOR will be responsible for obtaining and providing the requested medical records to the  
29 requesting party.

30 F. CONTRACTOR shall forward original medical records, except annual management, senior aide  
31 participant, and behavioral health client medical records to ADMINISTRATOR within the timeframe  
32 specified in subparagraph V.A.12. of this Exhibit A to the Agreement. CONTRACTOR shall maintain  
33 all annual management, senior aide participant, and behavioral health client medical records, and shall  
34 send a summary of findings and recommendations for the Annual Management and Senior Aide  
35 Participant examinations directly to the employee. CONTRACTOR shall send the Behavioral Health  
36 Client physician's report, by facsimile, as directed by ADMINISTRATOR.

37 //

1 G. CONTRACTOR shall retain one (1) complete copy of said medical records as specified above,  
2 in accordance with the Records Management and Maintenance paragraph in the Agreement.

### 3 4 **III. PAYMENTS**

5 A. COUNTY shall pay CONTRACTOR, monthly in arrears, for only those Physical Examination  
6 Services provided pursuant to the Agreement. CONTRACTOR shall invoice COUNTY on a monthly  
7 basis. Invoices are due the tenth (10th) day of the month following the month in which services were  
8 performed under the Agreement. Invoices received after the due date may not be paid within the same  
9 month. Payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21)  
10 calendar days after receipt of a correctly completed billing form from CONTRACTOR.

11 B. CONTRACTOR's invoices for Physical Examination Services shall be documented in  
12 accordance with procedures approved by ADMINISTRATOR.

13 C. COUNTY shall pay CONTRACTOR, monthly in arrears, fifty percent (50%) of courier  
14 expenses, for courier services provided pursuant to the Agreement. CONTRACTOR shall invoice  
15 COUNTY on a monthly basis. Invoices are due the tenth (10th) day of the month following the month  
16 in which services were performed under the Agreement. Invoices received after the due date may not be  
17 paid within the same month. CONTRACTOR shall include with the invoice, a monthly statement from  
18 the courier service identifying expenditures pursuant to the Agreement. Payment to CONTRACTOR  
19 should be released by COUNTY no later than twenty-one (21) calendar days after receipt of a correctly  
20 completed billing form and supporting documentation from CONTRACTOR.

21 D. At ADMINISTRATOR's sole discretion, ADMINISTRATOR may withhold or delay any  
22 payment, either in whole or in part, if CONTRACTOR fails to comply with any provision of the  
23 Agreement, including, but not limited to, CONTRACTOR's obligations with respect to reporting,  
24 correcting deficiencies, or delays in progressing satisfactorily in achieving all the terms of the  
25 Agreement. CONTRACTOR agrees that release of any payment withheld or delayed by  
26 ADMINISTRATOR shall be contingent upon satisfactory implementation and timeliness of  
27 CONTRACTOR's corrective action; provided, however, that any issue not satisfactorily resolved after  
28 sixty (60) calendar days may result in CONTRACTOR's loss of such withheld or delayed funds.

29 E. CONTRACTOR may not claim reimbursement for Physical Examination Services provided  
30 beyond the expiration and/or termination of the Agreement.

31 //

32 //

33 //

34 //

35 //

36 //

37 //



F. As compensation to CONTRACTOR for services provided hereunder, COUNTY shall pay CONTRACTOR at the rates listed below for Physical Examination Services. Rates are subject to change and/or be modified with approval by ADMINISTRATOR.

