

1 AGREEMENT FOR THE PROVISION OF  
2 DIRECT DIGITAL RADIOLOGY SERVICES  
3 FOR  
4 CORRECTIONAL HEALTH SERVICES PROGRAMS  
5 BETWEEN  
6 COUNTY OF ORANGE  
7 AND  
8 SD XRAY, LLC.

9 ~~MAY~~ JULY 1, ~~2018~~ 2020 THROUGH JUNE 30, ~~2020~~ 2021

10  
11 THIS AGREEMENT entered into this 1st day of ~~May, 2018~~ July, 2020, which date is by and between  
12 the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and SD XRAY,  
13 LLC, a California for-profit corporation (CONTRACTOR). COUNTY and CONTRACTOR may  
14 sometimes be referred to herein individually as "Party" or collectively as "Parties." This Agreement shall  
15 be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

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

18  
19 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Direct Digital  
20 Radiology Services to persons described herein; and

21 WHEREAS, CONTRACTOR agrees to provide certain Direct Digital Radiology Services specified  
22 herein at one or more of COUNTY'S jails; and

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

25 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

26 //  
27 //  
28 //  
29 //  
30 //  
31 //  
32 //  
33 //  
34 //  
35 //  
36 //  
37 //

**CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

<b><u>PARAGRAPH</u></b>	<b><u>PAGE</u></b>
Title Page.....	1
Contents.....	2
Referenced Contract Provisions .....	4
I. Acronyms .....	5
II. Alternation of Terms.....	6
III. Assignment of Debt .....	6
IV. Compliance .....	6
V. Confidentiality.....	10
VI. Delegation and Assignment and Subcontracts.....	11
VII. Employee Eligibility Verification .....	12
VIII. Equipment .....	12
IX. Expenditure and Revenue Report.....	14
X. Facilities, Payments and Services.....	14
XI. Indemnification and Insurance .....	14
XII. Inspections and Audits.....	19
XIII. Licenses and Laws .....	20
XIV. Literature, Advertisements, and Social Media.....	21
XV. Maximum Obligation.....	22
XVI. Minimum Wage Laws .....	22
XVII. Nondiscrimination.....	22
XVIII. Notices.....	25
XIX. Notification of Death .....	25
XX. Notification of Public Events and Meetings .....	26
XXI. Records Management and Maintenance .....	26
XXII. Research and Publication.....	27
XXIII. Severability.....	28
XXIV. Special Provisions .....	28
XXV. Status of Contractor .....	29
XXVI. Term .....	29
XXVII. Termination .....	29
XXVIII. Third Party Beneficiary .....	31
XXIX. Waiver of Default or Breach.....	31
Signature Page.....	32

//  
//  
//  
//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

**EXHIBIT A**

I. Definitions .....	1
II. Interruption of Service .....	2
III. Payments .....	2
IV. Records .....	3
V. Reports.....	5
VI. Rules and Regulations.....	6
VII. Services – Radiology and Ultrasound .....	6
VIII. Staffing .....	17
IX. Utilization Review and Quality Assurance .....	19

**EXHIBIT B**

I. Security Requirements and Guidelines for Applications Vendors and Application Service Providers .....	1
--	---

**EXHIBIT C**

I. Business Associate Contract.....	1
-------------------------------------	---

**EXHIBIT D**

I. Personal Information Privacy and Security Contract.....	1
--	---

//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//

**REFERENCED CONTRACT PROVISIONS**

**Term:** May 1, ~~2018~~2020 through June 30, ~~2020~~2021

                     Period One means the period from May 1, 2018 through June 30, 2019

                     Period Two means the period from July 1, 2019 through June 30, 2020

                     Period Two means the period from July 1, 2020 through June 30, 2021

**Maximum Obligation:** Period One Maximum Obligation:     \$ ~~1,053,112~~ 957,375

                     Period Two Maximum Obligation:                     874,500

                     Period Three Maximum Obligation:                    1,214,411

                     TOTAL MAXIMUM OBLIGATION: ~~\$1,927,612~~ 3,046,286

**Basis for Reimbursement:** Negotiated Amount

**Payment Method:**                      Monthly in Arrears

**Notices to COUNTY and CONTRACTOR:**

COUNTY:                      County of Orange  
                     Health Care Agency  
                     Medical & Correctional Health Services Operations  
                     405 West 5th Street, 7th Floor  
                     Santa Ana, CA 92701-4637

**CONTRACTOR DUNS Number:**                      07-886-4079

**CONTRACTOR TAX ID Number:**                      03-0507336

CONTRACTOR:     PETER H. CHUNG, DBA SD XRAY, LLC.  
                     8772 ~~CUYAMACA STREET, SUITE~~ Cuyamaca Street, Suite 102  
                     ~~SANTEE~~ Santee, CA 92071  
                     ~~BEAU CHUNG~~ Beau Chung  
                     beau@sdxrayandlab.com  
                     ~~LAUREN CHUNG~~ Lauren Chung  
                     lauren@sdxrayandlab.com

//

//

**I. ACRONYMS**

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

4	A. ARRA	American Recovery and Reinvestment Act
5	B. ASRS	Alcohol and Drug Programs Reporting System
6	C. CCC	California Civil Code
7	D. CCR	California Code of Regulations
8	E. CFR	Code of Federal Regulations
9	F. CHPP	COUNTY HIPAA Policies and Procedures
10	G. CHS	Correctional Health Services
11	H. D/MC	Drug/Medi-Cal
12	I. DHCS	Department of Health Care Services
13	J. DPFS	Drug Program Fiscal Systems
14	K. DRS	Designated Record Set
15	L. HCA	Health Care Agency
16	M. HHS	Health and Human Services
17	N. HIPAA	Health Insurance Portability and Accountability Act
18	O. HSC	California Health and Safety Code
19	P. MHP	Mental Health Plan
20	Q. OCJS	Orange County Jail System
21	R. OCPD	Orange County Probation Department
22	S. OCR	Office for Civil Rights
23	T. OCSD	Orange County Sheriff's Department
24	U. OIG	Office of Inspector General
25	V. OMB	Office of Management and Budget
26	W. OPM	Federal Office of Personnel Management
27	X. PADSS	Payment Application Data Security Standard
28	Y. PC	State of California Penal Code
29	Z. PCI DSS	Payment Card Industry Data Security Standard
30	AA. PHI	Protected Health Information
31	AB. PII	Personally Identifiable Information
32	AC. PRA	Public Record Act
33	AD. USC	United States Code
34	AE. WIC	State of California Welfare and Institutions Code

//

//

//

**II. ALTERATION OF TERMS**

A. This Agreement, together with Exhibit(s) A, B, and C, attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement.

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

**III. ASSIGNMENT OF DEBTS**

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

**IV. COMPLIANCE**

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

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

2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own Compliance Program, Code of Conduct and any Compliance related policies and procedures. CONTRACTOR’s Compliance Program, Code of Conduct and any related policies and procedures shall be verified by ADMINISTRATOR’s Compliance Department to ensure they include all required elements by ADMINISTRATOR’s Compliance Officer as described in this Paragraph IV (COMPLIANCE). These elements include:

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

//

1 f. Methodology for detecting and correcting offenses.

2 g. Methodology/Procedure for enforcing disciplinary standards.

3 3. If CONTRACTOR does not provide proof of its own Compliance program to  
4 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's  
5 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR  
6 within thirty (30) calendar days of execution of this Agreement a signed acknowledgement that  
7 CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct.

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

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

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

33 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all  
34 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide health  
35 care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR.  
36 Notwithstanding the above, this term does not include part-time or per-diem employees, contractors,  
37 subcontractors, agents, and other persons who are not reasonably expected to work more than one hundred

1 sixty (160) hours per year; except that any such individuals shall become Covered Individuals at the point  
2 when they work more than one hundred sixty (160) hours during the calendar year. CONTRACTOR shall  
3 ensure that all Covered Individuals relative to this Agreement are made aware of ADMINISTRATOR's  
4 Compliance Program, Code of Conduct and related policies and procedures (or CONTRACTOR's own  
5 compliance program, code of conduct and related policies and procedures if CONTRACTOR has elected  
6 to use its own).

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

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

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

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

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

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

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

33 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or  
34 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.  
35 Such individual or entity shall be immediately removed from participating in any activity associated with  
36 this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to  
37 CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly



1 return any overpayments within forty-five (45) business days after the overpayment is verified by  
2 ADMINISTRATOR.

3 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance  
4 Training available to Covered Individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

## 17 **V. CONFIDENTIALITY**

18 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio  
19 and/or video recordings, in accordance with all applicable federal, state and county codes and regulations,  
20

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

28 C. CONTRACTOR shall have in effect a system to protect patient records from inappropriate  
29 disclosure in connection with activity funded under this Agreement. This system shall include provisions  
30 for employee education on the confidentiality requirements, and the fact that disciplinary action may occur  
31 upon inappropriate disclosure. CONTRACTOR agrees to implement administrative, physical, and  
32 technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and  
33 availability of all confidential information that it creates, receives, maintains or transmits.  
34 CONTRACTOR shall provide COUNTY with information concerning such safeguards.

35 D. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to  
36 CONTRACTOR, or its subcontractors or agents in violation of the applicable state and federal regulations  
37 regarding confidentiality.

1 E. CONTRACTOR shall monitor compliance with the above provisions on confidentiality and  
2 security, and shall include them in all subcontracts.

3 F. CONTRACTOR shall notify ADMINISTRATOR within twenty-four (24) hours during a work  
4 week, of any suspected or actual breach of computer system security, if the security breach would require  
5 notification under CCC §1798.82.

## 6 7 **VI. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

8 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without  
9 prior written consent of COUNTY. CONTRACTOR shall provide written notification of  
10 CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to  
11 ADMINISTRATOR not less than ninety (90) calendar days prior to the effective date of the delegation.  
12 Any attempted assignment or delegation in derogation of this paragraph shall be void.

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

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

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

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

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

36 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,  
37 CONTRACTOR shall provide written notification within thirty (30) calendar days to ADMINISTRATOR

1 when there is change of less than fifty percent (50%) of Board of Directors or any governing body of  
2 CONTRACTOR at one time.

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

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

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

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

14 4. This provision shall not be applicable to service agreements usually and customarily entered  
15 into by CONTRACTOR to obtain or arrange for supplies, technical support, professional services  
16 provided by consultants, and medical services not provided directly by CONTRACTOR, including but  
17 not limited to dialysis.

18 5. All program and administrative support staff, including subcontractors, must physically  
19 reside in the Continental United States for both on-site and/or remote support services. Contractor is  
20 required to ensure that all staff and subcontractors providing equipment and software support for digital  
21 radiology services will have an established physical residence in the Continental United States throughout  
22 the term of the Agreement.

