

AGREEMENT FOR PROVISION OF
INTERGOVERNMENTAL TRANSFER FUNDS

BETWEEN

COUNTY OF ORANGE

AND

CHILDREN'S HOSPITAL OF ORANGE COUNTY

MAY 4, 2010~~19, 2009~~ THROUGH DECEMBER 31, 2010~~2009~~

THIS AGREEMENT (Agreement) entered into this 4th~~19th~~ day of May 2010~~2009~~, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and CHILDREN'S HOSPITAL OF ORANGE COUNTY, a California non-profit corporation (HOSPITAL). This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

W I T N E S S E T H:

WHEREAS, HOSPITAL, a general acute care facility, licensed in accordance with the requirements of the California Health Facilities Licensure Act (Health and Safety Code, Sections 1250 et seq.) and the regulations promulgated pursuant thereto, is equipped, staffed and prepared to provide medical services; and

WHEREAS, HOSPITAL currently contracts with the California Department of Health Care Services (DHCS) for the provision of Medi-Cal services; and

WHEREAS, HOSPITAL also meets the criteria to be eligible for payments from the Private Hospital Supplemental Fund established pursuant to Welfare and Institutions Code Section 14166.12(b); and

WHEREAS, COUNTY may transfer funds to DHCS for deposit into the Private Hospital Supplemental Fund pursuant to Section 433.51 of Title 42 of the Code of Federal Regulations and Welfare and Institutions Code Section 14166.12(e); and

WHEREAS, DHCS shall use transferred funds to obtain federal financial participation for distribution in all or part to HOSPITAL; and

WHEREAS, COUNTY is agreeable to transferring funds on behalf of HOSPITAL to DHCS; and

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

//
//
//
//
//

CONTENTS

1		
2		
3	<u>PARAGRAPH</u>	<u>PAGE</u>
4	Title Page.....	1
5	Contents.....	2
6	Referenced Contract Provisions	3
7	I. Allocation Period	44
8	II. Alteration of Terms	44
9	III. Compliance.....	44
10	IV. Confidentiality.....	77
11	V. Delegation, and Assignment, and Subcontracts	7-
12	-7	
13	VI. Facilities, Payments and Services.....	88
14	VII. Indemnification and Insurance.....	88
15	VIII. Inspections and Audits	99
16	IX. Licenses and Law	910
17	X. Nondiscrimination.....	1111
18	XI. Notices	1112
19	XII. Records	1313
20	XIII. Responsibilities of County	1313
21	XIV. Responsibilities of Hospital	1413
22	XV. Severability.....	1414
23	XVI. Status of Parties.....	1414
24	XVII. Term	15
25	XVIII. Termination	1514
26	XIX. Third Party Beneficiary.....	1615
27	XX. Waiver of Default or Breach.....	1615
28	Signature Page	17
29	//	
30	//	
31	//	
32	//	
33	//	
34	//	
35	//	
36	//	
37	//	

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 //

REFERENCED CONTRACT PROVISIONS

Allocation Period: May 4, 2010~~19, 2009~~ through December 31, 2010~~2009~~

Total Maximum Obligation: \$~~100~~**103,000**

Basis for Reimbursement: Negotiated Amount

Payment Method: Intergovernmental Transfer to California Department of Health
 Care Services

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
 Health Care Agency
 Manager of Operations
 Medical and Institutional Health Services Operations
 405 West 5th Street, Room 718
 Santa Ana, CA 92701-4637

HOSPITAL:	Attention: Kimberly C. Cripe, President/CEO	
	Children’s Hospital of Orange County	Children’s Hospital of Orange County
	455 South Main Street	P.O. Box 5700
	Orange, CA 92868	Orange, CA 92863

HOSPITAL’S Insurance Coverages:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000
Professional Liability	\$3,000,000
Comprehensive General Liability Insurance	\$5,000,000

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

I. ALLOCATION PERIOD

A. The allocation period of this Agreement shall commence and terminate as specified on Page 3 of this Agreement, unless otherwise sooner terminated as provided elsewhere in this Agreement; provided, however, the parties shall continue to be obligated to comply with the requirements and perform such duties specified in this Agreement. Such duties include, but are not limited to, obligations with respect to claims processing, reimbursement, confidentiality, indemnification, audits, accounting, and data reporting.