1.	<u>PRE-PLACEMENT PHYSICAL EXAMINATIONS</u>	<u>Rate</u>
a.	Class 1 Limited Examination	\$ 22.00
b.	Class 1+ Qualifier(s) Examination	27.00
c.	Class 2 Examination	70.00
d.	Class 3 Examination	101.00
e.	Class 4 Examination	126.00
2.	<u>PERIODIC PHYSICAL EXAMINATIONS</u>	
a.	Annual Management Examination	\$ 85.00
b.	Surveillance Examinations	
1)	Asbestos	46.00
2)	California Department of Motor Vehicles (DMV), Class B	36.00
3)	Crane Operator	91.00
4)	Federal Aviation Administration (FAA)	90.00
5)	Hazardous Device (Bomb Squad)	128.00
6)	Hazardous Material (Initial)	128.00
7)	Lead	101.00
8)	Public Health Clinic (Title 22)	22.00
9)	Respirator	46.00
10)	SCUBA	116.00
11)	Senior Aide Participant	26.00
3.	<u>MISCELLANEOUS SERVICES</u>	
a.	ALT Liver Enzyme	\$10.00
b.	Audiometry (Audio)	10.00
c.	Blood and Body Fluid Post Exposure Evaluation	49.00
d.	Blood Lead Test	30.00
e.	Blood Draw	12.00
f.	Blood Type Test	12.00
g.	Body Fat Analysis by Caliper Method (4 Sites)	15.00
h.	Breath Alcohol Test	27.00
i.	California DMV Class B Certification (Forms Only)	15.00
j.	Complete Blood Count (CBC) with Differential	8.00

	<u>MISCELLANEOUS SERVICES - Continued</u>	<u>Rate</u>
1		
2	k. Colonoscopy (Local Anesthesia)	\$1,360.00
3	l. Color Vision Test (Dvorine or Farnsworth)	15.00
4	m. Consent and Collection of Urine Drug/Alcohol Testing Samples	13.00
5	n. Electrocardiogram (EKG)	22.00
6	o. Fitness for Duty Evaluation	114.00
7	p. Gamma Globulin Injection	16.00
8	q. Health Risk Appraisal Form	15.00
9	r. Hepatitis B Antibody Test	40.00
10	s. Hepatitis B Antigen Test	30.00
11	t. Hepatitis B Immune Globulin Injection	95.00
12	u. Hepatitis B Vaccine (1 dose)	65.00
13	v. Hepatitis C Antibody Test	35.00
14	w. HIV Antibody Test	85.00
15	x. Liver Enzyme Panel	12.00
16	y. Mammography	193.00
17	z. Mammography with Implants	303.00
18	aa. Measles, Mumps, Rubella (MMR) Titer	106.00
19	bb. Medical Restrictions Evaluation	140.00
20	cc. Medical History Questionnaires	15.00
21	dd. MMR Vaccine	60.00
22	ee. Non-National Institute on Drug Abuse (NIDA) Drug Screen (5 Panel)	28.00
23	ff. Physical Examinations for Behavioral Health Clients	126.00
24	gg. Pregnancy Test (Urine)	21.00
25	hh. Pulmonary Function Test (PFT)	20.00
26	ii. PFT, Pre and Post Treadmill	40.00
27	jj. Prostate Specific Antigen (PSA)	28.00
28	kk. Rectal Examination and Occult Blood, Prostate for Males	7.00
29	ll. Sigmoidoscopy	207.00
30	mm. SMA 24 Panel with HDL (Fasting)	22.00
31	nn. Stool for Occult Blood Test	5.00
32	oo. Tetanus, Diphtheria, Pertussis (Tdap) Vaccine	50.00
33	pp. Tetanus, Diphtheria (Td) Vaccine Booster	20.00
34	qq. Treadmill/Cardiac Stress Test (Bruce Protocol)	195.00
35	rr. Tuberculin (TB) Purified Protein Derivative (PPD) Skin Test Reading	7.00
36	ss. TB PPD Skin Test and Reading (1-Step)	7.00
37	tt. TB PPD Skin Test and Reading (2-Step)	7.00