## 23 24 **VII. EMPLOYEE ELIGIBILITY VERIFICATION**

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

## 34 35 **VIII. EQUIPMENT**

36 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all  
37 property of a Relatively Permanent nature with significant value, purchased in whole or in part by

1 Administrator to assist in performing the services described in this Agreement. “Relatively Permanent”  
 2 is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or over, including  
 3 freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets.  
 4 Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes,  
 5 and installation costs are defined as Controlled Equipment. Controlled Equipment includes, but is not  
 6 limited to audio/visual equipment, computer equipment, and lab equipment. The cost of  
 7 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated  
 8 according to generally accepted accounting principles.

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

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

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

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

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

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

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

37 //

1 **IX. EXPENDITURE AND REVENUE REPORT**

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

6 B. CONTRACTOR may be required to submit periodic Expenditure and Revenue Reports  
7 throughout the term of the Agreement.

8  
9 **X. FACILITIES, PAYMENTS, AND SERVICES**

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

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

21  
22 **XI. INDEMNIFICATION AND INSURANCE**

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

33 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all  
34 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary  
35 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.  
36 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on  
37 deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors

1 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject  
2 to the same terms and conditions as set forth herein for CONTRACTOR.

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

12 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,  
13 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an  
14 amount in excess of \$50,000 (\$5,000 for automobile liability) shall specifically be approved by the  
15 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If  
16 CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other  
17 indemnity provision(s) in this Agreement, agrees to all of the following:

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

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

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

27 E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XI  
28 (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall  
29 constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this  
30 Agreement.

#### 31 F. QUALIFIED INSURER

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

37 //

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Technology Errors & Omissions	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence
Performance Security Bond	\$1,250,000

#### 28 H. REQUIRED COVERAGE FORMS

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

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

#### 33 I. REQUIRED ENDORSEMENTS

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

36 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as  
 37 broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents



1 as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN***  
 2 ***AGREEMENT.***

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

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

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

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

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

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

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

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

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

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

33 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
 34 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY  
 35 incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall  
 36 constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this  
 37 Agreement by COUNTY.

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

4 R. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

28 S. The performance bond requirement may be secured by one of the following methods, or a  
 29 combination thereof.

30 1. Performance Bond issued by an admitted surety licensed in the State of California and  
 31 acceptable to the County, provided that the language of such bond shall recognize and accept the contract  
 32 requirement for immediate release of funds to the County upon determination by the County, that the  
 33 CONTRACTOR is in breach of the contract or County ordinance, and that the nature of the breach is such  
 34 that the public health and safety are endangered, and recognizing that any legal dispute by the  
 35 CONTRACTOR or the bonding company shall be initiated and resolved only after release of the  
 36 performance security funds to the County; or

37 //

1 2. Irrevocable Letter of Credit, issued by a bank or other financial institution acceptable to the  
2 County, on a form acceptable to the County, which shall recognize and accept the contract requirement  
3 for immediate payment of funds to the County upon determination by the County that the CONTRACTOR  
4 is in breach of the contract or County ordinance, and that the nature of the breach is such that the public  
5 health and safety are endangered, and recognizing that any legal dispute by the CONTRACTOR or the  
6 creditor shall be initiated and resolved only after release of the performance security funds to the County.  
7 Real property may be used by a bank to provide the financial resources for credit required under this  
8 section.

9 3. The performance bond or irrevocable letter of credit furnished by the CONTRACTOR in  
10 fulfillment of this requirement shall provide that such bond or letter of credit shall not be canceled for any  
11 reason except upon thirty (30) calendar days' written notice to the County of the intention to cancel said  
12 bond or letter of credit. The CONTRACTOR shall, not later than twenty (20) business days following  
13 the commencement of the 30-day notice period, provide the County with replacement security in a form  
14 acceptable to the County. In the event that the guarantor/surety is placed into liquidation or  
15 conservatorship proceedings, the CONTRACTOR shall provide replacement security acceptable to the  
16 County within twenty (20) business days of such occurrence.

17 4. Failure of the CONTRACTOR to meet these requirements after the CONTRACTOR has  
18 been selected, and prior to the contract start date, shall result in forfeiture of the CONTRACTOR's  
19 contract award.

20 5. Failure of the CONTRACTOR to maintain service and performance requirements during the  
21 term of the Agreement shall be considered a breach and may additionally result in removal of the  
22 CONTRACTOR and forfeiture of performance bond.

23  
24 **XII. INSPECTIONS AND AUDITS**

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

35 B. CONTRACTOR shall actively participate and cooperate with any person specified in  
36 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this  
37 //

1 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such  
2 evaluation or monitoring.

3 C. AUDIT RESPONSE

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

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

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

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

23  
24 **XIII. LICENSES AND LAWS**

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

33 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

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

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

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

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

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

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

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

19           D. CONTRACTOR attests that all CONTRACTOR physicians providing services under this  
20 Agreement are and will continue to be as long as this Agreement remains in effect, the holders of currently  
21 valid licenses to practice medicine in the State of California and are members in good standing of the  
22 medical staff of CONTRACTOR's facility.

#### 23 24           **XIV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

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

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

#### 7 8 **XV. MAXIMUM OBLIGATION**

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

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

#### 14 15 **XVI. MINIMUM WAGE LAWS**

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

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

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

#### 29 30 **XVII. NONDISCRIMINATION**

##### 31 **A. EMPLOYMENT**

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

1 unlawfully discriminate against any employee or applicant for employment because of his/her race,  
 2 religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,  
 3 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual  
 4 orientation, or military and veteran status.

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 with  
 10 domestic partners, or discriminate between domestic partners and spouses of those employees, in the  
 11 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 Opportunity  
 14 Commission setting forth the provisions of the Equal Opportunity clause.

15 5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR  
 16 and/or subcontractor shall state that all qualified applicants will receive consideration for employment  
 17 without regard to race, religious creed, color, national origin, ancestry, physical disability, mental  
 18 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender  
 19 expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed  
 20 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 notice  
 23 advising the labor union or workers' representative of the commitments under this Nondiscrimination  
 24 Paragraph and shall post copies of the notice in conspicuous places available to employees and applicants  
 25 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 disability,  
 29 medical condition, genetic information, marital status, sex, gender, gender identity, gender expression,  
 30 age, sexual orientation, or military and veteran status in accordance with  
 31 Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 - §1688;  
 32 Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975  
 33 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of  
 34 Regulations; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et  
 35 seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as  
 36 otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed.

37 //

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

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

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

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

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

22 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply with  
23 the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented  
24 in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended  
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 enforce  
33 rights secured by federal or state law.

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

37 //



**XVIII. 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 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 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. Any CONTRACTOR providing services to custody patients shall provide a copy of such written notification to the Sheriff of Orange County.

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

**XIX. NOTIFICATION OF DEATH**

A. Upon becoming aware of the death of any person served pursuant to this Agreement, CONTRACTOR shall immediately notify CHS Director, on-premises Sheriff's Deputy, and ADMINISTRATOR.

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

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

//

//

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

4 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written  
5 report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within  
6 forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant  
7 to this Agreement.

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

## 12 **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

16 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of  
17 any applicable public event or meeting. The notification must include the date, time, duration, location  
18 and purpose of the public event or meeting. Any promotional materials or event related flyers must be  
19 approved by ADMINISTRATOR prior to distribution.  
20

## 21 **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

33 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the  
34 commencement of the contract, unless a longer period is required due to legal proceedings such as  
35 litigations and/or settlement of claims.  
36

37 //

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

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

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

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

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

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

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

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

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

20 H. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and  
21 security of PII and/or PHI. CONTRACTOR shall, immediately upon discovery of a breach of privacy  
22 and/or security of PII and/or PHI by CONTRACTOR, notify ADMINISTRATOR of such breach by  
23 telephone and email or facsimile.

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

27 J. CONTRACTOR shall retain all participant, client, and/or patient medical records for seven (7)  
28 years following discharge of the participant, client and/or patient, with the exception of non-emancipated  
29 minors for whom records must be kept for at least one (1) year after such minors have reached the age of  
30 eighteen (18) years, or for seven (7) years after the last date of service, whichever is longer.

31  
32 **XXII. RESEARCH AND PUBLICATION**

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

36 //

37 //

**XXIII. 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.

**XXIV. 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.

//

**XXV. 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 employees and shall not be considered in any manner to be COUNTY employees.

**XXVI. 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.

**XXVII. TERMINATION**

A. Either party may terminate this Agreement, without cause, upon [thirty (30), ninety (90), 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.

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

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

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

9           D. CONTINGENT FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11  
12 **XXVIII. THIRD PARTY BENEFICIARY**

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

16  
17 **XXIX. WAIVER OF DEFAULT OR BREACH**

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

23 //  
24 //  
25 //  
26 //  
27 //  
28 //  
29 //  
30 //  
31 //  
32 //  
33 //  
34 //  
35 //  
36 //  
37 //

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

3  
4 SD XRAY, LLC.

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

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

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

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

14  
15  
16  
17 COUNTY OF ORANGE

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

21 HEALTH CARE AGENCY

22  
23  
24 APPROVED AS TO FORM  
25 OFFICE OF THE COUNTY COUNSEL  
26 ORANGE COUNTY, CALIFORNIA

27  
28 BY: \_\_\_\_\_ DATED: - \_\_\_\_\_

29 DEPUTY

30  
31  
32  
33  
34  
35 If CONTRACTOR is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any  
36 Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If  
37 the Agreement is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the board of directors  
has empowered said authorized individual to act on its behalf by his or her signature alone is required.



EXHIBIT A  
 TO AGREEMENT FOR THE PROVISION OF DIRECT DIGITAL RADIOLOGY SERVICES FOR  
 CORRECTIONAL HEALTH SERVICES PROGRAMS  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 SD XRAY, LLC.  
~~MAY~~ JULY 1, 2018 ~~2020~~ THROUGH JUNE 30, ~~2020~~ 2021

**I. DEFINITIONS**

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

A. “CHS” means the Health Care Agency’s Correctional Health Services program.

B. “CHS Liaison” means ADMINISTRATOR’S CHS designee assigned to act as liaison between CONTRACTOR and the Orange County Sheriff’s Department as well as with other CHS staff as necessary and appropriate.

C. “CHS Medical Director” means the Health Care Agency’s Correctional Health Services Medical Director.

D. “Contracting Hospital” means a hospital that has executed a Hospital Services for the Correctional Health Services Programs Agreement with COUNTY.

E. “Contract Officers” means ADMINISTRATOR’S and CONTRACTOR’S designees, who shall administer this Agreement for the respective parties.

F. “County Health Care Professional” means physicians, nurses, health officers or other persons or classes of persons designated by ADMINISTRATOR’S Contract Officer to perform the treatment authorization functions specified in this Agreement.