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.

II. ALTERATION OF TERMS

This Agreement fully expresses all understanding of COUNTY and HOSPITAL with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by both parties.

III. COMPLIANCE

A. COUNTY’S Health Care Agency (HCA) 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. HOSPITAL may adopt HCA’S Compliance Program or establish its own. If HOSPITAL has established its own Compliance Program, HOSPITAL shall acknowledge existence of HCA’S Compliance Program and shall provide certification to ADMINISTRATOR that HOSPITAL shall operate its own Compliance Program and shall ensure that its employees, subcontractors, interns, volunteers, and members of Board of Directors or duly authorized agent, if appropriate, (“Covered Individuals”) are made aware of HOSPITAL’S Compliance Program policies and procedures.

2. If HOSPITAL elects to adopt HCA’S Compliance Program, ADMINISTRATOR shall provide HOSPITAL with a copy of the relevant HCA Policies and Procedures relating to the Office of Compliance. HOSPITAL shall ensure that Covered Individuals relative to this Agreement are made aware of these Policies and Procedures.

B. CODE OF CONDUCT – Under the direction of the HCA Office of Compliance, a Code of Conduct for adherence by all HCA employees and contract providers has been developed.

1. Within thirty (30) calendar days of award of this Agreement, HOSPITAL has the option of submitting to ADMINISTRATOR a signed acknowledgement and agreement that HOSPITAL shall comply with the “HCA Contractor Code of Conduct” specified in subparagraph B.3 below or Hospital shall submit a copy of its Code of Conduct to ADMINISTRATOR for review and comparison to federal, state, and COUNTY standards by the HCA Compliance Officer.

1 2. If HOSPITAL elects to submit a copy of its Code of Conduct, HCA'S Compliance Officer
2 shall advise HOSPITAL of any necessary changes to Hospital's Code of Conduct to meet minimum
3 standards and HOSPITAL shall either take necessary action to meet said standards or shall be asked to
4 acknowledge and agree to the "HCA Contractor Code of Conduct" specified in subparagraph B.3. below.

5 3. HCA CONTRACTOR CODE OF CONDUCT – HOSPITAL and its employees and
6 subcontractors shall:

7 a. Comply with all applicable laws, regulations, rules or guidelines when providing and
8 billing for services specified herein.

9 b. Use their best efforts to conduct themselves honestly fairly, courteously and with a high
10 degree of integrity in their professional dealings related to this Agreement and avoid any conduct that
11 could reasonably be expected to reflect adversely upon the integrity of HOSPITAL and/or COUNTY.

12 c. Treat COUNTY employees, clients and other COUNTY contractors fairly and with
13 respect.

14 d. NOT engage in any activity in violation of HCA'S Compliance Program, nor engage in
15 any other conduct which violates any applicable law, regulation, rule or guideline.

16 e. Take precautions to ensure that claims are prepared and submitted accurately, timely and
17 are consistent with all applicable laws, regulations, rules or guidelines.

18 f. Ensure that no false, fraudulent, inaccurate or fictitious claims for payment or
19 reimbursement of any kind are submitted.

20 g. Bill only for eligible services actually rendered and fully documented and use billing
21 codes that accurately describe the services provided.

22 h. Act promptly to investigate and correct problems if errors in claims or billings are
23 discovered.

24 i. Promptly report to HCA'S Compliance Officer any activity that HOSPITAL believes
25 may violate the standards of the HCA Compliance Program, or any other applicable law, regulation, rule
26 or guideline.

27 j. Promptly report to HCA'S Compliance Officer any suspected violation(s) of this HCA
28 Contractor Code of Conduct by COUNTY employees.

29 k. Consult with HCA'S Compliance Officer if there are any questions or uncertainties of
30 any Compliance Program standard or any other applicable law regulation, rule or guideline.

31 4. Failure of HOSPITAL to timely submit the acknowledgement of the HCA Contractor Code
32 of Conduct or its own Code of Conduct shall constitute a material breach of this Agreement, and failure to
33 cure such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall constitute
34 grounds for termination of this Agreement as to the non-complying party.