MISCELLANEOUS SERVICES - ContinuedRate

uu.	Urinalysis (Dip Stick)	\$ 6.00
vv.	Urinalysis (Microscopic)	8.00
ww.	Varicella Titer	65.00
xx.	Varicella Vaccine	115.00
yy.	VDRL or RPR for Syphilis	65.50
zz.	X-Ray, Any Single Chest	19.00
aaa.	X-Ray, Ankle (3 Views: AP, Lateral, Oblique)	30.00
bbb.	X-Ray, Cervical Spine (3 Views: AP, Lateral, Odontoid)	30.00
ccc.	X-Ray, Chest (Left and Right Oblique)	27.00
ddd.	X-Ray, Chest (PA)	18.00
eee.	X-Ray, Chest (PA and Lateral)	26.00
fff.	X-Ray, Chest, (Reading by "B" Reader)	53.00
ggg.	X-Ray, Elbow (3 Views: Lateral, Oblique)	30.00
hhh.	X-Ray, Knee (Weight Bearing) (3 Views: AP, Lateral, Oblique)	30.00
iii.	X-Ray, Lumbo-Sacral Spine (3 Views: Lateral, PA, L5-SI Spot)	30.00
jjj.	X-Ray, Shoulder (3 Views: AP Interior, AP Exterior Rotator)	30.00
kkk.	X-Ray, Wrist (3 Views: AP, Lateral, Oblique)	30.00
lll.	Zinc Protoporphyrin	30.00

4. ADDITIONAL PROCEDURES/SERVICES – CONTRACTOR shall perform additional procedures/services not specified above, as requested by ADMINISTRATOR. CONTRACTOR shall bill COUNTY the usual and customary charges for such services, and COUNTY shall reimburse CONTRACTOR.

5. CONTRACTOR shall staff County clinics, to provide services, as requested by ADMINISTRATOR, at the hourly rates listed below. Rates are subject to change and/or be modified with approval by ADMINISTRATOR.

<u>SERVICE</u>	<u>RATE</u>	
Physician	\$200.00	per hour
Registered Nurse	50.00	per hour, minimum 4 hours
Licensed Vocational Nurse	50.00	per hour, minimum 4 hours
Medical Assistant	35.00	per hour

G. If CONTRACTOR subcontracts with a Professional Temporary Staffing Agency to provide staffing for physical examination services or other services included above, as approved by ADMINISTRATOR in writing, CONTRACTOR shall document that its subcontracted medical

professionals, including but not limited to, Physicians, Registered Nurses, Licensed Vocational Nurses, and Medical Assistants maintain all necessary licenses, certificates and accreditations necessary for the provision of services hereunder and required by the laws, regulations, or requirements of the United States, the State of California, COUNTY, and any other applicable governmental agencies. Additionally, CONTRACTOR shall ensure that stated insurance coverage, consistent with Subparagraph VIII.F. of the Agreement, and that the sanction screening process, in accordance with Subparagraph III.B.3 of the Agreement, are completed and documented for all its subcontracted medical professionals providing services hereunder. CONTRACTOR shall maintain the aforementioned documentation at its facility and provide any documentation requested by ADMINISTRATOR within ten (10) business days of ADMINISTRATOR's written request. CONTRACTOR shall be required to maintain the aforementioned documentation for a period of seven (7) years.

H. SPECIALTY SERVICES – If specialty services are requested, CONTRACTOR shall pay the specialty services within forty-five (45) calendar days of receipt of the invoice from the specialty services, then bill the COUNTY for the amount paid.

I. Pre-Placement Physical Examination and Periodic Physical Examination rates as referenced in subparagraph III.F.1. and III.F.2. of this Exhibit A to the Agreement are inclusive of said physical examinations and the associated required procedures specified in Attachment V-1 and V-2 to the Agreement.

J. CONTRACTOR shall not bill the employee/applicant for any Physical Examination Services CONTRACTOR provides, and will ensure the employee/applicant is not billed for any services provided by physician specialists.

K. COUNTY shall not compensate CONTRACTOR for Physical Examination Services not performed in accordance with the Services paragraph of this Exhibit A to the Agreement.

L. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify subparagraph III.F. of this Exhibit A to the Agreement.