G. “Custody Patient” means any of the following:

1. An Orange County Jail inmate referred to CONTRACTOR any CHS Program staff member or Deputy.

2. A minor brought to CONTRACTOR, for treatment, who is under the care and custody of the Orange County Probation Department pursuant to, or pending the filing of, a petition under the Welfare and Institutions Code.

H. “Deputy” means a sworn officer of the Orange County Sheriff’s Department.

I. “Fiscal Year” means the period from July 1 through the following June 30.

J. “Professional Services” means those Medical Services provided by Physicians or medical technicians with current training and a valid license or certificate, as appropriate, to act within the scope of their professional classification.

K. “JHS” means the Health Care Agency’s Juvenile Health Services Program.

L. “Medical Services” means any diagnostic, treatment, or supportive services, excluding TB screenings, which are determined by ADMINISTRATOR to be medically necessary to protect life or prevent significant disability, and/or to diagnose and treat illness or injuries which require treatment to prevent serious deterioration of health. Medical Services include any service or examination authorized in accordance with this Agreement.

**II. INTERRUPTIONS IN SERVICE**

A. CONTRACTOR may be excused from providing services hereunder, or such portions thereof as CONTRACTOR is incapable of performing, if it is prevented from providing or arranging for the provision of services by reason of war, fire, insurrection, COUNTY labor matters, riots, lockdown of the CHS Facilities, earthquakes, other acts of God, or other grave cause, as determined acceptable by COUNTY.

1. To such extent it may be held harmless for damages suffered by COUNTY during such interruption; provided, however, any obligation by COUNTY to pay CONTRACTOR may be reduced.

2. To the extent that any disruption of services in progress is the result of actions taken by OCSD for security purposes, CONTRACTOR may be excused from providing services hereunder and any obligation by COUNTY to pay CONTRACTOR shall not be affected.

B. If CONTRACTOR is unable to provide or arrange for the provision of a substantial portion of the services hereunder for twenty (20) consecutive calendar days, COUNTY may terminate all or a portion of this Agreement upon ten (10) calendar days prior written notice given at any time during or after such period to CONTRACTOR.

**III. PAYMENTS**

A. The following budget for services provided in accordance with Paragraph III of this Exhibit A to the Agreement is set forth for informational purposes only and may be adjusted by mutual written agreement of CONTRACTOR and ADMINISTRATOR; provided, however, that the total of all such adjustments shall not exceed the Maximum Obligation for each Period or COUNTY’S Total Maximum Obligation as specified on Page 4 of the Agreement, as adjusted in accordance with the Maximum Obligation Paragraph of this Agreement:

CATEGORY	PERIOD ONE	PERIOD TWO	<u>PERIOD THREE</u>
Administration	\$ -86,125	\$ 79,500	\$ 48,750
Program	<del>880,862</del> 785,126	715,500	955,260
Profit	<del>-</del> 86,125	79,500	110,401
TOTAL	<del>\$1,053,112</del> 957,376	\$874,500	\$1,214,411

//

~~B. The following compensation schedule is for informational purposes only. //~~

B. As compensation to CONTRACTOR for providing services in accordance with Paragraph III of this Exhibit A to the Agreement, COUNTY shall pay CONTRACTOR monthly, ~~which may be adjusted at ADMINISTRATOR's discretion,~~ at the following amounts for each Period; provided, however, that the total of all such monthly payments shall not exceed the Maximum Obligation for each Period or COUNTY'S Total Maximum Obligation as specified on Page 4 of the Agreement, as adjusted in accordance with the Maximum Obligation Paragraph of this Agreement:

CATEGORY	PERIOD ONE	PERIOD TWO	PERIOD THREE
Administration	\$ 6,152	\$ 6,625	\$ 12,396
Program	56,080	59,625	79,605
Profit	<u>6,152</u>	<u>6,625</u>	<u>9,200</u>
TOTAL	\$68,384	\$72,875	<u>\$101,201</u>

1. On an as-needed basis, ultrasound services provided by CONTRACTOR shall be billed as fee-for-service not to exceed eighty (80) percent of Area 26 RBRVS Medicare rates. Ultrasound service fees are not included in the negotiated amount of the Total Maximum Obligation.

C. CONTRACTOR's invoice shall be on a form approved or supplied by ADMINISTRATOR and provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th) calendar day of the month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after receipt of the correctly completed invoice form.

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

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

**IV. RECORDS**

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

A. CONTRACTOR shall keep and maintain records of each service rendered to each Custody Patient, the Custody Patient to whom the service was rendered, the date the service was rendered, and such additional information as COUNTY may require.

//  
//

1 B. All X-rays performed in accordance with the Agreement shall be, and remain the property of  
 2 COUNTY and shall not be removed or transferred from COUNTY except as permitted herein to be read  
 3 by CONTRACTOR's Physician.

4 C. CONTRACTOR shall maintain with respect to each Custody Patient receiving DDR Services a  
 5 standard physician medical record as required by Sections 70747 through and including 70751 of the  
 6 California Code of Regulations, as they exist now or may hereafter be amended, and other records related  
 7 to the services rendered, the medical necessity of the service, and the quality of the care provided. Records  
 8 shall be maintained in accordance with Section 51476 of Title 22 of the California Code of Regulations,  
 9 as it exists now or may hereafter be amended.

10 1. It is understood that the standard physician medical records shall be and remain the property  
 11 of CONTRACTOR and/or CONTRACTOR's physicians and shall not be removed or transferred from  
 12 CONTRACTOR and/or CONTRACTOR's physicians except in accordance with applicable State and  
 13 Federal statutes and regulations promulgated thereto. All written reports and documentation submitted to  
 14 COUNTY in accordance with this Agreement shall be and remain the property of COUNTY and the  
 15 parties acknowledge and agree that the physician medical record may contain duplicates of the reports  
 16 and documentation submitted to COUNTY.

17 2. To the extent permitted by law, in accordance with procedures required by law, and upon  
 18 receipt of twenty-four (24) hours prior written notice from COUNTY, CONTRACTOR shall permit  
 19 COUNTY to inspect and make copies of said records. Unannounced inspections, evaluations, or requests  
 20 for information may be made in those exceptional situations where arrangement of an appointment  
 21 beforehand is clearly not possible or clearly inappropriate due to the nature of the inspection or evaluation.

22 D. CONTRACTOR shall provide access by COUNTY to any medical records of Custody Patients  
 23 in accordance with all applicable laws and regulations as they now exist or may hereafter be changed.

24 E. CONTRACTOR shall maintain books, records, documents, and other evidence, accounting  
 25 procedures, and practices sufficient to reflect properly all direct and indirect cost of whatever nature  
 26 claimed to have been incurred in the performance of this Agreement and in accordance with Medicare  
 27 principles of reimbursement and generally accepted accounting principles.

28 F. Maintenance of Files and Contract Close-Out

29 1. CONTRACTOR shall store and maintain at the very least within the State of California all  
 30 radiographic records, both hardcopy and electronic, for a period of 10 years after the end of the contract,  
 31 and shall make these records available upon request. CONTRACTOR shall provide ready access of all  
 32 archived images, reports and examination results to authorized CHS medical staff via internet, electronic  
 33 health record interface or downloaded files onto appropriate media.

34 2. On completion or termination of contract, the CONTRACTOR shall return all records to CHS  
 35 in a timely manner. CONTRACTOR shall provide CHS with an orderly schedule of transferring records  
 36 and have that schedule approved prior to the return of such records.

37 //

1 3. Upon completion or termination of the contract, CONTRACTOR shall forthwith return to  
 2 CHS all material constituting or containing confidential information. CONTRACTOR shall not thereafter  
 3 use, reproduce, or disclose such information to any third party.

4 G. Data and Documentation

5 1. All data stored in the system shall remain the property of the County no matter where the  
 6 data resides (i.e. cloud, internal network, etc...). If data is stored in the cloud, the County must be listed as  
 7 a co-owner with the vendor on any contract with a cloud services vendor (i.e. Amazon, Rackspace, etc.)  
 8 for the sole purpose of data retrieval or service continuance in the event of dissolution. Vendor must  
 9 maintain financial obligations during the term of the contract.

10 2. In the event of dissolution, the County retains the right to enter into an agreement with sub-  
 11 contracted vendors for the sole purpose of moving data or continuance of services so that County business  
 12 is not impaired.

13 3. CONTRACTOR shall provide County with system documentation, including equipment user  
 14 manuals and database schema.

15 4. The CONTRACTOR shall perform the initial conversion of all required Radiology data up  
 16 through the date of the end of the integration test. All data, which is successfully converted, must be  
 17 maintained in a separate dataset and loaded into the test system for network, stress and user acceptance  
 18 testing. Data, which was not successfully converted, must be identified and reported for follow-up and  
 19 possible correction by HCA, and shall be maintained in a separate dataset.

20  
 21 **V. REPORTS**

22 A. CONTRACTOR to provide statistical reports on a monthly basis to CHS. Statistics shall include  
 23 the number, type, and cost of all x-ray services provided, including results (Positive/Negative), for each  
 24 facility. Program Reports to be provided by CONTRACTOR to ADMINISTRATOR no later than twenty  
 25 (20) days following the end of the month being reported.

26 1. A copy of this report shall also be attached to the monthly invoices sent to the County.

27 2. All radiological reports prepared and submitted by the CONTRACTOR shall be subject to  
 28 quality review by the CHS Medical Director or their designee. The CHS Medical Director may at any  
 29 time (at least on a quarterly basis) request from the CONTRACTOR a quality review meeting to discuss  
 30 and evaluate radiological reports previously submitted for accuracy.

31 3. Dosimeter reports shall be submitted to CHS or designated representative on a quarterly basis  
 32 via electronic means for all facilities.

33 4. Provide any other special reports pertaining to utilization upon request as required by CHS  
 34 at no additional cost to the County.

35 5. The reporting application shall have the capability to utilize the data elements to allow the  
 36 retrieval of customized reports as needed, utilizing a built-in intuitive report creator tool.

37 //

1           6. Provide 100% traceability of all x-rays and transactions as to date, time, user and facility that  
2 can be accessed and managed centrally.  
3

#### 4   **VI. RULES AND REGULATIONS**

5           In addition to the clauses contained in the contract, CONTRACTOR shall comply with the following  
6 additional requirements.

7           A Confidentiality of medical record information is essential and is required under the Health  
8 Insurance Portability and Accounting Act of 1996, Public Law 104-191 HIPAA, Code of Federal  
9 Regulations 42, Part 2; California Health and Safety Code Sections, 199.20, California Welfare and  
10 Institution Code Section 5328.

11          B. CONTRACTOR will provide a current Title 17, Radiology Rules and Regulations binder for each  
12 facility. The Title 17 binder will be updated annually or earlier if new updates are available.