35 C. HOSPITAL shall screen all Covered Individuals employed or retained to provide services related
36 to this Agreement to ensure that they are not designated as "Ineligible Persons", as defined hereunder.
37 Screening shall be conducted against the General Services Administration's List of Parties Excluded from

1 Federal Programs and the Health and Human Services/Office of Inspector General List of Excluded
2 Individuals/Entities.

3 1. Ineligible Person shall be any individual or entity who: (i) is currently excluded, suspended,
4 debarred or otherwise ineligible to participate in the federal health care programs; or (ii) has been
5 convicted of a criminal offense related to the provision of health care items or services and has not been
6 reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or
7 ineligibility.

8 2. HOSPITAL shall screen prospective Covered Individuals prior to hire or engagement.
9 HOSPITAL shall not hire or engage any Ineligible Person to provide services relative to this Agreement.

10 3. HOSPITAL shall screen all current Covered Individuals semi-annually, each January and
11 July unless otherwise authorized in writing by ADMINISTRATOR, to ensure that they have not become
12 Ineligible Persons.

13 4. Covered Individuals shall be required to disclose to HOSPITAL immediately any debarment,
14 exclusion or other event that makes the Covered Individual an Ineligible Person. HOSPITAL shall notify
15 COUNTY immediately upon such disclosure.

16 5. In addition to screening organizations and vendor under subcontract, HOSPITAL shall also
17 request that its subcontractors warrant that they are eligible to participate in all federal and State of
18 California health programs and have not been excluded or debarred from participation in a federal or state
19 health care programs, and to further warrant to HOSPITAL that they do not have any Ineligible Person in
20 their employ or under contract.

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

27 D. REIMBURSEMENT STANDARDS

28 1. HOSPITAL shall take reasonable precaution to ensure that the coding of health care claims
29 and billing for same are prepared and submitted in an accurate and timely manner and are consistent with
30 federal, state and county laws and regulations as well as HCA'S policies and/or agreements with third
31 party payers. This includes compliance with federal and state health care program regulations and
32 procedures or instructions otherwise communicated by regulatory agencies including the Centers for
33 Medicare and Medicaid Services or their agents.

34 2. HOSPITAL shall not submit false, fraudulent, inaccurate or fictitious claims for payment or
35 reimbursement of any kind.

36 3. HOSPITAL shall bill only for those eligible services actually rendered which are also fully
37 documented. When such services are coded, HOSPITAL shall use only correct billing codes that

1 accurately describe the services provided.

2 //

3 4. HOSPITAL shall act promptly to investigate and correct any problems or errors in coding of
4 claims and billing, if and when, any such problems or errors are identified by anyone.

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

7 1. HOSPITAL shall use its best efforts to encourage attendance at Compliance Training by
8 Covered Individuals.

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

15
16 **IV. CONFIDENTIALITY**

17 A. Each party shall use its best efforts to maintain the confidentiality of all records, including
18 billings, claims, and any audio and/or video recordings, in accordance with all applicable state and federal
19 codes and regulations, as they now exist or may hereafter be amended or changed including, but not
20 limited to the Health Insurance Portability and Accountability Act.

21 B. Prior to providing any services pursuant to this Agreement, all HOSPITAL'S employees,
22 contractors, and members of Board of Directors, or its designee or duly authorized agent(s) shall agree, in
23 writing, with HOSPITAL to use their respective best efforts to maintain, in accordance with applicable
24 laws and regulations, the confidentiality of any and all information and records which may be obtained in
25 the course of providing such services. The agreement shall specify that it is effective irrespective of all
26 subsequent resignations or terminations of HOSPITAL'S employees, contractors, and members of Board
27 of Directors or duly authorized agent.