#### **IV. REPORTS**

A. CONTRACTOR shall submit, daily to ADMINISTRATOR, completed EFs, and a ETF. For purposes of the Agreement, daily means Monday through Friday, except legal holidays of COUNTY. CONTRACTOR shall ensure that each corresponding EF is listed on the ETF. CONTRACTOR shall submit EFs for Behavioral Health Client physical examinations on a separate ETF.

B. CONTRACTOR shall submit on forms provided or approved by ADMINISTRATOR, financial and/or programmatic reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services provided hereunder. ADMINISTRATOR shall be specific as to the nature of the information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

//

//

## V. SERVICES

### A. GENERAL REQUIREMENTS – CONTRACTOR shall:

1. Provide Physical Examination Services at location(s) approved in writing by ADMINISTRATOR. Facility shall include at minimum a waiting room, four (4) patient examination rooms, office space for confidential patient interviews, and adequate parking to include eight (8) clearly marked parking spaces to be available during normal business hours to persons receiving services under the Agreement. All Physical Examination Services locations shall be accessible to the physically handicapped.

2. Be capable of handling up to two thousand four hundred eighty (2,480) physical examinations per year, up to thirty (30) physical examinations on any given day, and have appointment times available for each class of examination each day proportionate to the number of estimated examinations.

3. Provide Physical Examination Services between normal business hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, except legal holidays of COUNTY. Within twenty-four (24) hours notice, be available to provide extended hours for Pre-Placement Physical Examination Services as requested, including evenings and Saturdays. The parties agree that such requests shall be infrequent.

4. Verify the identification of all persons referred by ADMINISTRATOR for physical examination services by using a picture identification card. A copy of such identification card shall be placed in the person's medical record.

5. Perform all Physical Examination Services in a period of not more than four (4) hours on the same day, except where such performance is beyond the reasonable control of CONTRACTOR. Waiting room time before examination shall be no more than twenty (20) minutes from the time examinee checks in and completes all appropriate paperwork. Any change in such performance shall require the prior authorization of ADMINISTRATOR.

6. Perform audiograms in an American National Standards Institute (ANSI)-approved sound booth.

7. Ensure electrocardiograms (EKGs) are reviewed and signed by a licensed physician, and that abnormal EKGs are reviewed, interpreted and signed by a board certified or board eligible cardiologist or internist. CONTRACTOR shall deliver EKGs to ADMINISTRATOR by the fifth (5th) business day following date of the examination, except for EKGs for Annual Management Examinations, which shall be forwarded to the employee.

8. Ensure examining physicians review and sign all medical records, tests, and recommendations for work restrictions, and that an occupational health physician reviews the examining physician's examination results and completes a summary of medical examination form, which shall include physical findings, laboratory reports, normal and borderline EKG reports, and recommendations for appropriate work restrictions.

//

1           9. Ensure examining physician discusses with the employee/applicant, only such matters  
2 uncovered during the examination that are deemed medically significant and urgent, e.g., extremely  
3 elevated blood pressure, significant abnormality in EKG, and recommend follow-up accordingly.

4           10. Compare Periodic Physical Examination findings and results with previous Periodic  
5 Physical Examination findings, and make follow-up recommendations to ADMINISTRATOR if there is  
6 a significant change, e.g., extremely elevated blood pressure, significant abnormality in EKG.

7           11. Ensure physical examinations and medical history questionnaire reviews are made by a  
8 licensed physician experienced in occupational medicine, with the exception of Class I examinations,  
9 which may be performed by a Registered Nurse Practitioner (RNP) under the supervision of a licensed  
10 physician. Routine measurements and laboratory samples may be taken by nurses and technicians.

11           12. Deliver physical examination medical records, as specified in subparagraph II.A. and II.B.  
12 of this Exhibit A to the Agreement, to ADMINISTRATOR on or before 3:00 p.m. on the fourth (4th)  
13 business day following the date of the examination, except for physical examination medical records for  
14 annual management examinations, senior aide participant examinations, and behavioral health  
15 examinations which shall be retained by CONTRACTOR. If a physical examination includes a two-  
16 step TB and immunization test, final results shall be delivered to ADMINISTRATOR within one (1)  
17 business day of the final read. The parties understand that CONTRACTOR intends to carry out this  
18 responsibility by means of subcontract with a courier service of their choice.