13          C. CONTRACTOR shall ensure confidential information is disclosed in confidence and with the  
14 understanding that it constitutes valuable business information developed by the County at great  
15 expenditure of time, effort and money.

16          D. CONTRACTOR shall not release any confidential information for any purpose other than the  
17 performance of their contract and understands that contract may be terminated for cause if unauthorized  
18 confidential information is released.

19          E. CONTRACTOR shall comply with the background clearance required by OCSD for  
20 subcontractors that require facility access.

#### 21   **VII. SERVICES – RADIOLOGY AND ULTRASOUND**

22          A. Unless otherwise specified herein, the cost of all services provided in accordance with this  
23 Paragraph III shall be deemed included in COUNTY’S Maximum Obligation to CONTRACTOR for each  
24 Period.  
25

26          B. Direct Digital Radiology (DDR)

27               1. The DDR system shall consist of a Radiology Information System (RIS) and Picture  
28 Archiving and Communications System (PACS) which shall be capable of displaying radiographic images  
29 on a standard PC and must be HL7 and Digital Imaging and Communication in Medicine (DICOM)  
30 compliant. The system must have the ability to interface with the Electronic Health Record (EHR) system  
31 currently being used, or as instructed by ADMINISTRATOR. The system must be able to operate within  
32 the existing HCA IT environment including the Local Area Network, hardware, and software  
33 infrastructure. It must comply with internal HCA IT standards so that the DDR system does not require  
34 its own separate technical environment. It must be capable of interoperation and interfacing with other  
35 HCA and County systems and with standard office automation products. Radiology equipment shall meet  
36 County approval prior to installation and start of service. The County reserves the right to approve or  
37 disapprove the use of any radiological equipment to be operated in the designated facilities.

1 2. CONTRACTOR shall provide DDR Services at the Intake Release Center (IRC), and Central  
 2 Men's Jail (CMJ), both located at 550 N. Flower in Santa Ana and at the Theo Lacy Branch Jail (TLF)  
 3 located at 501 City Drive South in Orange, or other CHS Facilities as directed by ADMINISTRATOR  
 4 using CONTRACTOR equipment and supplies.

5 a. Intake Release Center (IRC) located at 550 North Flower St., Santa Ana, California,  
 6 92703 DDR Service Hours of Operation – Twenty (24) hours per day, seven (7) days per week, three  
 7 hundred sixty five (365) days per year. All holidays included.

8 1) Dedicated chest x-ray examination for TB screening

9 b. Central Men's Jail (CMJ) located at 550 North Flower St., Santa Ana, California, 92703

10 1) DDR Service Hours of Operation – Eight (8) hours per day, ~~four~~ five (5) days per  
 11 week. (Monday – Friday) 8:00 am – 5:00 pm

12 c. Theo Lacy Facility (TLF) located at 501 The City Drive, Orange, California, 92868

13 1) DDR Service Hours of Operation – Eight (8) hours per day, three (3) days per week.  
 14 Monday, Wednesday, Friday, 8:00 am – 5:00 pm

15 3. Additions and changes to the designated CHS Facilities may occur in the future as necessary  
 16 and as agreed by both COUNTY and the CONTRACTOR.

17 C. Information Technology and Compatibility Requirements

18 1. The DDR system must fully conform with and support the following HCA Information  
 19 Technology (IT) Infrastructure and environment requirements:

20 a. Technical Data Management Software Specifications

21 1) Technical Environment

22 a) Meet HCA IT security requirements as outlined in Exhibit B, Security  
 23 Requirements and Guidelines for Application Vendors and Application Service Providers

24 b) If client-hosted, meet HCA network architecture requirements

25 c) Be scalable to allow for growth; intuitive, user-friendly and simple interface;  
 26 resilient, reliable and highly-available

27 d) Support at least ten (10) concurrent users

28 e) Offer scalable integrated system management capabilities for system  
 29 configuration, change management, and backup and recovery

30 f) Be customizable through configuration and Application Program Interfaces  
 31 (APIs)

32 g) Support HL7 and flat file data formats for importing and exporting data

33 h) Be kept up to date. CONTRACTOR shall update/upgrade said software at no  
 34 charge to County

35 i) Be upgradeable to the next generation of operating systems and user interfaces.

36 b. Conformity and Support

37 1) Server Environment

- 1 a) Industry-standard server operating system running on virtual hardware  
 2 b) x86 64 compatible processor from Intel or AMD  
 3 c) Operating system (Windows Server): Microsoft Windows 2012 R2 or newer  
 4 d) Operating system (Linux): Red Hat Enterprise Linux or CentOS  
 5 e) Network adapters running at 1GB Full-Duplex (minimum requirement)  
 6 f) SAN-attached storage (optional) using fiber cards from QLogic running at 8Gb  
 7 (minimum requirement)  
 8 g) Hewlett Packard (HP) is HCA/IT server hardware vendor  
 9 h) VMWare vSphere 5.x or newer is HCA/IT preferred virtualization software  
 10 i) Citrix XenApp 6.x or newer is HCA/IT preferred application delivery software  
 11 2) Operating Environment  
 12 a) Full support of standard networking technologies: DNS, DHCP, NTP, WINS,  
 13 TCP/IP  
 14 b) All communications shall be encrypted in-transit through the use of standard  
 15 security protocols: SSH, sFTP, SCP, HTTPs  
 16 c) At-rest encryption methods must comply with industry-best practice as  
 17 designated by NIST  
 18 d) SQL 2016 (Preferred) -compliant relational or post-relational database  
 19 management software: Microsoft SQL, Oracle, MySQL  
 20 e) Web services hosted by Microsoft IIS, Apache, or Tomcat  
 21 3) Client Environment  
 22 a) x86 64 compatible processor from Intel or AMD.  
 23 b) Microsoft Windows 10 and newer  
 24 c) Internet Explorer 11 and newer  
 25 d) Microsoft Office 2013 and newer  
 26 e) McAfee Virus Scan Enterprise  
 27 f) McAfee Disk Encryption  
 28 g) Network adapter running at 1GB Full-Duplex [minimum requirement]  
 29 h) iOS (See Mobility Requirements)  
 30 i) Microsoft Bitlocker  
 31 j) Microsoft System Management Software (SMS)  
 32 k) Patchlink for automated software distribution  
 33 D. General Mobility Requirements  
 34 1. Mobility Requirements  
 35 a. Application shall be designed in a way that is device agnostic, i.e., application  
 36 performance will be identical whether the end user is connecting from a desktop versus a tablet or mobile  
 37 device.



1 b. All menus and forms shall scale to display appropriately on any device, regardless of  
2 screen resolution, aspect ratio, or orientation.

3 c. Alternatively, application may provide alternate interfaces or points of entry depending  
4 on the end user's device, e.g., a mobile app for tablets, iPads and smart phones versus a full featured  
5 application for workstations and laptops.

6 d. If offline access is required, the application shall accommodate devices with limited  
7 space by downloading the minimum amount of data needed to function without an active connection to  
8 the server.

9 e. All forms and menus shall be designed for optimal performance over slower or unreliable  
10 connections, e.g., virtual private network, satellite or burst wireless connections, Wi-Fi, or a tethered  
11 internet connection.

12 f. Whenever possible, application shall offload large workloads to the server to  
13 accommodate devices with low-power or slower processors, e.g., tablets or mobile phones.

14 g. Forms and menus shall be designed with touch interaction as the primary expected input  
15 method through the use of drop-down lists, on/off switches, and context-specific fields.

16 h. Application shall support native functions of the client device, including but not limited  
17 to: on-screen keyboards, voice dictation, predictive text and suggested words, front and rear cameras, and  
18 GPS location services.

#### 19 E. Support and Training Requirements

##### 20 1. CONTRACTOR Support Plan

21 a. CONTRACTOR shall be responsible for maintaining and supporting all installed  
22 application software and hardware, initially under a one (1) year warranty beginning after full acceptance  
23 of the machines. Further support shall be provided under ongoing software license renewals.

24 b. CONTRACTOR's support shall be based on a 24/7 operation of HCA and shall delineate  
25 a list of possible services incorporating both HCA site and CONTRACTOR site staffing, and the costs  
26 associated with those services. There shall be pre-established Service Level Agreements for measuring  
27 the effectiveness of the delivery of the services.

28 c. CONTRACTOR's support plan shall be jointly developed by HCA and CONTRACTOR  
29 prior to the initiation of CONTRACTOR's support. The cost of such support shall be borne by  
30 CONTRACTOR unless the problems can be shown to be attributable to the hardware, network, operating  
31 system or other system components whose operation and maintenance is the responsibility of HCA.

32 1) Required Support Levels

33 2) System Availability

34 3) System Performance

35 4) System Utilization

36 5) Incident Management

37 6) Scanner /Digitizer operation and synchronization

- 7) Reporting
- 8) Data Integrity
- 9) Security
- 10) Change Management
- 11) Hardware

2. CONTRACTOR shall utilize the following Severity Index for categorizing and prioritizing application errors.

a. Severity 1 - Application errors that cause

- 1) Problems in completing less than 10% of system processes
- 2) Problems having an immediate adverse impact to processes
- 3) Disruption in service resulting in system unavailable for one (1) hour
- 4) Disruptions affecting HCA staff and our business partners

b. Severity 2 - Application errors that cause

- 1) Major operational impact, even if workarounds are available
- 2) Problems having an adverse impact to business within 24 hours
- 3) Problems affecting business partners from logging into the system

c. For a Severity 1 problem, CONTRACTOR must acknowledge receipt of the problem report within one (1) hour, must be working on the problem within four (4) hours of initial report, and must fix the problem within twenty four (24) hours of initial report. Periodic status reports are required during this period.

d. For a Severity 2 problem, CONTRACTOR must acknowledge receipt of the problem report within one (1) hour, must be working on the problem by the next working day, and must have the problem corrected on a schedule to be negotiated with HCA. Periodic status reports are required during this period.

e. Upon commencing of the Contract CONTRACTOR shall Establish policies and procedures for prioritizing and responding to HCA requests for support including:

- 1) Criteria for diagnosing reported problems and determining root cause(s) of problem.
- 2) Use of Severity Index criteria for assessing the impact of reported problems.
- 3) Procedures determining responsibility for problem resolution.
- 4) Defining response time for various categories of problems.
- 5) Documenting the response and subsequent actions.
- 6) Procedures for escalating disagreements with HCA regarding cause of the problem and responsible party.
- 7) Procedures for working cooperatively with HCA staff to promptly resolve problems.
- 8) Tracking all problem reports.
- 9) Correct any errors in functionality that are reported by HCA or business partners

//

10) A differentiation of the Lead Technician responsibilities vs. those of the Project Manager that are identified by CONTRACTOR within a reasonable period, depending upon the severity of the error.