28
29 **V. DELEGATION, AND ASSIGNMENT, AND SUBCONTRACTS**

30 A. HOSPITAL may not delegate the obligations hereunder or assign its rights, either in whole or in
31 part, without the prior written consent of COUNTY, which consent shall not be unreasonably withheld,
32 conditioned, or delayed; provided however, obligations undertaken by HOSPITAL pursuant to this
33 Agreement may be carried out by means of contracts, provided such contracts meet the requirements of
34 this Agreement as they relate to the service or activity under contract, include any provisions that
35 ADMINISTRATOR may reasonably require, and are approved in writing by ADMINISTRATOR, which
36 approval shall not be unreasonably conditioned, withheld, or delayed. This provision shall not be
37 applicable to service agreements usually and customarily entered into by HOSPITAL to obtain or arrange

1 for supplies, technical support, or professional services. No contract shall terminate or alter the
2 responsibilities of HOSPITAL to COUNTY pursuant to this Agreement.

3 #

4 B. HOSPITAL may not assign the rights hereunder, either in whole or in part, without the prior
5 written consent of COUNTY, which consent shall not be unreasonably conditioned, withheld, or delayed.
6 Any change in the control structure, including but not limited to, the sale or transfer of more than fifty
7 percent (50%) of the assets or stock of HOSPITAL, change to another corporate structure, including a
8 change to a sole proprietorship, or a change in fifty percent (50%) or more of HOSPITAL'S directors at
9 one time (six-months or less) shall be deemed an assignment pursuant to this paragraph. Any attempted
10 assignment or delegation in derogation of this subparagraph shall be void.

11 **VI. FACILITIES, PAYMENTS AND SERVICES**

12 COUNTY shall compensate HOSPITAL, and HOSPITAL agrees to provide the services, staffing,
13 facilities, any equipment and supplies, and reports in accordance with this Agreement. HOSPITAL shall
14 use its best efforts to operate continuously throughout the term of this Agreement with at least the
15 minimum number and type of staff which meet applicable state and federal requirements, and which are
16 necessary for the provision of the services hereunder.

17 **VII. INDEMNIFICATION AND INSURANCE**

18 A. HOSPITAL agrees to indemnify, defend ~~with counsel approved in writing by COUNTY~~ and
19 hold ~~harmless~~ COUNTY, its elected and appointed officials, officers, ~~agents and~~ employees, agents and
20 those special districts and agencies for which COUNTY'S Board of Supervisors acts as the governing
21 Board ("COUNTY INDEMNITEES") harmless from any ~~all liability~~, claims, ~~losses and~~ demands,
22 including defense costs, or liability of any kind or nature, including but not limited to personal injury or
23 property damage, arising ~~whether resulting from court action or related to~~ otherwise, arising out of the
24 services, products ~~acts~~ or other performance provided by ~~omissions of~~ HOSPITAL pursuant to this
25 Agreement. If judgment is entered against, ~~its officers, agents or employees.~~ COUNTY agrees to
26 provide HOSPITAL and COUNTY by a court ~~with written notification of~~ competent jurisdiction
27 because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, ~~any claim~~
28 ~~within thirty (30) calendar days of notice thereof, to allow~~ HOSPITAL ~~control over the defense and~~
29 ~~settlement of the claim,~~ and COUNTY agree that liability will be apportioned as determined by the
30 court. Neither party shall request a jury apportionment. ~~to cooperate with HOSPITAL in its defense.~~

31 B. Without limiting HOSPITAL'S ~~HOSPITAL'S~~ indemnification, HOSPITAL warrants that it is
32 self-insured or shall maintain in force at all times during the term of this Agreement, the policy or
33 policies of insurance covering its operations placed with reputable insurance companies in amounts as
34 specified on Page 3 of this Agreement. Upon request by ADMINISTRATOR, HOSPITAL shall provide
35 evidence of such insurance.

1 C. All insurance policies except Workers' Compensation and Employer's Liability shall contain the
2 following clauses:

3 1. "The County of Orange is included as an additional insured with respect to the operations of
4 the named insured performed under contract with the County of Orange."

5 2. "It is agreed that any insurance maintained by the County of Orange shall apply in excess of,
6 and not contribute with, insurance provided by this policy."

7 //

8 3. "This insurance shall not be canceled, limited or non-renewed until after thirty (30) calendar
9 days written notice has been given to Orange County HCA/Manager of Operations, Medical and
10 Institutional Health Services, 405 West 5th Street, Room 718, Santa Ana, CA 92701-4637."

11 #

12 D. Certificates of Insurance and endorsements evidencing the above coverages and clauses shall be
13 mailed to COUNTY as referenced on Page 3 of this Agreement.