19           13. Ensure staff that perform TB tests attend training as required by ADMINISTRATOR.

20           14. Ensure spirometry examinations are performed by a certified pulmonary technician or a  
21 person who has completed a NIOSH-approved course, and x-rays are read by a licensed physician  
22 certified in radiology or a B Reader.

23           15. Ensure treadmill/cardiac stress tests follow the full, unabbreviated Bruce Protocol and are  
24 performed by a board certified or board eligible cardiologist or internist. Results shall include reason  
25 for test, minutes and Metadata Encoding and Transmission Standard (METs), and a copy of the baseline  
26 EKG. Employees shall be allowed to exercise until fatigued. Symptoms and reason for stopping shall be  
27 documented. Tests shall be available a minimum of four (4) business days per week. CONTRACTOR  
28 shall give employee/applicant two (2) calendar days notice of scheduled test date and time.

29           16. Provide necessary test equipment during regular business hours, including alternate  
30 equipment when existing equipment is not operational. Equipment shall be accessible to the physically  
31 handicapped. All equipment shall be calibrated and serviced annually or as required, with evidence of  
32 such service available for inspection by ADMINISTRATOR.

33           17. Operate with at least the minimum number and type of staff required for the provision of  
34 Physical Examination Services as described in this paragraph. Submit a Curriculum Vitae for each new  
35 professional staff member, for review by ADMINISTRATOR, prior to commencement of duties under

36 //

37 //

1 the Agreement. If physician is not board certified in occupational medicine, CONTRACTOR shall  
 2 provide verifiable evidence which documents a minimum of five (5) years of full-time experience,  
 3 including training in occupational medicine.

4 18. Ensure all applicants identified to be at high risk for TB receive a two-step PPD skin test  
 5 and reading by appropriate medical personnel. CONTRACTOR shall administer a booster test if  
 6 required by protocol.

7 19. Designate a contact person and a backup contact person for purposes of the Agreement.

8 20. CONTRACTOR, its employees, officers, agents, and subcontractors shall not refer any  
 9 COUNTY employee/applicant to a private service in which CONTRACTOR has a financial interest.

10 21. CONTRACTOR shall be responsible only for the collection procedure for the urine  
 11 drug/alcohol test. COUNTY shall select and contract directly with a laboratory for testing services.  
 12 CONTRACTOR shall ensure that a legally defensible chain of custody procedure is written and  
 13 followed from the point the patient is instructed to give a urine sample through sample pick-up by the  
 14 designated courier from the drug screening laboratory. The patient shall be asked to provide a urine  
 15 sample for drug/alcohol testing during the course of the medical examination. The patient shall be in a  
 16 hospital type gown and shall not have access to street clothes, purses, bags, etc. Water to the bathroom  
 17 sink shall be turned off, and water in the commode shall be "colored" with blue dye.

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

23 B. FORMS, PROTOCOLS AND STANDARDS – CONTRACTOR shall provide Pre-Placement  
 24 Physical Examination and Periodic Physical Examination Services in accordance with the EF, Physical  
 25 Examination Forms, protocols and standards referenced below.

26 1. CONTRACTOR shall use Physical Examination Forms to document Physical Examination  
 27 Services provided to individuals pursuant to the Agreement.

28 2. ADMINISTRATOR shall refer individuals to CONTRACTOR, and CONTRACTOR shall  
 29 provide the services indicated on the EF for each individual referred for Physical Examination Services.

30 3. CONTRACTOR shall adhere to appropriate protocols and standards for physical  
 31 examination services to be provided pursuant to the Agreement.

32 4. EFs, Physical Examination Forms, protocols, and standards may be revised by  
 33 ADMINISTRATOR, upon mutual written agreement of CONTRACTOR and ADMINISTRATOR.  
 34 Additional forms, protocols, and standards necessary to carry out Physical Examination Services may be  
 35 developed, upon mutual written agreement of CONTRACTOR and ADMINISTRATOR.