F. Operations and Maintenance Procedures

1. CONTRACTOR shall be responsible for establishing operations and maintenance procedures for the DDR system. CONTRACTOR shall provide the necessary documentation and procedures to support HCA's operations of the DDR system on a 24/7 basis. CONTRACTOR shall perform the following:

2. Maintain the software program code to provide the functionality as delineated in contract.

3. Distribute any software upgrades or version replacements to which HCA is entitled under the software license along with updated user and operational documentation and assist in its installation in the test environment and migration to production.

4. Maintain comprehensive change control procedures to control software versions and releases; HCA should be notified formally of any intended changes.

a. Develop procedures for software distribution to HCA and its business partners who may be users of the system including any application server software and any client software (if needed).

b. Maintain all hardware components required for radiographic imaging. Routine maintenance shall occur regularly or as recommended by the manufacturer, so that optimal functionality and uptime is ensured. Immediately correct any hardware errors that impede functionality.

c. CONTRACTOR shall establish and maintain a source code escrow so that HCA will have access to program source code in the event of bankruptcy, dissolution, merger or other situation which may impact CONTRACTOR's ability or willingness to support the software.

d. CONTRACTOR shall provide a means for HCA staff to report problems via email, telephone, or online submission.

e. CONTRACTOR shall ensure that responses are made to HCA within specified time periods, acknowledging receipt of the problem report and identifying when direct contact can be made with CONTRACTOR-assigned support staff person.

f. CONTRACTOR shall update and distribute user and operational documentation to reflect any software corrections/changes.

g. CONTRACTOR shall provide replacement dosimeter badge(s) one (1) day prior or upon expiration.

G. Training Requirements

1. CONTRACTOR may accept County's training plan below or submit their own training plan for County approval. CONTRACTOR shall provide 1) initial "classroom led" hands on training to County, 2) as needed training before full implementation of DDR system, and 3) training on all future functionality of the DDR system. In addition to end users, training attendees may include third party contractors provided by CONTRACTOR or County.

1 a. End User Training

2 1) End Users are the largest group in need of training. They are further broken down  
3 into more specific groups based upon their job function, logon group, and access rights.

4 b. Service Desk and Field Technician Training

5 1) Service Desk and Field Technician staff shall be trained, at minimum, at the Super  
6 User level of instruction. Training objectives shall be for participants to accurately triage and record  
7 issues for escalation to higher levels of support, and identify issues within the system and troubleshoot  
8 desktop and mobile device issues. Service Desk staff will be given rights to create and maintain user  
9 maintenance.

10 c. Administrator Training

11 1) Administrator staff shall be trained in the support of the front and back end  
12 architecture, such as database and server administration.

13 d. Software Support Training

14 1) Software Support staff shall be trained at the level of both Super User and Service  
15 Desk staff, in addition to selected aspects of the Administrator staff level. The objective shall be for  
16 participants to be able to recognize core issues versus issues that can be cured with a short term work  
17 around. Software Support staff will be responsible for testing new releases and updates.

18 e. User Application Specific Training

19 1) All potential users shall be trained on the use of the DDR software application at the  
20 level of training that corresponds to the access rights granted to the group that the user is part of.

21 f. Ad Hoc Report Training

22 1) End Users with access to the Ad Hoc reporting tools shall be trained on the use of  
23 the Ad Hoc report generator.

24 H. Administration:

25 1. Central Administration

26 a. Ability to manage multiple users centrally utilizing Microsoft management tools and  
27 services such as Active Directory.

28 b. Ability to manage Machines from one central server concurrently.

29 2. Local Systems Administration

30 a. Perform administrative functions such as access rights or creating ad hoc queries.

31 b. Grant permissions based on roles; rights can be inherited from other roles.

32 I. System and Resources Requirements

33 1. 24 hour/7 days per week (24/7) technical support.

34 2. Tested, verifiable Disaster Recovery state.

35 3. Documentation

36 #

37 #

1 a. In addition to the documentation requirements identified herein, CONTRACTOR shall  
 2 provide documentation for all the functionality provided by the DDR system, including third party  
 3 applications that may be needed for implementation.

4 b. Application/Server Documentation

5 1) CONTRACTOR shall provide the HCA/ IT System Administrator  
 6 with the following:

- 7 a) How to report and troubleshoot server related hang-ups and problems.
- 8 b) How to verify if the user has lost a connection to the server/application.
- 9 c) How to add and delete user ID's.
- 10 d) How to assign rights and privileges.
- 11 e) How to set-up, clear, and troubleshoot print queues.
- 12 f) How to assign and reset a user password.
- 13 g) How to set-up a standard desktop or connection from a mobile device.
- 14 h) How to maintain all system interfaces and peripherals.

15 c. Application User Documentation

16 1) CONTRACTOR shall provide Super Users with the following:

- 17 a) How to enter data into the application, find data already entered, perform  
 18 standard and advanced searches and generate reports appropriate to their group rights.
- 19 b) How to verify if a user has lost a connection to the application.
- 20 c) How to check print queues.
- 21 d) Troubleshoot lost connections to the application/server.
- 22 e) Advanced reporting features.
- 23 f) Interface troubleshooting.
- 24 g) Delete duplicate records.
- 25 h) Troubleshoot locked records.
- 26 i) Find lost records/cases.
- 27 j) Mobile device connection and operation.

28 J. Equipment Requirements

29 1. CONTRACTOR shall provide, install and maintain computer and radiology equipment in  
 30 each of the County correctional facilities. The system shall have the following components, specifications  
 31 and functionalities, which shall meet or exceed County expectations throughout the term of this Contract.

32 a. X-ray Equipment

- 33 1) U/C arm configuration.
- 34 2) One (1) dedicated chest unit (IRC unit only).
- 35 3) Floor/pedestal mounted.
- 36 4) 17 x 17 Detectors.
- 37 5) Vertical/Horizontal motor driven with variable SID.

1 6) Two (2) radiolucent exam tables with wheel locks that accommodate up to  
2 500 lbs (CMJ and TLF units).

3 7) Digital readout manual/programmable control panel with AEC (phototiming).

4 8) Automatic collimator with manual override.

5 9) Diagnostic quality high resolution monitors for each x-ray room and Radiologist  
6 reading stations.

7 10) CONTRACTOR to supply work station carts (to house PC, keyboard, flat panel  
8 monitor, and additional equipment as necessary to perform job function).

9 11) Minor modifications can be made to pre-existing space for medical equipment  
10 accommodation if within timeframe and with the approval of the County.

11 12) All radiation emitting tubes shall be registered as required and the CONTRACTOR  
12 shall be responsible for maintaining tube registration as required by all regulatory agencies.

13 13) All radiographic equipment and other related peripherals necessary to perform the  
14 services shall be the responsibility of the CONTRACTOR. The County shall not be liable for any cost  
15 associated with licensing, installation or removal, preventive maintenance and repair of any equipment  
16 used associated with the services.

17 14) The CONTRACTOR shall have replacement equipment readily available in case of  
18 equipment failure at any facility so as not to disrupt regularly scheduled x-ray clinics (i.e. extra hard  
19 drives, etc.).

20 15) No modification of a designated facility shall be allowed without prior approval of  
21 the County office responsible for the facilities and the Sheriff's Department.

22 16) The County of Orange shall not assume liability for any CONTRACTOR equipment  
23 kept in Sheriff's facilities. The CONTRACTOR shall ensure all radiographic equipment used is secured  
24 after each clinic's completion so as not to allow any unauthorized usage.

25 17) On completion of the contract, the CONTRACTOR shall remove the equipment  
26 within 10 working days of termination date. If the CONTRACTOR fails to remove the equipment, it shall  
27 be removed and held by the County for 30 workdays. If the CONTRACTOR has not removed the  
28 equipment by the end of the 30 workday period, the equipment shall be sold at public auction. Proceeds  
29 less cost of removal, storage and auction expense shall be forwarded to CONTRACTOR's last known  
30 address.

31 18) The CONTRACTOR shall have an on-site remedial maintenance response time  
32 within four (4) hours, seven (7) days a week, and 365 days a year (including all holidays). The  
33 CONTRACTOR shall guarantee a maximum downtime of 24 hours or less. HCA reserves the option to  
34 impose fines up to 10% of the monthly payment made to CONTRACTOR, for every 24-hour period of  
35 downtime that exceeds the maximum 24 hours downtime allowed.

36 19) The CONTRACTOR shall have the off-site ability to diagnose/repair software issues  
37 but, if remote access is unavailable then it is expected for the vendor to service onsite.

1                   20) Variations of the above requirements may be considered, including implementation  
2 of mobile units, if the equipment is able to sufficiently satisfy all operational, technology and security  
3 requirements.

4                   b. Interface Software

5                   1) Interface with the Sheriff's Data System for demographic information at time of  
6 booking and later a reconciliation file shall be sent for verification of inmate identity at time of booking.  
7 Desired data fields are as follows: Name – Last, First, Middle, Booking Number, Date, Time, Orange  
8 County Number (OCN) and Gender. Additional data fields may be required.

9                   2) Capable of uploading patient demographic data to three (3) acquisition work stations  
10 needed for the population of a workload list for use by radiology technicians.

11                   3) The Radiology system shall have an interface that allows medical staff utilizing an  
12 Electronic Health Record (EHR) system to call up radiology images and diagnoses during the course of  
13 providing patient care, without having to log into an additional application.

14                   c. PACS Software

15                   1) The ability to record audit trails for all transactions, permissions and requests. These  
16 audit trails shall be recorded in a log that cannot be altered. Changes in a submitted transaction must be  
17 made by retaining the old transaction, making the changes including a time/date/user stamp and a reason  
18 for that change. This information will be recorded in the audit trail and/or transactions log.

19                   2) Include the capability to select the data to be archived to near-line storage media  
20 using such criteria as booking number, age, name, program, record type, image date and yet to be  
21 determined unique identifiers and combinations of those and other criteria.

22                   3) Have real time updates to master records tables in order to provide current  
23 information to all queries and reports.

24                   4) Include the ability to interface with other enterprise-wide application software which  
25 may be implemented or acquired by HCA and is compatible with its standards.

26                   5) Include the ability to perform comprehensive data validation checks and enforcement  
27 of data integrity across all system transactions.

28                   6) Provide fault tolerant, twenty-four (24) hour/seven (7) days access with a minimum  
29 of ninety-nine percent (99%) up-time reliability using hardware and software fault tolerance methods.  
30 Data archive and restore capabilities.

31                   7) Study Date, time and seconds on PACS system must match the study, date, time and  
32 seconds on the RIS and Acquisition software.

33                   d. Acquisition Station

34                   1) Acquisition software shall be configured to download demographic data from the  
35 Sheriff's Data System.

36                   2) Acquisition station shall be a robust workstation consisting of a Redundant Array of  
37 Independent Disks (RAID) disks with dual power supplies for maximum uptime.

1 3) Work list shall populate every 10 to 15 seconds with current inmate/booking  
2 information (IRC Location).