14 **VIII. INSPECTIONS AND AUDITS**

15
16 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
17 of the State of California, the Secretary of the United States Department of Health and Human Services,
18 the Comptroller General of the United States, or any of their authorized representatives, shall have access
19 to any books, documents, and records, including, but not limited to, medical and patient records, of
20 HOSPITAL which such persons deem reasonably pertinent to this Agreement, for the purpose of
21 responding to a patient complaint or, conducting an audit, review, evaluation, or examination, or making
22 transcripts during the periods of retention set forth in the Records Paragraph of this Agreement. The
23 above mentioned persons, may at all reasonable times, inspect or otherwise evaluate the services provided
24 pursuant to this Agreement and the premises in which they are provided; provided, however, such
25 inspections or evaluations shall not interfere with patient care.

26 1. These audits, reviews, evaluations, or examinations may include, but are not limited to, the
27 following:

28 a. Level and quality of care, including the necessity and appropriateness of the services
29 provided.

30 b. Financial records when determined necessary to protect public funds.

31 c. Internal procedures for assuring efficiency, economy, and quality of care.

32 d. Grievances relating to medical care, and their disposition, or other types of complaints or
33 problems.

34 2. ADMINISTRATOR shall provide HOSPITAL with at least fifteen (15) calendar
35 days prior notice of such inspection or evaluation; provided, however, that the California Department of
36 Health Care Services, or duly authorized representative, which may include COUNTY, shall be required
37 to provide at least seventy-two (72) hours notice for its onsite inspections and evaluations. Unannounced
inspections, evaluations, or requests for information may be made in those situations where arrangement

1 of an appointment beforehand is not possible or inappropriate due to the nature of the inspection or
2 evaluation.

3 B. HOSPITAL shall actively participate and cooperate with any person specified in subparagraph A.
4 above in any evaluation of the services provided pursuant to this Agreement, and shall provide the above-
5 mentioned persons adequate office space to conduct such evaluation. Such space must be capable of
6 being locked and secured to protect the work of said persons during the period of their evaluation.

7 //

8 //

9 C. AUDIT RESPONSE

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

15 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
16 by HOSPITAL to COUNTY, or payment of sums due from COUNTY to HOSPITAL, said funds shall be
17 due and payable from one party to the other within sixty (60) calendar days of receipt of the audit results.
18 If reimbursement is due from HOSPITAL to COUNTY, and such reimbursement is not received within
19 said sixty (60) calendar days, COUNTY may, in addition to any other remedies, reduce any amount owed
20 HOSPITAL by an amount not to exceed the reimbursement due COUNTY. ~~The parties agree that~~
21 ~~COUNTY may act on behalf of the State of California to seek reimbursement from HOSPITAL.~~

22
23 **IX. LICENSES AND LAW**

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

32 B. HOSPITAL shall comply with all applicable governmental laws, regulations, or requirements as
33 they exist now or may be hereafter amended or changed.

34 C. This Agreement is not intended nor shall it be construed to affect, except as expressly provided
35 for herein, COUNTY'S or HOSPITAL'S existing rights, obligations, and responsibilities with respect to
36 care required by or provided to indigent patients; provided, however, that each party's rights and
37 obligations with respect to patients treated hereunder shall be limited to the rights and obligations

1 established and agreed to hereunder.

2 D. HOSPITAL warrants, to the best of its knowledge, that all hospital-based physicians providing
3 services at HOSPITAL, under this Agreement, are and will continue to be as long as this Agreement
4 remains in effect, the holders of currently valid licenses to practice medicine in the State of California and
5 are members in “good standing” of the medical staff of HOSPITAL’S facility.

6 E. HOSPITAL warrants that it makes its best effort to fully comply with all federal and state statutes
7 and regulations regarding the employment of aliens and others and that employees performing work under
8 this Agreement meet the citizenship or alien status requirement set forth in federal statutes and
9 regulations. HOSPITAL shall obtain, from all employees performing work hereunder, all verification and
10 other documentation of employment eligibility status required by federal or state statutes and regulations
11 including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as
12 they currently exist and as they may be hereafter amended. HOSPITAL shall retain all such
13 documentation for all covered employees for the period prescribed by the law.