36 //

37 //

1 C. QUALITY ASSURANCE

2 1. ADMINISTRATOR shall review completed physical examination records on a monthly  
3 basis and provide CONTRACTOR with a quality review report identifying any issues related to the  
4 performance outcomes below. CONTRACTOR shall submit a written response to ADMINISTRATOR,  
5 within seven (7) business days of receipt of the quality review report, describing measures to be taken to  
6 correct the issues.

7 2. PERFORMANCE OUTCOMES – CONTRACTOR shall ensure that:

8 a. One hundred percent (100%) of payments to subcontracted physicians for services  
9 rendered are made within forty-five (45) calendar days.

10 b. Ninety-five percent (95%) of all forms and charts shall be error free.

11 3. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify  
12 performance outcomes.

13 D. PHYSICAL EXAMINATIONS – Upon receipt of EF, CONTRACTOR shall provide the  
14 following Physical Examination Services:

15 1. PRE-PLACEMENT PHYSICAL EXAMINATIONS

16 a. Class 1 Limited Examination: This class of examination shall be provided to  
17 approximately fifty (50) job applicants per year whose job duties require light physical demand. This  
18 class of examination may be performed by physician or by a RNP under the supervision of a physician.  
19 ADMINISTRATOR will maintain the option to conduct some or all Class 1 Limited examinations  
20 within the Health Care Agency. Lab tests are not required for this class of examinations.

21 b. Class 1+ Qualifier(s) Examination: This class of examination shall be provided to  
22 approximately four hundred (400) job applicants per year whose job duties require light physical  
23 demand with one or more qualifiers. This examination must be performed by a physician.

24 c. Class 2 Examination: This class of examination shall be provided to approximately  
25 seven hundred (700) job applicants per year whose job duties require moderate physical demand. This  
26 examination must be performed by a physician.

27 d. Class 3 Examination: This class of examination shall be provided to approximately  
28 sixty (60) to eighty (80) job applicants per year whose job duties require heavy physical demand. This  
29 examination must be performed by a physician.

30 e. Class 4 Examination: This class of examination shall be provided to approximately  
31 three hundred (300) to four hundred (400) job applicants per year in public safety classifications. This  
32 class of examination is based on Peace Officer Standards Training (POST) guidelines and will serve as a  
33 base line for future periodic examinations. This examination must be performed by a physician.

34 2. PERIODIC PHYSICAL EXAMINATIONS

35 a. Annual Management Examination: This class of examination shall be provided to approximately  
36 one hundred fifty (150) COUNTY employees per year, whose jobs are administrative in nature. This examination  
37 must be performed by a physician. All optional services listed below must be offered to examinees.



- 1) Colonoscopy with local anesthesia, performed by certified gastroenterologist.
- 2) Signoidoscopy, performed by certified gastroenterologist.
- 3) Health Risk Appraisal Form.
- 4) Mammography, performed by certified mammography technician.
- 5) Prostate Specific Antigen.

b. Surveillance Examination: This class of examination shall be provided to approximately seven hundred (700) COUNTY employees per year, as required by law or special circumstances. This examination must be performed by a physician. Surveillance examinations include the following categories:

- 1) Asbestos
- 2) California DMV, Class B
- 3) Crane Operator
- 4) Federal Aviation Administration (FAA)
- 5) Hazardous Device (Bomb Squad)
- 6) Hazardous Material (Initial/Exit)
- 7) Lead
- 8) County Clinic (Title 22)
- 9) Respirator
- 10) SCUBA
- 11) Senior Aide Participant

3. PROCEDURES AND OTHER SERVICES – CONTRACTOR shall provide Procedures and Other Services as requested by ADMINISTRATOR. These services shall include, but not be limited to, the following:

a. Audiometry (Audio)

b. Blood and Body Fluid Post Exposure Evaluation – a physician, board certified in occupational health, shall perform medical evaluation and treatment services for employees exposed via parenteral (needlestick or cut) and/or mucous membrane (splash to eye or mouth) to potentially infected blood and bodily fluids in the course of their duties for the COUNTY.