3 4) Touchscreen work list is required for selection of a patient/inmate to be examined;  
4 system must allow for manual input when necessary.

5 5) Data Fields required: Name – Last, First, Middle, Booking Number, Date, Time, and  
6 Orange County Number (OCN) and Gender. Additional data fields may be required.

7 6) Software should include a minimum of six (6) attempts for taking an x-ray image.

8 7) Software must be capable of storing a minimum of 30 days of studies (stored images  
9 must be encrypted in accordance with HCA security regulations).

10 8) Software must have ability to auto delete images once the maximum storage quota  
11 has been met. Software shall provide the ability to manually delete images when necessary.

12 9) All standard hospital radiology exams required with the Acquisition software (i.e.  
13 facial, mandible, orbits, ribs, etc.).

14 10) Provide the computer hardware and software necessary to download and upload  
15 digital images and reports for transfer and storage purposes, including a laser digitizer and dri-chem printer  
16 for hard copy of the image when required.

17 11) Equipment shall be installed at Sheriff's designated Facilities at pre-existing  
18 locations within the facilities. Any equipment installed and kept by the CONTRACTOR in the designated  
19 Facilities shall remain the responsibility of the CONTRACTOR including its required licensing  
20 requirements, preventive maintenance and repair. Mobile equipment may be considered if all  
21 requirements can be sufficiently met.

22 12) Acquisition software shall have the ability for CHS staff to manually enter inmate  
23 demographic information directly into the application in case of interface problems.

24 e. Digital Printing and Scanning

25 1) Capable of printing to a dri-chem digital printer for a hard copy of the images.

26 2) Provide ability to import digital images and reports for transfer and storage purposes.  
27 Ability to copy digital images onto portable media (e.g. CD, DVD and flash drive).

28 3) Capable of receiving images that are scanned through a digitizer.

29 K. Workload and Schedule

30 1. CONTRACTOR will provide coverage availability at the mutually agreed times and days at  
31 the designated facility. Additionally, CONTRACTOR shall have staffing available as ready replacements  
32 for scheduled/unscheduled absences of regular staffing so as not to disrupt regularly scheduled facility  
33 radiology clinics.

34 2. Require all employees working within the designated facilities to complete a thorough  
35 background check conducted by the OCSD. Employees are ineligible to work within these facilities  
36 without successfully completing this process.

37 //



1 3. Adhere to all OCSD's security rules and procedures in place in the performance of services  
2 at the designated Facility(ies).

3 4. Require its employees to remain on-site at their assigned Facility while performing contract  
4 services at all times.

5 5. Coordinate with HCA CHS and/or OCSD staff responsible for scheduling the inmates for  
6 examinations.

7 6. Administer and process radiology exams on-site and transmit the images to a diagnostic  
8 radiologist who will read the x-rays within four (4) hours and provide diagnostic reports within 24 hours  
9 of the examination. Reports and images shall be transmitted electronically via secured internet site for  
10 access by authorized CHS medical staff.

11 7. Concurrent telephone notification of all positive results or suspicious results for TB shall be  
12 made immediately to the CHS medical staff.

13 8. Provide services on the schedule that has been agreed upon by CHS and CONTRACTOR.  
14 The CONTRACTOR shall provide and maintain up to date Point of Contact information to respond to  
15 CHS's staff inquiries during equipment failure and CONTRACTOR staff's non-conformance to agreed  
16 clinic schedules. Contact information should include business hours, as well as after hours  
17 (nights/weekends/holidays). Response times in these cases shall be within the hour.

18 L. Workload Requirements

19 1. The workload requirement is listed below. The average number of exams per year is based  
20 on the previous year's average examinations administered and may vary or change depending on the needs  
21 of the CHS Facility.

22 a) IRC facility averages seventy thousand (70,000) TB screening images annually.

23 b) CMJ and TLF facilities average four thousand (4,000) routine examinations annually.

24 M. Meetings

25 1. Monthly management meetings with ADMINISTRATOR to discuss contract performance  
26 and Radiology issues including, but not limited to, whether the program is or is not progressing  
27 satisfactorily in achieving all the terms of the Agreement and, if not, what steps will be taken to achieve  
28 satisfactory progress, and review of statistics and program services.

29 N. Additional Services

30 1. Upon mutual written agreement between COUNTY and CONTRACTOR additional services  
31 such as, but not limited to, ultrasound, and mobile x-ray may be included at rates of compensation to be  
32 determined prior to execution.

34 VIII. STAFFING

35 A. CONTRACTOR shall provide all staffing and equipment necessary to provide digital radiology  
36 services at the designated Facilities.

37 //

1 1. CONTRACTOR shall provide a Project Manager exclusive to COUNTY. Project Manager  
 2 shall oversee and manage all services provided under this agreement. Duties include but not limited to:  
 3 a. Attend monthly meetings to discuss contract performance and operational issues  
 4 b. Provide monthly schedule to CHS Administrator(s)  
 5 c. Ensure appropriate staffing coverage in all facilities at all times  
 6 d. Communicate staffing changes to CHS Administrator(s) via email  
 7 e. Ensure all radiology employees are trained on equipment use and radiology operations  
 8 in all jail facilities

9 f. Attend all site inspections and provide CHS documentation of findings and actions taken.

10 2. Contractor shall designate the Project Manager to be the main point of contact for any issues  
 11 associated with the contract. Response times shall be (1) hour for urgent issues and four (4) hours for  
 12 routine inquiries. Urgent issues include employee matters that may affect staffing coverage in the next 24  
 13 hours (e.g. staff calling out) Contractor shall notify the County Immediately of any changes to designated  
 14 Project Manager.

15 B. All program and administrative support staff, including subcontractors, must physically reside in  
 16 the Continental United States for both on-site and/or remote support services. CONTRACTOR is required  
 17 to ensure that all staff and subcontractors providing equipment and software support for digital radiology  
 18 services will have an established physical residence in the Continental United States throughout the term  
 19 of the contract.

20 C. On-site jail staffing will include all radiology technicians that are properly licensed to perform  
 21 the necessary procedures in both the booking process and as part of the outpatient treatment program.

22 D. Only board certified Radiologists licensed by any State within the Continental United States shall  
 23 read and complete diagnostic image reports. Applicable copies of current radiological staff licenses and  
 24 certificates shall be submitted to HCA Contract Services prior to start of the services and shall be  
 25 maintained current by the awarded CONTRACTOR throughout the term of the contract.

26 E. CONTRACTOR, subcontractors and all CONTRACTOR employees, including future employees  
 27 hired during the term of this contract, who perform services at any designated Facilities will be required  
 28 to pass a thorough background investigation conducted by OCS D prior to the start of the contract.  
 29 Individuals who do not pass the background check will not be allowed access to any designated Facilities  
 30 or data with no exception.

31 F. CONTRACTOR shall require all support staff and subcontractors not assigned within a  
 32 designated facility with a business need to work within a designated facility to complete and maintain an  
 33 active security clearance conducted by OCS D. Security clearances must be renewed annually and allow  
 34 staff to be escorted within the facility to conduct necessary business.

35 G. Maintain required records for its employees and subcontractors, including verification of  
 36 credentials, current licensures, certificates, work schedules and make copies available for display at work  
 37 place.

1 H. CONTRACTOR is required to maintain all mandated radiation equipment registration  
2 documentation and fees with the State of California Department of Public Health.

3 I. Provide and maintain current listing of its facility assigned staff and shall advise the County of  
4 any CONTRACTOR’s staff changes, additions and terminations/separations within a reasonable time.  
5 Any identification cards/keys issued to CONTRACTOR’s staff to gain access to OCSD’s Facilities shall  
6 be surrendered to CHS Administration as soon as possible.

7 J. Provide unlimited training for on-site personnel based upon role and access.

8 K. CONTRACTOR shall at all times have an active recruitment plan in case of staff turnover.  
9 Recruitment status and/or updates shall be provided to CHS Administrator(s) during the monthly meetings  
10 or upon request.

11  
12 **IX. UTILIZATION REVIEW/QUALITY ASSURANCE**

13 A. Within forty-five (45) days of the effective date of this Agreement, representatives of  
14 ADMINISTRATOR and CONTRACTOR shall meet and develop written Operating Procedures covering  
15 Services specified in Paragraph VII of this Exhibit A to the Agreement. Such Operating Procedures shall  
16 be mutually agreed to by both parties and shall address, but not be limited to, the supervision and  
17 scheduling of Radiology Technicians and other CONTRACTOR staff operating within the CHS Facilities.  
18 Said Operating Procedures shall be reviewed by both parties at least annually, as well upon the addition  
19 of any other Services to be provided by CONTRACTOR. Any subsequent changes to the Operating  
20 Procedures shall be mutually agreed upon, in writing, by both parties.

21 B. During Period One of this Agreement, representatives of CONTRACTOR and  
22 ADMINISTRATOR, which shall include the Contract Officers, shall meet at least quarterly to discuss  
23 CONTRACTOR’s administrative and programmatic progress and performance.

24 C. CONTRACTOR shall participate in any CHS Utilization Review program and/or Quality  
25 Assurance program for the review of all services provided pursuant to this Agreement.

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 #

34 #

35 #

36 #

37 #

EXHIBIT B  
 TO AGREEMENT FOR THE PROVISION OF DIRECT DIGITAL RADIOLOGY SERVICES FOR  
 CORRECTIONAL HEALTH SERVICES PROGRAMS  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 SD XRAY, LLC.  
~~MAY~~ JULY 1, 2018 ~~2020~~ THROUGH JUNE 30, ~~2020~~ 2021

**I. SECURITY REQUIREMENTS AND GUIDELINES FOR APPLICATION VENDORS AND APPLICATION SERVICE PROVIDERS**

A. Overview

1. This document provides a high-level overview of application security related guidelines and requirements set forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-implemented applications and application service providers who provide hosted services.

2. These requirements and guidelines are consistent with regulatory privacy and security requirements and guidelines as well as supportive of OCHCA’s position and practices on risk management in terms of appropriately safeguarding OCHCA’s information assets.

3. The sections below are comprehensive and may apply in whole or in part based on specific implementation and scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This information will be reviewed, validated and documented by OCHCA Security prior to any contract being finalized.

4. Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA’s systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security Standards, and Sarbanes-Oxley (SOX). Vendors must also commit to ensuring compliance with all future local, state and federal laws and regulations related to privacy and security as they pertain to the application or service.

B. General Security Requirements

1. The application/system must meet the general security standards based upon ISO 17799 – Code of Practice for Information Security and ISO 27799 – Security Management in Health Using ISO 17799.

2. The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.

//

1 3. For applications hosted by OCHCA, OCHCA will routinely apply patches to both the  
 2 operating system and subsystems as updated releases are available from the operating system vendor and  
 3 or any third party vendors. The vendors must keep their software current and compatible with such  
 4 updated releases in order for the application to operate in this environment.