14 F. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

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

17 a. In the case of an individual contractor, his/her name, date of birth, Social Security
18 number, and residence address;

19 #
20 b. In the case of a contractor doing business in a form other than as an individual, the name,
21 date of birth, Social Security number, and residence address of each individual who owns an interest of
22 ten percent (10%) or more in the contracting entity;

23 c. A certification that HOSPITAL has fully complied with all applicable federal and state
24 reporting requirements regarding its employees;

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

27 2. Failure of HOSPITAL to timely submit the data or certifications required by subparagraph
28 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting requirements for
29 child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders
30 and Notices of Assignment shall constitute a material breach of this Agreement, and failure to cure such
31 breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination
32 of this Agreement as to the non-complying party.

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

35
36 **X. NONDISCRIMINATION**

37 **A. EMPLOYMENT**

1 1. During the performance of this Agreement, HOSPITAL shall not unlawfully discriminate
 2 against any employee or applicant for employment because of his or her ethnic group identification, race,
 3 religion, ancestry, color, creed, sex, marital status, national origin, age (40 and over), sexual
 4 orientation~~preference~~, medical condition, or physical or mental disability. HOSPITAL shall warrant that
 5 the evaluation and treatment of employees and applicants for employment is free from discrimination in
 6 the areas of: employment; promotion; demotion or transfer; recruitment or recruitment advertising; layoff
 7 or termination; rate of pay or other forms of compensation; and selection for training, including
 8 apprenticeship. There shall be posted, in conspicuous places, available to employees and applicants for
 9 employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity
 10 Commission setting forth the provisions of the Equal Opportunity Clause.

11 2. All solicitations or advertisements for employees placed by or on behalf of HOSPITAL and
 12 its contractors shall state that all qualified applicants will receive consideration for employment without
 13 regard to ethnic group identification, race, religion, ancestry, creed, color, sex, marital status, national
 14 origin, age (40 and over), sexual orientation~~preference~~, medical condition, or physical or mental
 15 disability. Such requirement shall be deemed fulfilled by use of the phrase "an equal opportunity
 16 employer."

17 3. HOSPITAL shall give written notice of its obligations under this Equal Opportunity Clause
 18 to each labor union with which HOSPITAL has a collective bargaining agreement.

19 4. Upon a finding of discrimination by the Equal Opportunity Commission, Department of Fair
 20 Employment and Housing, or a court of competent jurisdiction, and after exhaustion of any and all
 21 appeals, this Agreement may be canceled, terminated or suspended in whole or in part, and HOSPITAL
 22 may be declared ineligible for future contracts.

23 B. SERVICES, BENEFITS, AND FACILITIES - HOSPITAL shall not discriminate in the provision
 24 of services, the allocation of benefits, or in the accommodation in facilities on the basis of ethnic group
 25 identification, race, religion, ancestry, creed, color, sex, marital status, national origin, age (40 and over),
 26 sexual orientation~~preference~~, medical condition, or physical or mental disability in accordance with Title
 27 VI of the Civil Rights Act of 1964, 42, U.S.C.A. §2000d and all other pertinent rules and regulations
 28 promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now
 29 exist or be hereafter amended or changed.

30 C. PERSONS WITH DISABILITIES - HOSPITAL agrees to comply with the provisions of §504 of
 31 the Rehabilitation Act of 1973 (29 U.S.C.A. 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the
 32 Americans with Disabilities Act of 1990 (42 U.S.C.A. 12101, et seq.), pertaining to the prohibition of
 33 discrimination against qualified persons with disabilities as they exist now or may be hereafter amended
 34 together with succeeding legislation.

35 D. RETALIATION - Neither HOSPITAL, nor its employees or agents shall intimidate, coerce, or
 36 take adverse action against any person for the purpose of interfering with rights secured by federal or state
 37 laws, or because such person has filed a complaint, certified, assisted, or otherwise participated in an

1 investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or
2 state law.

3
4 **XI. NOTICES**

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

- 7 1. When delivered personally; or
8 2. Three (3) days from the date sent by certified or registered mail in the United States
9 Postal Service, return receipt requested, postage prepaid, or first class postage prepaid, and
10 addressed as specified on Page 3 of this Agreement; or
11 3. When faxed ~~FAXed~~, transmission confirmed; or
12 4. When sent by electronic mail; or
13 5. When delivered by United States Postal Service Express Mail, Federal Express, United
14 Parcel Service, or other expedited delivery service.

15 B. Termination Notices shall be addressed as specified on Page 3 of this Agreement, and shall be
16 effective when faxed ~~FAXed~~, transmission confirmed, or when delivered by U.S. Postal Service Express
17 Mail, Federal Express, United Parcel Service, or other expedited delivery service.

18 C. Any party to this Agreement may change the address at which it wishes to receive notice by
19 giving notice to the other party in the manner set forth above. For purposes of this Agreement, any notice
20 to be provided by COUNTY may be given by ADMINISTRATOR.

21
22 **XII. RECORDS**

23 A. HOSPITAL shall maintain records that are adequate for the California Department of Health
24 Services to substantiate the services for which claims are submitted for reimbursement as funded under
25 this Agreement and the charges thereto. Such records shall include, but not be limited to, individual
26 patient charts and utilization review records.

27 **B. RECORDS RETENTION**

28 1. All records connected with the performance of this Agreement shall be retained by the
29 parties, at a location in the County of Orange, for a period of seven (7) years after final payment under
30 this Agreement.

31 2. Records which relate to litigation or settlement of claims arising out of the performance of
32 this Agreement, or costs and expenses of this Agreement as to which exception has been taken by
33 COUNTY or state or federal governments, shall be retained by HOSPITAL until disposition of such
34 appeals, litigation, claims or exceptions is completed.

35
36 **XIII. RESPONSIBILITIES OF COUNTY**

37 A. Following execution of this Agreement by the Orange County Board of Supervisors, COUNTY

1 shall transfer \$100,403,000 to the California Department of Health Care Services (DHCS) for deposit into
2 the Private Hospital Supplemental Fund.

3 B. Pursuant to Welfare and Institutions (W&I) Code 14166.12(f), DHCS shall utilize the non-federal
4 funds provided by COUNTY to obtain federal financial participation including Federal Medical
5 Assistance Percentage (FMAP) and federal financial participation to the full extent permitted by law,
6 which amount COUNTY anticipates to be \$195,262,217,938.

7 ~~C. Pursuant to W&I Code 14166.12(o), COUNTY shall designate HOSPITAL to receive not
8 less than seventy-five percent (75%) of the amount deposited plus the corresponding federal financial
9 participation, anticipated to be \$163,453.~~

10 ~~D.~~ COUNTY shall recommend to the California Medical Assistance Commission (CMAC),
11 responsible for negotiating Private Hospital Supplemental Funds with HOSPITAL, that HOSPITAL also
12 receive the twenty-five percent (25%) balance of the amount deposited plus the corresponding federal
13 financial participation plus the FMAP, anticipated to be \$50,000,54,484. HOSPITAL understands that
14 COUNTY

15 //

16 -may only make a recommendation regarding these funds and that final determination regarding
17 distribution of these funds rests with CMAC.

18 **XIV. RESPONSIBILITIES OF HOSPITAL**

19 As a condition for HOSPITAL to receive funds specified in Paragraph XIII above, HOSPITAL or
20 its affiliate shall:

21 A. Financially support emergency and trauma services provided to pediatric patients, specifically
22 Medi-Cal patients, through December 31, 2010,2009 regardless of the patients' ability to pay.
23

24 #

25 B. Provide emergency, trauma, and other hospital services to all Medi-Cal patients, regardless of age
26 or ability to pay, through December 31, 2010,2009.

27 C. Submit relevant and pertinent data as requested by the Local EMS Agency that complies with
28 state and local EMS data requirements.

29 D. Agree that no portion of funds received by HOSPITAL from CMAC as approved by this
30 Agreement shall be returned to any governmental or quasi-governmental agency.

31 **XV. SEVERABILITY**

32 If a court of competent jurisdiction declares any provision of this Agreement or application thereof to
33 any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal,
34 state, or county statutes, ordinance, or regulation, the remaining provisions of this Agreement or the
35 application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full
36 force and effect, and to that extent the provisions of this Agreement are severable, unless to do so would
37

1 | defeat an essential business purpose of this Agreement.

2
3 | **XVI. STATUS OF PARTIES**~~PARTIES~~

4 | A. Each party is, and shall at all times be deemed to be, an independent contractor and shall be
5 | wholly responsible for the manner in which it performs the services required of it by the terms of this
6 | Agreement. Each party is entirely responsible for compensating staff and consultants employed by that
7 | party. This Agreement shall not be construed as creating the relationship of employer and employee, or
8 | principal and agent, between COUNTY and HOSPITAL or of either party's employees, agents,
9 | consultants, or contractors. Each party assumes exclusively the responsibility for the acts of its
10 | employees, agents, consultants, or contractors as they relate to the services to be provided during the
11 | course and scope of their employment or respective contracts.

12 | B. COUNTY shall neither have, nor exercise, any control or direction over the methods by which
13 | HOSPITAL shall perform its obligations under this Agreement. The standards of medical care and
14 | professional duties of HOSPITAL'S employees performing medical services under this Agreement shall
15 | be determined, as applicable, by HOSPITAL'S Board of Directors and the standards of care in the
16 | community in which HOSPITAL is located, and all applicable provisions of law and other rules and
17 | regulations of any and all governmental authorities relating to licensure and regulation of HOSPITAL.

18
19 | **XVII. TERM**

20 | The term of this Agreement shall commence and terminate as specified on Page 3 of this
21 | Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would
22 | normally extend beyond this term, including but not limited to, obligations with respect to
23 | confidentiality, indemnification, audits, reporting and accounting.

24 | **XVIII. TERMINATION**

25 | A. Neither party shall be liable nor deemed to be in default for any delay or failure in performance
26 | under this Agreement or other interruption of service or employment deemed resulting, directly or
27 | indirectly, from Acts of God, civil or military authority, acts of public enemy, war, accidents, fires,
28 | explosions, earthquakes, floods, failure of transportation, machinery or suppliers, vandalism, strikes or
29 | other work interruptions by a party's officers, agents, employees, affiliates, or contractors, or any similar
30 | cause beyond the reasonable control of any party to this Agreement. However, all parties shall make good
31 | faith efforts to perform under this Agreement in the event of any such circumstance.

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

- 34 | 1. The loss by HOSPITAL of legal capacity.
35 | 2. Cessation of services.
36 | 3. The loss of accreditation or any license required by the Licenses and Law paragraph of this
37 | Agreement.

C. After receiving a Notice of Termination, HOSPITAL shall do the following:

1. Comply with termination instructions provided by ADMINISTRATOR in a manner that is consistent with recognized standards of quality care and prudent business practice for hospitals in the communities in which HOSPITAL is located.

2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining allocation period.

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

4. Until the date of termination, continue to be reimbursed by COUNTY for provision of services specified herein.

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

6. Assist ADMINISTRATOR in effecting the transfer of patients in a manner consistent with their best interests.

D. The rights and remedies of COUNTY and HOSPITAL provided in this Termination paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

~~XIX.~~

~~XVIII.~~ **THIRD PARTY BENEFICIARY**

No party hereto intends that this Agreement shall create rights hereunder in third parties including, but not limited to, any contractors or any patients provided services hereunder.

~~XX.~~~~XIX.~~ **WAIVER OF DEFAULT OR BREACH**

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

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

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

3
4 CHILDREN'S HOSPITAL OF ORANGE COUNTY

5
6
7 DATE: _____

DATE: _____

8
9 PRINTED NAME: _____

PRINTED NAME: _____

10
11 BY: _____

BY: _____

12
13 TITLE: _____

TITLE: _____

14
15 COUNTY OF ORANGE

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE
BOARD PER G.C. SEC. 25103, RESO 79-1535

16
17 BY: _____

18 CHAIR OF THE BOARD
19 OF SUPERVISORS

ATTEST:

20 BY: _____

21 DARLENE J. BLOOM
22 Clerk of the Board of Supervisors
23 of Orange County, California

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

28 BY: _____

DATED: _____

29 DEPUTY
30
31

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