c. Blood Lead Test

d. Blood Draw

e. Blood Type Test

f. Body Fat Analysis by Caliper Method (4 Sites)

g. California DMV Class B Certification (Forms Only)

h. Complete Blood Count (CBC) with Differential

i. Colonoscopy (Local Anesthesia)

1) Colonoscopy (Initial Biopsy)

2) Colonoscopy (Additional Biopsy)

- 1 3) Colonoscopy (Specimen Biopsy)
- 2 j. Color Vision Test (Dvorine or Farnsworth)
- 3 k. Consent and Collection of Urine Drug/Alcohol Testing Samples
- 4 l. Electrocardiogram (EKG)
- 5 m. Fitness for Duty Evaluation – a physician, board certified in occupational health, shall
- 6 perform a comprehensive evaluation and render a recommendation and opinion, within fourteen (14)
- 7 business days of referral, on the employee's ability to perform the job.
- 8 n. Gamma Globulin Injection
- 9 o. Health Risk Appraisal Form
- 10 p. Liver Enzyme Panel
- 11 q. Mammography
- 12 r. Mammography with Implants
- 13 s. Measles, Mumps, Rubella (MMR) Titer
- 14 t. Medical History Questionnaire
- 15 u. Medical Restriction Evaluation – a physician, board certified in the appropriate
- 16 specialty, shall perform a comprehensive evaluation and render an opinion on medical restrictions
- 17 relevant to an applicant's ability to perform a specific job. Specialties may include, but not be limited to,
- 18 orthopedics, cardiology, pulmonary, and psychiatry.
- 19 v. MMR Vaccine
- 20 w. Non-National Institute on Drug Abuse (NIDA) Drug Screen (5 Panel)
- 21 x. Physical Examination for Behavioral Health Clients with TB
- 22 y. Pregnancy Test (Urine)
- 23 z. Pulmonary Function Test (PFT)
- 24 aa. PFT, Pre and Post Treadmill
- 25 bb. Prostate Specific Antigen (PSA)
- 26 cc. Rectal Examination and Occult Blood, Prostate for Males
- 27 dd. Sigmoidoscopy
- 28 ee. SMA 24 Panel with HDL (Fasting)
- 29 ff. Stool for Occult Blood Test
- 30 gg. Tetanus, Diphtheria, Pertussis (Tdap) Vaccine
- 31 hh. Tetanus, Diphtheria (Td) Vaccine Booster
- 32 ii. Treadmill/Cardiac Stress Test (Bruce Protocol)
- 33 jj. Tuberculin (TB) Purified Protein Derivative (PPD) Skin Test Reading
- 34 kk. TB PPD Skin Test and Reading (1-Step)
- 35 ll. Urinalysis (Dip Stick)
- 36 mm. Urinalysis (Microscopic)
- 37 nn. Varicella Titer

- oo. Varicella Vaccine
- pp. X-Ray, Any Single Chest
- qq. X-Ray, Ankle (3 Views: AP, Lateral, Oblique)
- rr. X-Ray, Cervical Spine (3 Views: AP, Lateral, Odontoid)
- ss. X-Ray, Chest (Left and Right Oblique)
- tt. X-Ray, Chest (PA)
- uu. X-Ray, Chest (PA and Lateral)
- vv. X-Ray, Chest, (Reading by "B" Reader)
- ww. X-Ray, Elbow (3 Views: Lateral, Oblique)
- xx. X-Ray, Knee (Weight Bearing) (3 Views: AP, Lateral, Oblique)
- yy. X-Ray, Lumbo-Sacral Spine (3 Views: Lateral, PA, L5-SI Spot)
- zz. X-Ray, Shoulder (3 Views: AP Interior, AP Exterior Rotator)
- aaa. X-Ray, Wrist (3 Views: AP, Lateral, Oblique)
- bbb. Zinc Protoporphyrin

4. ADDITIONAL PROCEDURES/SERVICES – CONTRACTOR shall perform additional procedures/services not specified above as requested by ADMINISTRATOR. ADMINISTRATOR shall specify the type of test or service required, and reimbursement shall be made in accordance with subparagraph III.F.4. of this Exhibit A to the Agreement.