5 4. Vendors must provide timely updates to address any applicable security vulnerabilities found  
 6 in the application.

7 5. OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and  
 8 manage the health and performance of the application server, network connectivity, power etc. The  
 9 application must function appropriately while the monitoring tools are actively running.

10 6. All application services must run as a true service and not require a user to be logged into the  
 11 application for these services to continue to be active. OCHCA will provide an account with the  
 12 appropriate security level to logon as a service, and an account with the appropriate administrative rights  
 13 to administer the application. The account password must periodically expire, as per OCHCA policies and  
 14 procedures.

15 7. In order for the application to run on OCHCA server and network resources, the application  
 16 must not require the end users to have administrative rights on the server or subsystems.

#### 17 C. Encryption

18 1. Application/system must use encryption to protect sensitive data at rest wherever technically  
 19 possible (e.g. SQL TDE Encryption).

20 2. All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as  
 21 Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the  
 22 network level. This requirement pertains to any regulated data in motion such as website access and file  
 23 transfers.

24 3. All electronic files, where applicable, that contain OCHCA data must be encrypted when  
 25 stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes).  
 26 The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES),  
 27 with a 128bit key or higher.

28 4. All encryption methods used for data storage and transmission must be disclosed by the  
 29 vendors.

30 5. Encryption shall be used to protect data whenever technically possible.

#### 31 D. Network Application Documentation

32 1. Vendors must provide documentation related to the configuration of the application including  
 33 methods of secure implementation and port requirements.

#### 34 E. Access Management

35 1. Application/system must control access to and within the system at multiple levels (e.g. per  
 36 user, per user role, per area, per section of the chart) through a consistent mechanism of identification and  
 37 authentication of all users in accordance with the 'Role Based Access Control' (RBAC) standard.

1           2. Application/system must support measures to define, attach, modify and remove access rights  
2 for all classes of users.

3           3. Application/system must support measures to enable and restrict access to the whole and/or  
4 sections of the technology solution in accordance with prevailing consent and access rules.

5           4. Application must have the ability to create unique user accounts.

6           5. Application must support session timeouts or automatic logoff after 20 minutes of inactivity.

7           6. The application must provide functionality to automatically disable or lock accounts after 60  
8 days of inactivity.

9           F. Password Management

10          1. Application must support password management measures including but not limited to  
11 password expiration, account lockout and complex passwords.

12          2. Passwords expiration must be set to 90 days and the system must prevent the use of the  
13 previous 4 passwords.

14          3. Accounts must be locked after five unsuccessful login attempts.

15          4. The password must be at least 8 characters in length and a combination of letters, numbers,  
16 and special characters with at least 3 of the four following categories.

17           a. Uppercase letters (A through Z)

18           b. Lowercase letters (a through z)

19           c. Numeric digits (0 through 9)

20           d. Special Characters (! @ # \$ % ^ & etc.)

21          G. Audit Capabilities

22          1. Auditing and logging capabilities will permit HCA to identify, and possibly reverse,  
23 unauthorized or unintended changes to application.

24          2. Application must support the identification of the nature of each access and/or modification  
25 through the use of logging.

26          3. Application must employ audit capabilities to sufficiently track details that can establish  
27 accountability for each step or task taken in a clinical or operational process.

28          4. All audit logs must be protected from human alteration.

29          5. Access to logs must be limited to authorized users.

30          6. The application must employ basic query tools and reports to easily search logs.

31          7. OCHCA record retention policies must be followed. Currently OCHCA requires that this  
32 period be at least six years from the time the record was initiated.

33          8. Logging and auditing functionality must include the following:

34           a. Record of who did what to which object, when and on which system.

35           b. Successful/unsuccessful log-in and log-out of users.

36           c. Add, modify and delete actions on data/files/objects.

37           d. Read/view actions on data classified as restricted/confidential.

1 e. Changes to user accounts or privileges (creation, modification, deletion).

2 f. Switching to another users access or privileges after logging in (if applicable).

3 H. Protection from Malicious Code

4 1. For cloud hosted solutions, vendors must utilize antivirus/antispymware software on servers  
5 and monitor to prevent malicious code which may lead to a compromise of OCHCA's data.

6 2. For local hosted solutions, vendors must ensure that the application appropriately supports  
7 the use of antivirus/antispymware software.

8 I. Remote Support Functionality

9 1. Provider must conform to OCHCA Vendor Remote Access Policy.

10 J. HCA Data Usage

11 1. During the course of any implementation and subsequent support and life cycle management,  
12 any OCHCA data that the vendors have access to in any manner shall be considered confidential unless  
13 otherwise designated in writing.

14 2. Vendors must not use or disclose OCHCA's data other than as permitted or as required by  
15 contract or law.

16 3. The vendors must agree to use appropriate safeguards to prevent the unauthorized use or  
17 disclosure of OCHCA's data during any time that the data is stored or transported in any manner by  
18 vendors.

19 4. After the end of any appropriate use of OCHCA's data within the vendors' possession, such  
20 data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

21 K. Cloud Solutions

22 1. Application Service Providers hosting OCHCA data must meet the following additional  
23 requirements and are required to comply with and provide deliverables noted below:

24 a. SSAE 16. SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance certificate.

25 2. Network Intrusion Detection and Prevention. All systems that are accessible via the internet  
26 must actively use a network based intrusion detection and prevention solution.

27 3. Workstation/Laptop Encryption. All workstations, laptops and mobile devices that process  
28 and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified  
29 algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.

30 4. Jurisdiction and Location of OCHCA Data. To protect against seizure and improper use by  
31 non-United States (US) persons and government entities, all data / information stored and processed for  
32 OCHCA must reside in a facility under the legal jurisdiction of the US.

33 5. Patch Management. All workstations, laptops, and other systems that access, process and/or  
34 store OCHCA data must have appropriate security patches installed. Application Service Providers must  
35 utilize a documented patch management process which determines installation timeframe based on risk  
36 assessment and vendor recommendations. At a minimum, all applicable patches must be installed within  
37 30 days of vendor release.

1 6. Application Access. All systems accessible via the internet must employ security controls to  
2 prevent access to the application via an asset not approved or owned by the county.

3 7. Risk Assessment. Application Service Providers hosting data for HIPAA covered services  
4 must conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security  
5 Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on the  
6 latest version of NIST SP 800-30 ([http://csrc.nist.gov/publications/nistpubs/800-30-](http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf)  
7 [rev1/sp800\\_30\\_r1.pdf](http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf)). Upon request, the Risk Assessment findings and remediation strategy must be  
8 shared with OCHCA.

9 8. NIST. To ensure compliance with HIPAA, Application Service Providers shall implement  
10 appropriate security safeguards by following National Institute of Standards and Technology (NIST)  
11 guidelines.

#### 12 L. Policies

13 1. Vendors must have formal, published IT security policies that address how they manage and  
14 maintain the internal security posture of their own or sub-contracted infrastructure. The vendor shall also  
15 clearly demonstrate that additional security features are in place to protect systems and data in the unique  
16 environment of the service provider model: namely, security issues associated with storing County-owned  
17 data on a remote server that is not under direct County control and the necessity of transferring this data  
18 over an untrusted network.

19 2. Vendors must provide, to the extent permissible, all relevant security policies and procedures  
20 to the County for review and validation. All documentation must be provided in electronic format for the  
21 County's review.

22 3. These policies must include, but not be limited to, the following:

23 a. IT Staff Usage Agreement. All vendor employees performing services for the County  
24 must sign and agree to an IT usage agreement within their own organization as part of an overall security  
25 training and awareness program. At a minimum, vendor employees must sign a statement of  
26 understanding within their own organization regarding Internet dangers, IT security, and IT ethics and  
27 best practices,

28 b. IT Security Policies and Procedures. The vendor shall provide its IT security policies and  
29 procedures for review by the County.

30 c. IT Operations Security Policy. Written standards for operational security for any  
31 facilities where the County data, staff or systems shall exist. These documents must include, but not be  
32 limited to, physical security, network security, logical security, systems/platform security, wireless access,  
33 remote access, and data protections.

34 d. Data Management Security Policy. Policy for the safeguarding and management of all  
35 data provided by the County or accessed by vendor as part of implementation and ongoing maintenance.  
36 This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of  
37 duties.



1 e. Security Incident Notification and Management Process. A detailed document that  
 2 outlines the contact names and order and escalation of events that will occur in the case of a security  
 3 breach concerning the County staff, data, or systems. This document must be updated immediately upon  
 4 any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

5 4. In addition to developing, maintaining, and enforcing the above named policies, the vendor  
 6 must:

7 a. Bear the cost of compliance for any required changes to security infrastructure, policies  
 8 and procedures to comply with existing regulations, unless such change is unique to the County or  
 9 customarily paid for by the vendor's other customers.

10 b. Comply with reasonable requests by the County for audits of security measures,  
 11 including those related to identification and password administration.

12 c. Comply with reasonable requests by the County for onsite physical inspections of the  
 13 location from which the vendor provides services.

14 d. Provide the County with any annual audit summaries and certifications, including but not  
 15 limited to HIPAA, ISO or SOX audits, as applicable.

16 e. Designate a single point of contact to facilitate all IT security activities related to services  
 17 provided to the County, with the allowance of appropriate backups. Such contact(s) must be available on  
 18 a 7/24/365 basis.

19 M. Business Continuity / Disaster Recovery Plans

20 1. Application Service Providers must have a viable risk management strategy that is formally  
 21 documented in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP  
 22 plan(s) must identify recovery strategies within the application service areas, outline specific recovery  
 23 methods and goals, and provide the mutually agreed upon recovery time and point objectives.

24 N. Backup and Restore

25 1. The vendor must provide their routine Backup and Restore policy and procedure which  
 26 includes their backup data security strategy. These procedures shall allow for protection of encryption  
 27 keys (if applicable) as well as a document media destruction strategy including media management tasks  
 28 (i.e., offsite vaulting and librarian duties).

29 O. Staff Verification

30 1. For any employee a vendor contemplates using to provide services for the County, the vendor  
 31 shall use its standard employment criteria as used for similar services provided to other customers in  
 32 evaluating the suitability of that employee for such roles.

33 At a minimum, subject to the requirements of applicable law, such criteria must include the information  
 34 as outlined below for each employee:

35 a. Relevant Skills, Licenses, Certifications, Registrations. Each service employee must  
 36 possess the educational background, work experience, skills, applicable professional licenses, and related  
 37 professional certifications commensurate with their position. The County may, at any time and at its sole

1 discretion, request that the vendor demonstrate compliance with this requirement as applicable to the  
 2 nature of the services to be offered by the vendor's employee. The County may, at its sole discretion, also  
 3 request the vendor's certification that the vendor employee has undergone a chemical/drug screening, with  
 4 negative results, prior to granting access to the County facilities.

5 b. Background Checks. In accordance with applicable law, the vendor must, at the County's  
 6 request, obtain as a condition of employment, a background investigation on any vendor employee  
 7 selected to work for the County. The security and background investigation shall include criminal record  
 8 checks, including records of any conviction in the U.S. or other relevant jurisdiction where the employee  
 9 resides. Costs for background investigations must be borne by the vendor.

10 c. At a minimum, subject to the requirements of applicable law, the vendor must:

11 1) Ensure that all vendor service employees performing applicable services or  
 12 supporting the vendor's duties and obligations under a County agreement: (i) have not been convicted of  
 13 any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and (ii) have not  
 14 been on any list published and maintained by the Government of the United States of America of persons  
 15 or entities with whom any United States person or entity is prohibited from conducting business.

16 2) Follow such verification procedures as may be reasonably specified by the County  
 17 from time to time. If either the vendor or the County becomes aware that any vendor employee has been  
 18 convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or has been included  
 19 on any such list of persons or entities convicted of such crimes, then the vendor shall promptly remove  
 20 the employee from providing services to the County and prohibit that employee from entering any  
 21 facilities at which services are provided.

22 3) Annually certify to the County that, to the best of its knowledge, none of the service  
 23 employees have been convicted of any felony involving fraud, theft, dishonesty or a breach of trust under  
 24 any laws.

25 **P. IT Physical Security and Access Control**

26 1. The vendor must establish processes and procedures for physical access to and control of  
 27 their own facilities that are, at a minimum, consistent with relevant industry-specific best practices.

28 2. Vendor employees are expected to:

29 a. Comply with facility access procedures, using procedures such as sign-in/sign-out  
 30 requirements and use of assigned ID badges.

31 b. Scan ID badges, where applicable, at any secure door and/or entrance and exit gates,  
 32 including any door or gate that may already be open.

33 c. Refrain from using recordable media in conjunction with County-owned equipment.

34 d. Comply with check-in/check-out requirements for materials and/or equipment.

35 e. Adhere to the facility's established emergency, safety and evacuation procedures.

36 f. Report any unsafe conditions to the facility's safety representative.

37 #

1 g. Report any access violations or security threats to the facility's local security  
2 administrator.

3 Q. IT Security Compliance and Training

4 1. The vendor must ensure that all vendor employees comply with security policies and  
5 procedures and take all reasonable measures to reduce the opportunity for unauthorized access,  
6 transmission, modification or misuse of the County's data by vendor employees.

7 2. The vendor must ensure that all vendor employees are trained on security measures and  
8 practices. The vendor will be responsible for any costs related to such training.

9 a. At a minimum, the vendor is expected to:

10 1) Ensure that a formal disciplinary process is defined and followed for vendor  
11 employees who violate established security policies and procedures.

12 2) Proactively manage and administer access rights to any equipment, software and  
13 systems used to provide services to the County.

14 3) Define, maintain and monitor access controls, ranging from physical access to  
15 logical security access, including a monthly review of vendor employees' access to systems used to  
16 provide services to the County.

17 3. The vendor shall monitor facilities, systems and equipment to protect against unauthorized  
18 access.

19 a. At a minimum, the vendor is expected to:

20 1) Monitor access to systems; investigate apparent security violations; and notify the  
21 County of suspected violations, including routine reporting on hacking attempts, penetrations and  
22 responses.

23 2) Maintain data access control and auditing software and provide adequate logging,  
24 monitoring, and investigation of unusual or suspicious activity.

25 3) Initiate immediate corrective actions to minimize and prevent the reoccurrence of  
26 attempted or actual security violations.

27 4) Document details related to attempted or actual security violations and provide  
28 documentation to the County.

29 5) Provide necessary documentation and evidence to the County in connection with any  
30 legal action or investigation.

31 R. Security Testing Recommendations

32 1. The vendor should perform a series of steps to verify the security of applications, some of  
33 which are noted below. This section will not be validated by the County, but reflects best practices that  
34 the vendor should consider and follow.

35 a. Look for vulnerabilities at various layers of the target environment. In the lowest layer,  
36 the vendor's testing team should look for flaws in the target network environment, including any routers  
37 and firewalls designed to control access to the web server and related target components. The team should

1 attempt to determine whether such filters provide adequate protection at the network layer of the target  
2 hosts that the team can reach across the Internet.

3           b. Look for flaws in the Internet-accessible hosts associated with the target infrastructure,  
4 including the web server. This host-based component of the test will analyze which network-accessible  
5 services are available on the target hosts across the Internet, including the web server process. The testing  
6 team should look for incorrect configuration, unpatched or enabled services, and other related problems  
7 on the target hosts.

8           1) This review performed by the vendor should include but not be limited to:

9           a) The web application (i.e., the software that interacts with users at their web  
10 browsers; typically custom-crafted code created by the web development team)

11           b) The web server application (the underlying software that sends and receives  
12 information via HTTP and HTTPS, typically off-the-shelf software such as Microsoft's IIS or the open-  
13 source Apache software)

14           c) Any separate backend application servers that process information from the web  
15 application

16           d) The backend database systems that house information associated with the web  
17 application.

18           e) Infrastructure diagrams.

19           f) Configuration host review of settings and patch versions, etc.

20           g) Full code review.

21           h) Identification and remediation of well-known web server, code engine, and  
22 database vulnerabilities.

23           i) Identification and remediation of any server and application administration flaws  
24 and an exploitation attempt of same.

25           j) Analysis of user interface, normal application behavior, and overall application  
26 architecture for potential security vulnerabilities.

27           k) Analysis of data communications between the application and databases or other  
28 backend systems.

29           l) Manual analyses of all input facilities for unexpected behavior such as SQL  
30 injection, arbitrary command execution, and unauthorized data access.

31           m) Analyses of user and group account authentication and authorization controls to  
32 determine if they can be bypassed.

33           n) Identification of information leakage across application boundaries, including  
34 the capability to enumerate other users' data and "show code" weaknesses that reveal internal application  
35 logic.

36           o) Identification of areas where error handling is insufficient or reveals too much  
37 sensitive information.

1 p) Identification of opportunities to write to the host file system or execute  
2 uploaded files.

3 q) Identification of product sample files, application debugging information,  
4 developer accounts or other legacy functionality that allows inappropriate access.

5 r) Determination as to whether or not fraudulent transactions or access can be  
6 performed.

7 s) Attempts to view unauthorized data, especially data that should be confidential.

8 t) Examination of client-side cached files, temporary files, and other information  
9 that can yield sensitive information or be altered and re-submitted.

10 u) Analysis of encoded and encrypted tokens, such as cookies, for weakness or the  
11 ability to be reverse engineered.

## 12 S. Vendor Deliverables

13 1. The following items are to be provided by the vendor:

14 a. OCHCA Security Requirements and Guidelines for Application Vendors and  
15 Application Service Providers - Questionnaire

16 b. Business Continuity Plan Summary (as related to service provided)

17 c. SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance certificate

18 d. Network Diagram that demonstrates vendor network and application segmentation  
19 including the security controls in place to protect HCA data

20 e. IT Security Staff Usage Policy

21 f. IT Security Policies and Procedures

22 g. IT Operations Security Policy

23 h. Data Management Security Policy

24 i. Security Incident Notification and Management Process

25 j. Security Contact Identification (24x7x365)

26 k. Staff Related Items

27 1) Pre-Employment Screening Policy/Procedure

28 2) Background Checking Procedure

29 3) Ongoing Employment Status Validation Process

30 4) Staff Roster and Duties

31 l. Document and Intellectual Property Management Policies

32 m. Policies related to data, tapes, and resources that will be removed from County facilities

33 n. Vendor security test plan, test schedule and results

34 o. Vendor access control and log management plan

35 p. Vendor risk acceptance / compliance statement

36 q. Security Waiver form (if needed)

37 //

EXHIBIT C  
 TO AGREEMENT FOR THE PROVISION OF DIRECT DIGITAL RADIOLOGY SERVICES FOR  
 CORRECTIONAL HEALTH SERVICES PROGRAMS  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 SD XRAY, LLC.  
~~MAY~~ JULY 1, 2018 ~~2020~~ THROUGH JUNE 30, ~~2020~~ 2021

**I. BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

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

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

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

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

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

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

1 requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with  
 2 respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant  
 3 to the Agreement.

#### 4 B. DEFINITIONS

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

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

##### 11 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 //



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

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

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

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

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

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

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

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

33 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to  
34 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,  
35 and to make information related to such Disclosures available as would be required for COUNTY to  
36 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with  
37 45 CFR § 164.528.

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

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

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

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

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

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

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

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

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

#### 7 D. SECURITY RULE

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

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

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

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

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

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

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

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

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

4           E. DATA SECURITY REQUIREMENTS

5           1. Personal Controls

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

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

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

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

31           2. Technical Security Controls

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

37 //

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

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

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

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

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

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

- 35 1) Upper case letters (A-Z)
- 36 2) Lower case letters (a-z)
- 37 3) Arabic numerals (0-9)

1 4) Non-alphanumeric characters (punctuation symbols)

2 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to  
3 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
4 must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or  
5 by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication  
6 800-88. Other methods require prior written permission by COUNTY.

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

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

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

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

26 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to  
27 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
28 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is  
29 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files  
30 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website  
31 access, file transfer, and E-Mail.

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

36 3. Audit Controls

37 //

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

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

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

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

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

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

#### 27 5. Paper Document Controls

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

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

37 //

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

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

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

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

#### 19 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

1 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

11 1) The Disclosure is required by law; or

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

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

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

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

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

26 H. PROHIBITED USES AND DISCLOSURES

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

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

36 I. OBLIGATIONS OF COUNTY

37 //

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

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

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

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

12 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

34 //  
35 //  
36 //  
37 //

EXHIBIT D  
 TO AGREEMENT FOR THE PROVISION OF DIRECT DIGITAL RADIOLOGY SERVICES FOR  
 CORRECTIONAL HEALTH SERVICES PROGRAMS  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 SD XRAY, LLC.  
~~MAY~~ JULY 1, 2018 ~~2020~~ THROUGH JUNE 30, ~~2020~~ 2021

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

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

A. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

## 12 B. TERMS OF AGREEMENT

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

### 18 2. Responsibilities of CONTRACTOR

19 CONTRACTOR agrees:

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

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

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

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

37 //

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

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

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

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

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

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

34                   h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR  
35 agrees to implement reasonable systems for the discovery of any breach of unsecured DHCS PI and PII  
36 or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI  
37 //

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

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

7 //  
8 //  
9 //  
10 //  
11 //  
12 //  
13 //  
14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //  
29 //  
30 //  
31 //  
32 //  
33 //  
34 //  
35 //  
36 //  
37 //