5. SPECIAL REQUESTS – Physical Examination Services or procedures by special request shall be scheduled for the next available appointment. CONTRACTOR shall fax or telephone results to ADMINISTRATOR as soon as they become available. Reimbursement shall be made in accordance with subparagraph III.F.3. of this Exhibit A to the Agreement, plus twenty percent (20%).

E. DATABASE AND BILLING SYSTEM – CONTRACTOR shall access and utilize the electronic database and billing system as directed by ADMINISTRATOR. ADMINISTRATOR will provide to CONTRACTOR the necessary number of RSA Tokens for appropriate CONTRACTOR staff to access said system at no cost to the CONTRACTOR.

1. CONTRACTOR recognizes RSA Tokens are assigned to a specific individual staff member with a unique password, and that RSA Tokens and passwords shall not be shared with anyone.

2. CONTRACTOR shall return RSA Tokens to ADMINISTRATOR under the following conditions:

- a. When a staff member no longer performs work related to the Agreement.
- b. When a staff member no longer requires access to said system.
- c. When a staff member leaves employment of CONTRACTOR.
- d. When a token malfunctions.

3. CONTRACTOR shall reimburse the COUNTY for the actual cost of RSA Tokens lost, stolen, or damaged through acts of negligence.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify subparagraph V.D. and V.E. of this Exhibit A to the Agreement.

EXHIBIT B  
TO AGREEMENT FOR PROVISION OF  
PHYSICAL EXAMINATION SERVICES  
WITH  
OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA, A MEDICAL CORPORATION  
DBA CONCENTRA MEDICAL CENTERS  
JULY 1, 2016 THROUGH JUNE 30, 2019

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

//

//

and 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.

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

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

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

11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the

Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

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

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

#### D. SECURITY RULE

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

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

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

#### E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

//

//



- 1           3. CONTRACTOR'S notification shall include, to the extent possible:
- 2           a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
- 3 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 4           b. Any other information that COUNTY is required to include in the notification to
- 5 Individual under 45 CFR §164.404(c) at the time CONTRACTOR is required to notify COUNTY or
- 6 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
- 7 period set forth in 45 CFR §164.410 (b) has elapsed, including:
- 8           1) A brief description of what happened, including the date of the Breach and the date
- 9 of the discovery of the Breach, if known;
- 10           2) A description of the types of Unsecured PHI that were involved in the Breach (such
- 11 as whether full name, social security number, date of birth, home address, account number, diagnosis,
- 12 disability code, or other types of information were involved);
- 13           3) Any steps Individuals should take to protect themselves from potential harm
- 14 resulting from the Breach;
- 15           4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
- 16 mitigate harm to Individuals, and to protect against any future Breaches; and
- 17           5) Contact procedures for Individuals to ask questions or learn additional information,
- 18 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 19           4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
- 20 45 CFR §164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
- 21 COUNTY.
- 22           5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
- 23 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
- 24 CONTRACTOR made all notifications to COUNTY consistent with this Paragraph E and as required by
- 25 the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure
- 26 of PHI did not constitute a Breach.
- 27           6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
- 28 its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 29           7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
- 30 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
- 31 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
- 32 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
- 33 the Breach to COUNTY pursuant to Subparagraph E.2 above.
- 34           8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach
- 35 to COUNTY as it may become available, in reporting increments of five (5) business days after the last report
- 36 to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further
- 37 information, or follow-up information after report to COUNTY, when such request is made by COUNTY.

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

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

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

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

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

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

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

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

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

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

#### G. OBLIGATIONS OF COUNTY

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

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

//

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

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

6           H. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //