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REFERENCED CONTRACT PROVISIONS

Term: January 1, 2014 through June 30, 2017

Period One means the period from January 1, 2014 through June 30, 2014

Period Two means the period from July 1, 2014 through June 30, 2015

Period Three means the period from July 1, 2015 through June 30, 2016

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

Maximum Obligation: ~~\$27,580,000~~ 30,520,000

Period One Maximum Obligation:	\$ 3,560,000 <u>6,500,000</u>
Period Two Maximum Obligation:	7,770,000
Period Three Maximum Obligation:	8,000,000
Period Four Maximum Obligation:	<u>8,250,000</u>
TOTAL MAXIMUM OBLIGATION:	\$27,580,000 <u>30,520,000</u>

Basis for Reimbursement: Actual Cost Reimbursement

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: MedImpact Healthcare Systems, Inc.
 10680 Trenea Street, Stop 5
 San Diego, CA 92131-2446
 Contact person: Frederick Howe, CEO
 Contact e-mail: FHowe@MedImpact.com
 Contact phone: (858) 566-2727

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I. ACRONYMS

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

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2		
3		
4	A. ARRA	American Recovery and Reinvestment Act
5	B. ADSPRS	Alcohol and Drug Services Programs Reporting System
6	C. CCC	California Civil Code
7	D. CCR	California Code of Regulations
8	E. CEO	County Executive Office
9	F. CFR	Code of Federal Regulations
10	G. CHPP	COUNTY HIPAA Policies and Procedures
11	H. CHS	Correctional Health Services
12	I. CMS	Centers for Medicare and Medicaid Services
13	J. COI	Certificate of Insurance
14	K. D/MC	Drug/Medi-Cal
15	L. DHCS	Department of Health Care Services
16	M. DPFS	Drug Program Fiscal Systems
17	N. DRS	Designated Record Set
18	O. ePHI	Electronic Protected Health Information
19	P. EOB	Explanation of Benefits
20	Q. GAAP	Generally Accepted Accounting Principles
21	R. HCA	Health Care Agency
22	S. HHS	Health and Human Services
23	T. HIPAA	Health Insurance Portability and Accountability Act of 1996,
24		Public Law 104-191
25	U. HSC	California Health and Safety Code
26	V. ISO	Insurance Services Office
27	W. MAC	Maximum Allowable Cost
28	X. MHP	Mental Health Plan
29	Y. OCJS	Orange County Jail System
30	Z. OCPD	Orange County Probation Department
31	AA. OCR	Office for Civil Rights
32	AB. OCSD	Orange County Sheriff's Department
33	AC. OIG	Office of Inspector General
34	AD. OMB	Office of Management and Budget
35	AE. OPM	Federal Office of Personnel Management
36	AF. PA DSS	Payment Application Data Security Standard
37	AG. PC	State of California Penal Code

1	AH. PCI DSS	Payment Card Industry Data Security Standard
2	AI. PMPM	Per Member Per Month
3	AJ. PHI	Protected Health Information
4	AK. PII	Personally Identifiable Information
5	AL. PRA	Public Record Act
6	AM. SIR	Self-Insured Retention
7	AN. The HITECH Act	The Health Information Technology for Economic and Clinical Health
8		Act, Public Law 111-005
9	AO. USC	United States Code
10	AP. WIC	State of California Welfare and Institutions Code

11
12 **II. ALTERATION OF TERMS**

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

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

20
21 **III. COMPLIANCE**

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

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

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

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

35 4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it
36 shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures
37 to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.

1 ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR Compliance Program
2 and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to
3 meet said standards or shall be asked to acknowledge and agree to the HCA's Compliance Program and
4 Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain
5 all required elements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 D. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

2 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
3 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
4 and are consistent with federal, state and county laws and regulations.

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

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

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

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

15
16 **IV. CONFIDENTIALITY**

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

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

27
28 **V. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS**

29 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
30 prior written consent of COUNTY. CONTRACTOR shall provide written notification of
31 CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to
32 ADMINISTRATOR not less than thirty (30) calendar days prior to the effective date of the delegation.
33 Any attempted assignment or delegation in derogation of this paragraph shall be void.

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

36 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to
37 any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%)

1 of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
2 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
3 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
4 Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

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

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

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

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

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

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

30 3. CONTRACTOR will reimburse ADMINISTRATOR for amounts claimed for subcontracts
31 not approved in accordance with this paragraph.

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

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VI. EMPLOYEE ELIGIBILITY VERIFICATION

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

VII. FACILITIES, PAYMENTS AND SERVICES

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

VIII. FREIGHT ON BOARD PRICES

Equipment is priced Freight on Board from the manufacturer's plant. CONTRACTOR will arrange, pre-pay, and invoice COUNTY for insurance and shipping with respect to delivery of the Equipment. CONTRACTOR will provide documentation substantiating such actual insurance and shipping costs with the invoice. If COUNTY has agreed in writing to a shipment date, COUNTY agrees to pay all cancellation, re-stocking, storage and additional transportation fees incurred as a result of failure to accept delivery of the Equipment or Sublicensed Software, except if such failure to accept delivery is a result of the COUNTY examining the Equipment or Sublicensed Software in a timely manner and determining that it is not as contracted for in which case CONTRACTOR agrees to pay such fees.

IX. INDEMNIFICATION AND INSURANCE

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

COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

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

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

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

E. QUALIFIED INSURER

1. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

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

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

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

G. REQUIRED COVERAGE FORMS

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

1 2. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05,
2 CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

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

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

8 2. A primary non-contributing endorsement evidencing that the CONTRACTOR’s insurance
9 is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and
10 non-contributing.

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

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

17 K. All insurance policies required by this Agreement shall give COUNTY thirty (30) calendar days
18 notice in the event of cancellation and ten (10) calendar days notice for non-payment of premium. This
19 shall be evidenced by policy provisions or an endorsement separate from the COI.

20 L. If CONTRACTOR’s Professional Liability policy is a "claims made" policy, CONTRACTOR
21 shall agree to maintain professional liability coverage for two years following completion of Agreement.

22 M. The Commercial General Liability policy shall contain a severability of interests clause also
23 known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

24 N. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
25 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
26 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
27 adequately protect COUNTY.

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

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

36 Q. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

18 c. If CONTRACTOR is assessed a late penalty, the late penalty amount will be
19 reimbursed to the ADMINISTRATOR within thirty (30) business days of notification.

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

23
24 **X. 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, with
33 prior written notice, at all reasonable times inspect or otherwise evaluate the services provided pursuant
34 to this Agreement, and the premises in which they are provided.

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

5 C. AUDIT RESPONSE

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

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

18 3. During the Term of this Agreement and for seven (7) years thereafter, COUNTY and
19 representatives of a regulatory or accreditation agency may inspect and audit, CONTRACTOR's
20 business records that directly relate to billings made to COUNTY for Claims.

21 4. During the Term of this Agreement and for seven (7) years thereafter CONTRACTOR may
22 inspect and audit, or cause to be inspected and audited, the books and records of COUNTY directly
23 relating to this Agreement, including, and without limitation, the existence and number of Eligible
24 Members.

25 5. COUNTY and CONTRACTOR shall cooperate with each other and with each party's
26 independent accountants, which with verifiable objections may be requested to be substituted, which
27 have executed confidentiality/non-disclosure agreements with each party.

28 6. CONTRACTOR shall cooperate with representatives of any regulatory or accreditation
29 agency, to conduct any such inspection or audit.

30 7. Audits shall be at the auditing party's sole expense and shall only be made during normal
31 business hours, following reasonable prior written notice, without undue interference to the audited
32 party's business activity, and in accordance with normal and generally accepted audit practices.

33 8. An audit of CONTRACTOR's records shall be conducted at CONTRACTOR's
34 headquarters. Such audit by COUNTY shall constitute COUNTY's direction and authorization for
35 CONTRACTOR to disclose PHI to such auditor.

36 9. If the CONTRACTOR completes an independent audit which reveals a discrepancy in the
37 results and the previous calculations, then the CONTRACTOR shall deliver written notice to the

1 COUNTY, setting forth in reasonable detail the basis of such discrepancy within ten (10) business days
2 of the completed audit.

3 10. COUNTY and CONTRACTOR will make reasonable efforts to resolve any discrepancies
4 identified in an audit within sixty (60) business days following delivery of the notice of discrepancy, and
5 such resolution shall be final, binding, and conclusive upon the parties.

6 11. The audit rights described in this Paragraph shall not include any right to copy, notate or
7 otherwise capture the terms of any document including but not limited to Claims data, Statements,
8 contracts, books, records, in whole or in part, in any medium, whether written, recorded or via
9 computer. CONTRACTOR may request to review auditor's notes to ensure compliance. Such persons
10 may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this
11 Agreement, and the premises in which they are provided.

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

16
17 **XI. LICENSES AND LAWS**

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

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

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

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

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

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

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

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

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

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

12 1. CONTRACTOR shall comply with the applicable terms and conditions of the “Contract for
13 Low Income Health Program; Contract No. 11-15909-OR-10” between COUNTY and the California
14 Department of Health Care Services (“Department”). COUNTY shall provide CONTRACTOR with a
15 copy of any new or amended contract with Department as soon as it is available. CONTRACTOR shall
16 notify ADMINISTRATOR within thirty (30) calendar days of any inability of CONTRACTOR to
17 comply with the terms and conditions of COUNTY’s contract with Department.

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

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

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

28
29 **XII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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37 //

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

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

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

15
16 **XIII. MAXIMUM OBLIGATION**

17 A. The Maximum Obligation of COUNTY for services provided by CONTRACTOR in
18 accordance with this Agreement for each Period is as specified in the Reference Contract Provisions of
19 this Agreement.

20 B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR,
21 ADMINISTRATOR may increase or decrease the Period One, Period Two, Period Three, and Period
22 Four Maximum Obligations, provided the total of these Maximum Obligations does not exceed the
23 Total Maximum Obligation of COUNTY as specified in the Referenced Contract Provisions of this
24 Agreement.

25
26 **XIV. NONDISCRIMINATION**

27 **A. EMPLOYMENT**

28 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
29 unlawfully discriminate against any employee or applicant for employment because of his/her ethnic
30 group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age (40
31 and over), sexual orientation, medical condition, or physical or mental disability. Additionally, during
32 the term of this Agreement, and specific only to those Covered Individuals who are providing services
33 to the COUNTY, CONTRACTOR and its Covered Individuals shall require in its subcontracts that
34 subcontractors shall not unlawfully discriminate against any employee or applicant for employment
35 because of his/her ethnic group identification, race, religion, ancestry, color, creed, sex, marital status,
36 national origin, age (40 and over), sexual orientation, medical condition, or physical or mental disability.

37 //

1 2. CONTRACTOR and its Covered Individuals that specifically provide services to the
2 COUNTY, shall not discriminate against employees or applicants for employment in the areas of
3 employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or
4 termination; rate of pay or other forms of compensation; and selection for training, including
5 apprenticeship.

6 3. CONTRACTOR shall not discriminate between employees with spouses and employees
7 with domestic partners, or discriminate between domestic partners and spouses of those employees, in
8 the provision of benefits.

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

12 5. All solicitations or advertisements for employees placed by or on behalf of
13 CONTRACTOR and/or subcontractor that specifically provides services to the COUNTY shall state that
14 all qualified applicants will receive consideration for employment without regard to ethnic group
15 identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age (40 and
16 over), sexual orientation, medical condition, or physical or mental disability. Such requirements shall be
17 deemed fulfilled by use of the term EOE.

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

23 **B. SERVICES, BENEFITS AND FACILITIES** – CONTRACTOR and/or subcontractor shall not
24 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
25 on the basis of ethnic group identification, race, religion, ancestry, color, creed, sex, marital status,
26 national origin, age (40 and over), sexual orientation, medical condition, or physical or mental disability
27 in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 -
28 §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975
29 (42 USC §6101); and Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of
30 Regulations,) as applicable, and all other pertinent rules and regulations promulgated pursuant thereto,
31 and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or
32 changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not
33 limited to the following based on one or more of the factors identified above:

- 34 1. Denying a client or potential client any service, benefit, or accommodation.
- 35 2. Providing any service or benefit to a client which is different or is provided in a different
36 manner or at a different time from that provided to other clients.

37 //

1 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
2 others receiving any service or benefit.

3 4. Treating a client differently from others in satisfying any admission requirement or
4 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
5 any service or benefit.

6 5. Assignment of times or places for the provision of services.

7 C. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor, as applicable, agree
8 to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et
9 seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 (42 USC
10 12101 et seq.), as applicable, pertaining to the prohibition of discrimination against qualified persons
11 with disabilities in all programs or activities; and if applicable, as implemented in Title 45, CFR, §84.1
12 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

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

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

22
23 **XV. NOTICES**

24 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
25 authorized or required by this Agreement shall be addressed as specified in the Referenced Contract
26 Provisions of this Agreement or as otherwise directed by ADMINISTRATOR and be effective:

27 1. When delivered by U.S. Postal Service Express Mail, Federal Express, United Parcel
28 Service, or other expedited delivery service shall be deemed to have been duly given upon delivery on
29 the actual day of receipt or no greater than five (5) calendar days after being mailed, return receipt
30 requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

31 2. When faxed, upon transmission confirmed;

32 3. When sent by Email; or

33 4. When delivered in person, any written communications shall be deemed to have been duly
34 given upon actual in-person delivery.

35 B. Any and all notices, requests, demands and other communications contemplated, called for,
36 permitted, or required to be given hereunder shall be in writing, except through the course of the Parties'
37 routine exchange of information and cooperation during the terms of the work and services.

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

5 D. CONTRACTOR shall notify ADMINISTRATOR, in writing, upon becoming aware of any
6 occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall
7 include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any
8 COUNTY property in possession of CONTRACTOR.

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

11
12 **XVI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

31 H. CONTRACTOR shall notify ADMINISTRATOR of any California Public Records Act (PRA)
32 requests related to, or arising out of, this Agreement, upon becoming aware of the PRA request. In the
33 event CONTRACTOR receives a request to produce this Agreement, or identify any term, condition, or
34 aspect of this Agreement through a California PRA request, CONTRACTOR shall notify COUNTY no
35 less than three (3) business days prior to releasing such information. CONTRACTOR shall provide
36 ADMINISTRATOR all information that is requested by the PRA request.

37 //

1 I. CONTRACTOR's participant, client, and/or patient records shall be maintained in a secure
2 manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish
3 and implement written record management procedures.

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

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

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

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

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

16 1. Have documents readily available during a scheduled audit or site visit.

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

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

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

26
27 **XVII. RESEARCH AND PUBLICATION**

28 CONTRACTOR shall not utilize information and data received from COUNTY or developed as a
29 result of this Agreement for the purpose of personal publication.

30
31 **XVIII. RIGHT TO WORK AND MINIMUM WAGE LAWS**

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

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

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

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

15
16 **XIX. SEVERABILITY**

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

22
23 **XX. SPECIAL PROVISIONS**

24 A. COUNTY agrees that Participating Pharmacies seeking reimbursement from CONTRACTOR
25 for services provided to County Enrollees are independent contractors and not subcontractors or agents
26 of CONTRACTOR, and CONTRACTOR does not exercise any control over the professional judgment
27 of any pharmacist dispensing prescriptions or otherwise providing pharmaceutical related services at a
28 Participating Pharmacy. As a result, except as specified in Exhibit B and Exhibit C to the Agreement
29 relating to CONTRACTOR's responsibility for communicating the County Benefit Plan Designs with
30 and properly adjudicating Claims received from Participating Pharmacies, CONTRACTOR shall have
31 no liability to COUNTY or any BHS Program Clients and/or MSN COUNTY Enrollees for a claim
32 resulting from any act or omission of any Participating Pharmacy or its agents or employees.
33 ADMINISTRATOR may request CONTRACTOR to terminate a pharmacy as a Participating Pharmacy
34 if its practices, or that of its agents or employees, are found to be engaging in fraudulent activities or any
35 activity which places the well-being of the County Enrollee at risk. Such termination may also occur at
36 the request of the Program Manager.

37 //

1 B. Acceptance Agreement – ADMINISTRATOR will review all reports, statements, and invoices
2 provided by CONTRACTOR to and shall notify Contractor in writing of any errors or objections within
3 thirty (30) calendar days of receipt by ADMINISTRATOR of such report, statement or invoice, which
4 timeframe may be extended upon mutual written agreement of both parties. Specifically, this shall
5 include, but not be limited to, all service requests, benefit change requests, pharmacy operations change
6 requests, acceptance tests, implementation questionnaires, statements of work, etc.

7 C. Force Majeure – CONTRACTOR shall not be assessed with liquidated damages or
8 unsatisfactory performance penalties during any delay beyond the time named for the performance of
9 this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond
10 its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to
11 ADMINISTRATOR within thirty-six (36) hours of the start of the delay and CONTRACTOR avails
12 himself of any available remedies.

13 D. Change in Law or Practice; Equitable Adjustments – In the event any applicable law, drug
14 industry practice, or any policy, underwriting or management practice of a regulatory body, NCQA or
15 COUNTY, is modified through amendment, addition, deletion, interpretation or otherwise after the
16 execution of this Agreement; or if COUNTY becomes aware of any law (regardless of whether it existed
17 on the Effective Date of this Agreement) that materially alters the rights or obligations of
18 CONTRACTOR hereunder, COUNTY will promptly notify CONTRACTOR and the parties will
19 attempt to equitably adjust the terms of this Agreement to take such modification(s) or applicable law
20 into account and preserve each party’s anticipated benefits under this Agreement. Such changes shall be
21 agreed to in writing and incorporated into an Amendment; said Amendment shall be issued by the
22 ADMINISTRATOR, shall require the mutual consent of all Parties. If unable to agree upon an
23 equitable adjustment within sixty (60) days after either party notifies the other of such change, this
24 Agreement may be terminated upon 120 days written notice by either party. In the event that the
25 methodology for calculating the AWP pricing benchmark materially changes or is replaced with another
26 benchmark or methodology for any reason, CONTRACTOR may switch to such new pricing benchmark
27 or modify the pricing under this Agreement so as to maintain comparable pricing under the new
28 benchmark or methodology as existed prior to such change, which change shall be agreed to in writing
29 and incorporated into an Amendment; said Amendment shall be issued by the ADMINISTRATOR,
30 shall require the mutual consent of all Parties.

31 E. Contract Disputes – CONTRACTOR and ADMINISTRATOR shall deal in good faith and
32 attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising
33 under the terms of this Agreement is not disposed of in a reasonable period of time by the
34 CONTRACTOR’s Project Manager, or designee, and the County’s Project Manager, or designee, such
35 matter shall be brought to the attention of the COUNTY by way of the following process:

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1 1. The CONTRACTOR shall submit to the agency/department assigned Contract
2 Administrator a written demand for a final decision regarding the disposition of any dispute between the
3 CONTRACTOR and ADMINISTRATOR arising under, related to, or involving this Agreement, unless
4 COUNTY, on its own initiative, has already rendered such a final decision.

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

10 3. Pending the final resolution of any dispute arising under, related to, or involving this
11 Agreement, the CONTRACTOR agrees to diligently proceed with the provision of services under this
12 Agreement. The CONTRACTOR's failure to diligently proceed shall be considered a material breach
13 of this Agreement.

14 4. Any final decision of the COUNTY shall be expressly identified as such, shall be in
15 writing, and shall be signed by ADMINISTRATOR, or designee. If the COUNTY fails to render a
16 decision within ninety (90) calendar days after receipt of the CONTRACTOR's demand, it shall be
17 deemed a final decision adverse to the CONTRACTOR's contentions. The COUNTY's final decision
18 shall be conclusive and binding regarding the dispute unless the CONTRACTOR commences action in a
19 court of competent jurisdiction to contest such decision within ninety (90) days following the date of the
20 COUNTY's final decision or one (1) year following the accrual of the cause of action, whichever is
21 later.

22 F. Contractor Proprietary Software and Information – ADMINISTRATOR acknowledges that
23 CONTRACTOR owns, licenses or otherwise holds the rights to the entire software system used by
24 CONTRACTOR in processing Claims and preparing reports, including, without limitation, computer
25 programs, system and program documentation, and other documentation relating thereto (collectively,
26 the "Contractor Software System"), and that the Contractor Software System is the exclusive and sole
27 property of CONTRACTOR. ADMINISTRATOR further acknowledges that CONTRACTOR owns,
28 licenses, or otherwise holds all rights to its programs, reports, Formularies, and other services provided
29 to COUNTY under this Agreement. ADMINISTRATOR disclaims any rights to the Contractor
30 Software System as described above (including access to any applicable source codes), any resultant
31 reports, procedures or forms developed by CONTRACTOR, any development or modification of the
32 Contractor Software System as a result of any customization performed by any party, as well as any
33 program, report, Contractor Formulary or service provided hereunder, all of which shall be the property
34 of CONTRACTOR and are protected by copyright which shall be owned by CONTRACTOR. In the
35 event of any breach or threatened breach of this Section, CONTRACTOR shall be entitled to injunctive
36 relief, enjoining or restraining such breach or threatened breach. The parties acknowledge that any
37 //

1 remedy at law is inadequate and that CONTRACTOR will suffer irreparable injury if such conduct is
2 not prohibited.

3 G. Additional Maximum Obligation Provision – ADMINISTRATOR shall advise CONTRACTOR
4 when approximately seventy-five percent (75%) of the maximum obligation for each Period, and for
5 each Program, has been utilized. ADMINISTRATOR shall notify CONTRACTOR twenty-four (24)
6 hours prior to the full utilization of funding, as enumerated in the Reference Contract Provisions section
7 of this Agreement, which allows CONTRACTOR time to suspend or terminate the Agreement.

8 H. Additional Audit Provisions – The following additional audit provisions shall augment those
9 auditing provisions set forth in the Inspections and Audits section of this Agreement.

10 1. CONTRACTOR shall provide audit rights to ADMINISTRATOR or its agents in all areas
11 included in the Agreement. CONTRACTOR confirms acceptance of ADMINISTRATOR’s audit
12 requirement and an unrestricted ability for ADMINISTRATOR or its agents to obtain all materials, fee
13 schedules, etc., consistent with CONTRACTOR’s performance under this Agreement. For audits of
14 rebate agreements, CONTRACTOR shall provide a top 20 summary and 3 to 5 rebate agreements and
15 related billings broken down by job/unit number for review. Rebate agreements shall be reviewed on
16 CONTRACTOR’s site.

17 2. CONTRACTOR agrees to allow a detailed claims review related to County’s claims
18 activity to be performed by ADMINISTRATOR or the PBM Auditor. CONTRACTOR shall submit
19 reports which allow rebate activity to be reconciled against the claims initially submitted to the County
20 and paid with sufficient detail so ADMINISTRATOR or PBM Auditor can break down the information
21 by job/unit numbers used for the reporting period. CONTRACTOR may require the PBM Auditor to
22 sign a non-disclosure agreement and said agreement shall not also require signature of
23 ADMINISTRATOR. Claims shall be reviewed, at a minimum, on the same frequency as the invoices
24 are submitted by CONTRACTOR and shall be reconciled in accordance with the invoice payment
25 procedures specified in Exhibit D to the Agreement.

26 3. CONTRACTOR shall provide complete electronic pharmacy claims detail in NCPDP 5.1,
27 D.0, or most recent format, to accompany each invoice. CONTRACTOR agrees that
28 ADMINISTRATOR shall provide, or request that CONTRACTOR provide, this information to the
29 PBM Auditor for the purpose of screening all invoices for member eligibility, pricing, claim validity,
30 formulary coverage, etc., and reject applicable claims for payment. It shall be the responsibility of
31 CONTRACTOR to cure these exception claims or assume responsibility for incorrect payments in
32 accordance with the Inspections and Audits Paragraph of this Agreement.

33 a. CONTRACTOR guarantees to provide invoice claim data in the most recent electronic
34 format with each invoice that includes 100% of all claims supporting the invoice, all edits, Prior
35 Authorizations, and other relevant information to support claims payments.

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1 b. CONTRACTOR shall provide data which includes amount paid to pharmacy, check
2 date, and payment date. CONTRACTOR has one of the following options for submitting this data, with
3 shall include 100% of the information to support the invoice:

4 1) The data shall be added back to the original electronic claims file to allow
5 ADMINISTRATOR to reconcile to claims approved by ADMINISTRATOR by invoice; or

6 2) A new data file shall be submitted to ADMINISTRATOR that includes original
7 claims submission data so as to allow ADMINISTRATOR to reconcile back to claims approved by
8 ADMINISTRATOR.

9 4. CONTRACTOR shall provide prior authorization, edits, and descriptions in the claim detail
10 provided to ADMINISTRATOR and the PBM Auditor.

11 5. All Drug Utilization Review or "DUR" that is part of the program or fee must be
12 measureable in terms of frequency and return on investment.

13 6. ADMINISTRATOR, through a third-party eligibility contractor, shall submit an eligibility
14 database daily to CONTRACTOR as well as the PBM Auditor. CONTRACTOR must submit 100% of
15 all claims supporting documentation to the PBM Auditor as well as any reports detailing any edits or
16 prior authorizations.

17 7. COUNTY and representatives of a regulatory or accreditation agency, throughout the term
18 of this Agreement and for ten (10) years thereafter, shall endeavor to limit the inspection and audits of
19 CONTRACTOR's business records that directly relate to CONTRACTOR's services provided through
20 this Agreement to once annually. Throughout the term of this Agreement and for ten (10) years
21 thereafter, CONTRACTOR may inspect and audit, or cause to be inspected and audited, once
22 annually, the books and records of COUNTY directly relating to this Agreement, including, without
23 limitation, the existence and number of Eligible Members. Such audits shall be at the auditing party's
24 sole expense and shall only be made during normal business hours, following ninety (90) days prior
25 written notice, without undue interference to the audited party's business activity, and in accordance
26 with reasonable audit practices. An audit of CONTRACTOR's records shall be conducted at
27 CONTRACTOR's headquarters and shall be limited to transactions over the twelve (12) month period
28 immediately preceding such audit. In addition, at no time may any individual Claim be subject to an
29 audit more than once and COUNTY may not audit any twelve (12) month audit period more than once.
30 Such audit by COUNTY shall constitute COUNTY's direction and authorization for CONTRACTOR to
31 disclose PHI to such auditor. If a completed audit reveals a discrepancy in the results and the previous
32 calculations of the audited party, then the auditing party shall deliver written notice setting forth in
33 reasonable detail the basis of such discrepancy within ten (10) business days. The parties shall use
34 reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and
35 such resolution shall be final, binding, and conclusive upon CONTRACTOR and COUNTY. The audit
36 rights described in this Section shall not include any right to copy, notate or otherwise capture the terms
37 of any document including but not limited to Claims data, Statements, contracts, books, records, in

1 whole or in part, in any medium, whether written, recorded or via computer. Contractor shall be
2 entitled to review auditor's notes to ensure compliance. However, CONTRACTOR and
3 ADMINISTRATOR understand that COUNTY has no authority to limit the auditing frequency or
4 auditing practices of regulatory or accreditation agencies and the provision set forth herein may not
5 apply.

6 8. Desktop and On-Site Audits

7 a. CONTRACTOR shall conduct desktop and on-site audits to determine the accuracy of
8 claims adjudication and detect potential fraud and abuse. CONTRACTOR shall advise
9 ADMINISTRATOR of any audit findings and abide by the following procedures.

10 b. CONTRACTOR shall ensure that desktop audits include certain financial variances,
11 formulary and drug utilization review (DUR) compliance, Usual & Customary (U&C) compliance, and
12 dollar per prescription limits in addition to system parameters. CONTRACTOR shall have established
13 criteria for determining which pharmacies shall then be selected for an on-site audit and shall provide
14 these criteria to the ADMINISTRATOR and the PBM Auditor by July 1 of each year the Agreement is
15 in effect and following any changes made by CONTRACTOR.

16 c. The majority of pharmacies shall be selected on the basis of their performance history
17 versus other pharmacies servicing the same customer and national averages. If a pharmacy's
18 performance is outside of the norm, as defined in CONTRACTOR's established criteria for on-site
19 audits, a remote audit will be performed. If the remote audit is unable to provide a satisfactory
20 resolution, the pharmacy is scheduled for an on-site audit.

21 d. Audit criteria used shall include, but not be limited to:

- 22 1) Members' complaints provided by the BHS Program and/or the MSN Program
- 23 2) County requests
- 24 3) Lower than average generic substitution rate
- 25 4) Lower than average formulary compliance
- 26 5) High controlled substance percent
- 27 6) Percentage use of "Do Not Substitute" indicators
- 28 7) Higher than average number of prescriptions per County client
- 29 8) Higher than average days supply per prescription
- 30 9) Higher than average ingredient cost per prescription
- 31 10) Higher than average quantity billed per prescription

32 e. CONTRACTOR shall ensure that if an on-site audit is required, CONTRACTOR will
33 notify the pharmacy and schedule the audit. CONTRACTOR shall notify ADMINISTRATOR in
34 advance of any on-site audit visits in Orange County, California. On-site audits shall include a general
35 review for:

- 36 1) Compliance with governmental regulations;
- 37 2) Review of insurance signature logs;

- 1 3) Consultations provided;
- 2 4) Record retention;
- 3 5) Expired medications;
- 4 6) Verification of prescription-specific information

5 f. CONTRACTOR shall ensure that the verification of prescription-specific information
6 includes:

- 7 1) Patient name
- 8 2) Drug name and strength
- 9 3) Directions for use
- 10 4) Quantity
- 11 5) Number of authorized refills
- 12 6) Allowance of generic substitution (DAW notation)
- 13 7) Quality of Service provided to customers (observation only)

14 g. CONTRACTOR shall analyze the data during the desktop audits and visit select
15 pharmacies on-site as a follow-up or in the event that a pattern of behavior is seen in the processed
16 claims to provide additional education.

17 h. CONTRACTOR shall ensure that in the event of fraud detection, CONTRACTOR shall
18 immediately notify ADMINISTRATOR. After consultation with ADMINISTRATOR, and depending
19 on the severity of the offense, CONTRACTOR shall provide additional education about the infraction to
20 the offending pharmacy, remove the pharmacy from the network, and/or take any other action(s) that
21 may be necessary, including but not limited to notification of oversight authorities.

22 i. CONTRACTOR shall ensure that any monies recovered from pharmacy audits are
23 credited to the appropriate party.

24 j. CONTRACTOR shall review and report to ADMINISTRATOR on BHS Program
25 Formulary and/or MSN Program Formulary compliance by Participating Pharmacies.

26 9. CONTRACTOR shall ensure that all edits shall contain explicit criteria that are measurable
27 in the pharmacy claims supporting invoices. All edits, clinical and value-add programs shall
28 individually contain explicit measurable criteria and return-on-investment.

29 10. CONTRACTOR shall provide a pass through arrangement with ADMINISTRATOR, and
30 therefore, shall not keep any spread on drugs purchased through network pharmacies and the amount
31 billed to County.

32 11. CONTRACTOR shall provide regular reports designed to ensure that the pass through
33 arrangement is appropriate and provides value to ADMINISTRATOR and PBM Auditor.

34 12. CONTRACTOR shall allow the PBM Auditor to audit payments and contracts to ensure
35 compliance with all contract provisions. This shall include any services that are performed on behalf of
36 ADMINISTRATOR. CONTRACTOR may require PBM Auditor to sign non-disclosure agreement and
37 said agreement shall not require signature of ADMINISTRATOR.

1 I. Additional Records Management and Maintenance Provisions – All records connected with the
2 performance of the Agreement shall be retained for a period of ten (10) years from date of last service.
3 These records shall be made available, after appropriate advance notice during normal business hours, to
4 designated representative of the ADMINISTRATOR and/or the California Department of Health Care
5 Services. Within thirty (30) days of final payment, the CONTRACTOR shall make arrangements to
6 deliver all such records to the ADMINISTRATOR. CONTRACTOR may, in fulfillment of its
7 obligation to retain the financial and patient records as required by the ADMINISTRATOR, substitute
8 photographs, microphotographs, or other authentic reproductions of such records acceptable to the
9 ADMINISTRATOR, after three (3) years following the fiscal year in which payment was made for the
10 services, unless a shorter period is authorized, in writing, by ADMINISTRATOR.

11
12 **XXI. STATUS OF CONTRACTOR**

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

24
25 **XXII. TERM**

26 A. The term of this Agreement shall commence and terminate as specified in the Referenced
27 Contract Provisions of this Agreement, unless otherwise sooner terminated as provided in this
28 Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would
29 normally extend beyond this term, including but not limited to, obligations with respect to
30 confidentiality, indemnification, audits, reporting and accounting.

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

33
34 **XXIII. TERMINATION**

35 A. Either party may terminate this Agreement, without cause, upon one hundred twenty (120)
36 calendar days written notice given the other party.

37 //

1 B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement if
2 CONTRACTOR fails to perform any of the terms of this Agreement. Prior to such termination and
3 upon mutual concurrence of CONTRACTOR and ADMINISTRATOR, CONTRACTOR may be
4 allowed up to sixty (60) calendar days for corrective action.

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

- 7 1. The loss by CONTRACTOR of legal capacity.
- 8 2. Cessation of services.
- 9 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
10 another entity without the prior written consent of COUNTY.
- 11 4. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
12 this Agreement.

13 D. CONTINGENT FUNDING

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

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

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

- 29 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
30 is consistent with recognized standards of quality care and prudent business practice.
- 31 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
32 performance during the remaining contract term.
- 33 3. Until the date of termination, continue to provide the same level of service required by this
34 Agreement.
- 35 4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
36 upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an
37 orderly transfer.

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

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

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

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

13 G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
14 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
15

16 **XXIV. THIRD PARTY BENEFICIARY**

17 Neither party hereto intends that this Agreement shall create rights hereunder in third parties
18 including, but not limited to, any subcontractors or any clients provided services pursuant to this
19 Agreement.
20

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

22 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
23 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
24 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
25 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
26 Agreement.
27 //

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

3
4 MEDIMPACT HEALTHCARE SYSTEMS, INC.

5
6
7 BY: _____ DATED: _____

8
9 TITLE: _____

10
11
12
13
14
15 COUNTY OF ORANGE

16
17
18 BY: _____ DATED: _____

19 HEALTH CARE AGENCY

20
21
22
23
24 APPROVED AS TO FORM
25 OFFICE OF THE COUNTY COUNSEL
26 ORANGE COUNTY, CALIFORNIA

27
28
29 BY: _____ DATED: _____

30 DEPUTY

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

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 PHARMACY BENEFIT MANAGEMENT SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 MEDIMPACT HEALTHCARE SYSTEMS, INC.
 8 JANUARY 1, 2014 THROUGH JUNE 30, 2017

9
10 **BUSINESS ASSOCIATE CONTRACT**

11
12 A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

1 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
2 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
3 pursuant 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 HIPAA Privacy
33 Rule in 45 CFR § 164.501.

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

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

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

3 7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in
4 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
5 with 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
8 and environmental hazards, and unauthorized intrusion.

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

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

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

15 12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or
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
30 methodology specified by the Secretary of Health and Human Services in the guidance issued on the
31 HHS Web site.

32 18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
33 160.103.

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

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

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 CFR
6 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 promptly any Use or Disclosure of PHI not
12 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 in order to meet the
20 requirements under 45 CFR § 164.524. If CONTRACTOR maintains an Electronic Health Record with
21 PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR
22 shall provide such information in an electronic format to COUNTY.

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

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

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

37 //

1 11. CONTRACTOR agrees to provide COUNTY in a time and manner to be reasonably
2 determined by COUNTY, that information collected in accordance with the Agreement, in order to
3 permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in
4 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
19 terminate 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
22 no 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
24 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
25 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
26 subcontractor, employee 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
36 event:

37 //

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

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

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

9 D. SECURITY RULE

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

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

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

26 a. Complying with all of the data system security precautions listed under Paragraph E.,
27 below;

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

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

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

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

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

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

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

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

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

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

34 2. Technical Security Controls

35 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
37 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

1 is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full
2 disk unless approved by the COUNTY.

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

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

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

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

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

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

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

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

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

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

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

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

29 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
30 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
31 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
32 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
33 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
34 website access, file transfer, and E-Mail.

35 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and
36 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
37 //

1 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
2 comprehensive intrusion detection and prevention solution.

3 3. Audit Controls

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

10 b. Log Reviews. 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 routine procedure in place to review system logs for unauthorized access.

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

17 4. Business Continuity/Disaster Recovery Control (DRC)

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

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

30 5. Paper Document Controls

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

37 //

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

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

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

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

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

22 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

32 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
33 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
34 notification within five (5) business days of the oral notification.

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

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

1 b. Any other information that COUNTY is required to include in the notification to
2 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
3 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
4 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

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

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

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

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

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

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

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

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

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

33 8. If the Breach is due to the negligence or willful misconduct of CONTRACTOR,
34 CONTRACTOR shall bear all expense associated with the Breach and shall reimburse COUNTY for all
35 reasonable expenses COUNTY incurs in addressing the Breach and consequences thereof, including
36 costs of investigation, notification, remediation, documentation, or other costs associated with
37 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
4 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
5 by COUNTY except for the specific Uses and Disclosures set forth below.

6 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
7 for 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
13 is 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
21 carry 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 42 USC §
35 17935(d)(2).

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1 I. OBLIGATIONS OF COUNTY

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

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

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

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

13 J. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

35 //

36 //

37 //

1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 PHARMACY BENEFIT MANAGEMENT SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 MEDIMPACT HEALTHCARE SYSTEMS, INC.
 8 JANUARY 1, 2014 THROUGH JUNE 30, 2017

9
 10 **MEDICAL SAFETY NET (MSN) PROGRAM**
 11 **STATEMENT OF WORK**

12
 13 **I. PREAMBLE**

14 The Medical Safety Net (MSN) Program provides services that are medically necessary to protect
 15 loss of life or limb, prevent significant disability, or prevent serious deterioration of health. With
 16 respect to medical criteria for enrollment into the MSN Program, applicants must have an urgent or
 17 emergent medical condition or may have a severely chronic condition that if left untreated would result
 18 in serious deterioration of health.

19
 20 **II. DEFINITIONS**

21 The parties agree to the following terms and definitions for services provided for the MSN Program,
 22 and to those terms and definitions that, for convenience, are set forth elsewhere in this Exhibit B.

23 A. **“Claim”** means a Participating Pharmacy’s billing or invoice for a single prescription for MSN
 24 Formulary Drugs dispensed to an MSN Enrollee Patient.

25 B. **“Clean Claim”** means a Claim which has no defect, impropriety or special circumstance,
 26 including incomplete documentation that would delay timely payment by Contractor. A Participating
 27 Pharmacy submits a clean claim by providing the required data elements on the standard claims forms,
 28 along with any attachments and additional elements, or revisions to data elements, attachments and
 29 additional elements, of which the Participating Pharmacy has knowledge.

30 C. **“CMS”** means the Centers for Medicare & Medicaid Services.

31 D. **“Copayment”** means such amounts as are required to be collected by Participating Pharmacies
 32 from MSN Enrollee patients.

33 E. **“FDA”** means the Unites States Food & Drug Administration.

34 F. **“Administrator”** means any County Health Care Agency representative responsible for the
 35 general administration and program management of the Agreement, including but not limited to:
 36 Contractor’s compliance with the terms and conditions as specified herein; invoice receipt and payment
 37 authorization; and any notices to be provided on behalf of County as specified herein.

1 G. "MSN" or "MSN Program" means the County program responsible for providing necessary
 2 medical care, under California Welfare & Institutions (W&I) Code 17000 to Orange County residents
 3 ages nineteen (19) through sixty-four (64), with incomes between one hundred thirty-eight (138%)
 4 percent and two hundred (200%) percent of the Federal Poverty Level who have no other financial
 5 resources for medical care, which, as of the execution of this Contract, will be the Medical Safety Net
 6 (MSN) Program.

7 H. "MSN Program Benefit Plan" means the all aspects of the MSN Program pertaining to
 8 prescription drug services – specifically the MSN Formulary including, but not limited to, co-payments,
 9 maximum quantities, maximum days, benefit eligibility, benefit limitations and the corresponding
 10 accurate price calculations.

11 I. "MSN Enrollee" means a person, enrolled in the MSN Program, meeting the eligibility
 12 requirements set forth by the MSN Program in order to meets its obligations under Welfare &
 13 Institutions Code (W&I) 17000.

14 J. "MSN Formulary" means a listing of all prescription drugs and medications for each product
 15 line that is approved by the MSN Program for routine use and which may be dispensed through
 16 Participating Pharmacies to MSN Enrollees.

17 K. "MSN Program Manager" means the MSN Program Administrator, or designee, responsible for
 18 directing the MSN Program's efforts in fulfilling its obligations under this Agreement and for providing
 19 communication and direction to Contractor as to the MSN Program Benefit Plan as specified in this
 20 Exhibit B. The MSN Program Manager shall be the assigned Project Manager for the MSN Program.

21 L. "Participating Pharmacy" means a California- licensed a pharmacy located in Orange County
 22 which has entered into an agreement with Contractor to dispense drugs to eligible patients in accordance
 23 with this Contract.

24 M. "Pharmacy Benefit Manager Services" or "PBM Services" means those services provided by
 25 Contractor in accordance with this Contract and any other documents or correspondence provided by the
 26 MSN Program relating to Benefit Plan design, formulary changes, or any other changes to the MSN
 27 Program and communicated to Contractor which impact how or which pharmaceuticals are provided.

28 N. "PBM Auditor" means an independent third-party contracted with the MSN Program to screen
 29 all Contractor invoices and supporting documentation from Participating Pharmacies for MSN Benefit
 30 Plan eligibility, pricing, claim validity, formulary coverage, etc., for payment. As of the execution of
 31 this Contract, the PBM Auditor is Pro Pharma Pharmaceutical Consultants, Inc. dba Pro Pharma.
 32 Contractor agrees to allow audits related to County's claims activity to be performed by the PBM
 33 Auditor. Should the PBM Auditor change during the term of this Agreement, County shall notify
 34 Contractor within ten (10) business days of such change, and Contractor agrees to work with the new
 35 PBM Auditor under the same terms and conditions as the current PBM Auditor.

36 O. "Prescription" means each medication prescribed to an MSN Enrollee which results in a
 37 corresponding claim to Contractor from a Participating Pharmacy.

III. CONTRACTOR'S RESPONSIBILITIES

CONTRACTOR is responsible for administering and processing pharmacy claims for eligible services in accordance with the MSN Program guidelines as specified herein and as may be periodically amended by the ADMINISTRATOR. CONTRACTOR's responsibilities shall include, but not limited to, the following duties.

A. MSN PROGRAM – GENERAL BACKGROUND OF BENEFIT PLAN DESIGN

1. CONTRACTOR shall not be a plan fiduciary and shall not exercise discretion, authority, or control regarding administration of MSN Program Benefit Plan design.

2. CONTRACTOR shall provide the services as required by the MSN Benefit Plan design as specified.

3. CONTRACTOR agrees that the ADMINISTRATOR may modify, with ten (10) days written notice to CONTRACTOR, the MSN Program Benefit Plan designs to meet federal, state, or County requirements. CONTRACTOR may request additional time, if necessary.

4. Upon signed request, the ADMINISTRATOR may initiate benefit design changes, network modification, or add other services. Dependent on the complexity and breadth of the plan parameter change, CONTRACTOR shall implement a change as soon as possible or practicable but shall not take longer than ten (10) working days without written consent of the ADMINISTRATOR.

5. CONTRACTOR further agrees that it shall provide services in accordance with the modified MSN Program Benefit Plan design.

B. MSN PROGRAM BENEFIT PLAN DESIGN

1. CONTRACTOR shall reimburse only those medications that are on the MSN Program Formulary which shall be developed and maintained by the MSN Program. The COUNTY, through its MSN Program, is the payor of last resort for medically necessary medications. This formulary is restrictive in that only those medications on the formulary list are covered. Further, payments are restricted to generic formulations and/or step therapy medications when they are available.

2. The ADMINISTRATOR or the PBM Auditor shall provide the MSN Program Formulary and any modifications thereafter to CONTRACTOR. For reference, the most current MSN Program Formulary shall be posted by the ADMINISTRATOR on the MSN Program website at: <http://www.ochealthinfo.com/medical/MSN>.

3. In order to ensure that therapeutic integrity is maintained in the face of cost considerations, only generics rated as therapeutically equivalent (so-called "A" or "AB rated"), or rated equivalent to the pioneer product by the FDA are covered.

4. Exclusions from the formulary include medications not specifically listed in the formulary, over-the-counter medications and specific therapeutic classifications relating to conditions outside the scope of the MSN Program. ADMINISTRATOR, in rare cases, may provide a prior authorization to cover a non-formulary drug where one or more of the following conditions is present:

a. All formulary options have been ineffective,

1 b. Another non-formulary drug is less expensive, or

2 c. There is an overwhelming case-specific need, the diagnosis is within the scope of the
3 MSN Program and is consistent with the prescription.

4 5. CONTRACTOR agrees that reimbursement of any medications authorized outside the
5 scope of the MSN Program formulary, without a proper prior authorization from the
6 ADMINISTRATOR, will result in an audit exception, pursuant to the Inspection and Audits and Special
7 Provisions sections of the Agreement, and funds withheld or remitted to County from CONTRACTOR
8 in accordance with Exhibit D of the Agreement.

9 6. Medications

10 a. All medications must be obtained through Participating Pharmacies in
11 CONTRACTOR's network of pharmacies. In addition to maintaining its own formulary, medications
12 paid for by the MSN Program are limited to those filled in Orange County pharmacies, unless otherwise
13 requested by ADMINISTRATOR. CONTRACTOR shall provide its PBM Services based on the
14 following MSN Program guidelines. Failure to do so without proper authorization from the
15 ADMINISTRATOR will result in an audit exception, pursuant to the Inspection and Audits and Special
16 Provisions sections of the Agreement, and funds withheld from CONTRACTOR in accordance with
17 Exhibit D to the Agreement.

18 b. All medications available in generic must be prescribed as generic. If a physician
19 prescribes a brand name product, then the pharmacy is expected to substitute with a generic when one is
20 available, except in those rare instances when the brand medication may be less expensive than the
21 generic.

22 c. All requests for prior authorizations should be requested and prescribed as generic.

23 d. Every medication on the MSN Program formulary has a quantity limit on the number of
24 units covered in a month's supply, and a dollar limit on the maximum payment that the
25 ADMINISTRATOR will approve. These quantity limits and maximum dollar thresholds are formulary
26 limits on the usual dosage and expense for each medication. Prescriptions for quantities in excess of the
27 quantity limits or drug costs in excess of the maximum dollar threshold require a prior authorization.

28 1) The MSN Program covers only a 30-day supply of medication at a time. Requests
29 for greater than a 30-day supply are denied with the exception of diabetic maintenance medications
30 which are set at a 90-day supply limit.

31 2) In addition to diabetic materials such as insulin syringes and testing materials,
32 some ancillary pharmacy items are covered as specified on the MSN Program Formulary including may
33 include, but not be limited to, home IV therapy – standard equipment and customary ostomy supplies.

34 7. Prior Authorization Procedure.

35 a. The prescribing physician must confer with the pharmacist of a Participating Pharmacy
36 to determine if a formulary drug may be substituted; if not, the physician must complete the form and
37 forward it to the ADMINISTRATOR for review and approval.

1 b. The ADMINISTRATOR determines, for all Drug Authorization Requests, if they are
 2 approved. The ADMINSTRATOR's decisions are final and binding. ADMINISTRATOR shall enter
 3 all approved Prior Authorization requests into CONTRACTOR's database system for
 4 CONTRACTOR's reference in adjudicating Claims and for inclusion by CONTRACTOR in the
 5 supporting documentation submitted to ADMINSTRATOR and the PBM Auditor in support of
 6 CONTRACTOR's invoices.

7 C. MSN PROGRAM- PHARMACY NETWORK MANAGEMENT

8 1. CONTRACTOR shall work with the ADMINISTRATOR on written communications to
 9 Participating Pharmacies regarding the changes resulting from implementation of the Affordable Care
 10 Act.

11 2. CONTRACTOR shall distribute additional informational materials to the Participating
 12 Pharmacies if the MSN Program Benefit Plan design changes or other network changes are made. Such
 13 communications shall be approved by the ADMINISTRATOR.

14 3. CONTRACTOR shall routinely communicate, upon approval of the ADMINISTRATOR,
 15 policies and procedures regarding new drugs, therapeutic substitution and utilization management to
 16 pharmacies in the network.

17 4. CONTRACTOR shall agree that any communications referencing the MSN Program shall
 18 be approved by the ADMINISTRATOR, including educational materials. Educational materials that
 19 may be specifically related to the MSN Program include:

- 20 a. Formulary and preferred drug lists
- 21 b. Policies & procedures related to claims submission
- 22 c. New product notifications
- 23 d. Communication of new clinical guidelines
- 24 e. Policies & procedures related to prior authorizations
- 25 f. Patient compliance reminders
- 26 g. MAC program details
- 27 h. Policies & procedures related to member grievances
- 28 i. Benefits of optimizing generic drugs

29 5. CONTRACTOR shall manage Participating Pharmacy relationships, including
 30 credentialing and contracting, which encompasses pharmacy program compliance, contractual disputes,
 31 and re-credentialing. As part of managing Participating Pharmacies, CONTRACTOR shall be required
 32 to do the following:

- 33 a. Communicate with and educate pharmacists on issues that directly impact the MSN
 34 Program Enrollees being served via FAX blasts.
- 35 b. Periodically survey pharmacies in order to better monitor the satisfaction and needs of
 36 network pharmacies and shall share the results of these surveys with ADMINISTRATOR.

37 //

1 c. As part of the implementation process, if an analysis of the pharmacy network uncovers
2 any pockets of clients who need better access to pharmacies, then any local pharmacies not already
3 contracted shall be invited to join the network if qualified and meets CONTRACTOR's credentialing
4 criteria.

5 d. At any time during the Agreement, CONTRACTOR shall terminate a pharmacy as a
6 Participating Pharmacy if its practices, or that of its agents or employees, are found to be engaging in
7 fraudulent activities or any activity which places the well-being of the MSN Enrollee at risk and the
8 activity in question have not been corrected to the satisfaction of CONTRACTOR. Such request for
9 termination or corrective action may also occur at the request of the ADMINISTRATOR and
10 CONTRACTOR shall advise the ADMINISTRATOR within five (5) business days of the action taken.

11 D. MSN PROGRAM-CUSTOMER SERVICE

12 1. CONTRACTOR shall maintain a telephone number dedicated to facilitating
13 communication with the ADMINISTRATOR and its pharmacy providers submitting claims for the
14 MSN Program. CONTRACTOR shall provide a toll-free telephone number as, with rare exception, all
15 providers submitting claims will be Orange County based service providers.

16 2. CONTRACTOR's customer service call center shall manage pharmacy communications.
17 CONTRACTOR's customer service call center shall feature live agents who answer the phone 24 hours
18 a day, seven days a week, 365 days a year. Pharmacists shall be available during regular business hours
19 to take calls that are transferred from the customer service area. CONTRACTOR shall also provide
20 emergency access to a registered pharmacist 24 hours a day. CONTRACTOR's call center shall handle
21 inquiries from network pharmacies to clarify coverage and prescription information for the MSN
22 Program. CONTRACTOR shall also provide immediate answers to pharmacy questions through access
23 to plan design data, patient profiles and drug history, online and in real time.

24 3. CONTRACTOR shall use a call management tracking system to log calls and establish an
25 escalation procedure to handle caller inquiries. Each call shall be logged and given a code that translates
26 into the type of call received (e.g., eligibility, pharmacy location, co-pay or benefit question, etc.).
27 Notes are to be typed in from the customer service representative documenting which pharmacy called,
28 the name of the caller, the problem, and the solution.

29 4. CONTRACTOR shall train and instruct its customer service representatives in the
30 intricacies of the MSN Program Benefit Plan design. CONTRACTOR shall provide the customer
31 service representatives written reference information regarding the MSN Benefit Plan design, as
32 approved by the ADMINISTRATOR. Specific documentation for the customer service department
33 shall be created by CONTRACTOR based upon the needs of the MSN Program and corresponding
34 MSN Program Benefit Plan designs. CONTRACTOR shall provide follow-up refresher training at
35 regular intervals. In addition, CONTRACTOR shall monitor all calls and provide ADMINISTRATOR
36 with quarterly statistics on call performance.

37 //

1 5. For other non-English speaking calls, CONTRACTOR's customer service representatives
2 shall contact AT&T's Language Line which provides immediate interpreters in more than
3 140 languages. For the hearing and speech impaired, CONTRACTOR shall provide TDD-TTY
4 telecommunications.

5 6. If requested by the ADMINISTRATOR, CONTRACTOR shall be able to provide written
6 communication, supplied by ADMINISTRATOR, in Spanish and Vietnamese during the term of the
7 CONTRACTOR, which shall be reviewed and approved by the ADMINISTRATOR before distribution.
8 ADMINISTRATOR retains the option to translate necessary materials into other languages and provide
9 said materials to CONTRACTOR for use and distribution to MSN Program Enrollees as appropriate.

10 E. MSN PROGRAM-STAFFING

11 1. CONTRACTOR shall assign an account team to oversee the MSN Program Benefit Plan
12 implementation and administration. The account team will be comprised of CONTRACTOR staff that
13 will have direct responsibility for services provided in accordance with the Agreement to meet the needs
14 of the MSN Program. If requested by ADMINISTRATOR, the account team shall schedule onsite
15 meetings with ADMINISTRATOR to review performance, address concerns, and assist in program
16 management.

17 2. CONTRACTOR shall ensure that the account team's responsibilities include but not be
18 limited to the following:

19 a. Ensuring that day-to-day program operations run smoothly, address non-routine
20 member issues, and respond to other plan maintenance issues and/or concern.

21 b. Reviewing utilization figures and make recommendations on updating benefit design,
22 locate opportunities to further control costs, review pharmacy program, monitor drug utilization
23 patterns, participate in quality improvement and utilization management efforts, coordinate with the
24 ADMINISTRATOR.

25 c. Researching/documenting customer issues, monitor performance standards, and certify
26 operational issues or ADMINISTRATOR requests are addressed immediately.

27 d. Tracking plan utilization and costs, handle the analytical needs of the
28 ADMINISTRATOR as well as ad-hoc projects.

29 e. Overseeing benefit design setup ensuring that all program-specific edits are correctly
30 programmed, performing continual quality checks, developing and maintaining informational materials
31 for customer service agents.

32 f. Determining the best way to send eligibility, manage the data load and exchange.

33 g. Submitting required data files and reports, ensure data quality and accuracy, and update
34 data system as needed.

35 h. Ensuring MSN Program Enrollees have access to pharmacies they frequent, maintain
36 partnerships with participating pharmacies.

37 //

1 3. CONTRACTOR shall provide ADMINISTRATOR a minimum of sixty (60) days,
2 whenever practicably possible, advance written notice of any changes by CONTRACTOR to the
3 proposed account management team and a description of training for new team members.

4 4. CONTRACTOR’s customer service call center system shall route specific plan calls to
5 groups of agents specifically trained on each particular plan. CONTRACTOR shall train a sufficient
6 number of Customer Service Representatives to handle call volume.

7 5. CONTRACTOR may provide a menu selection for providers during the first sixty (60) days
8 of implementation to allow clients and providers to enter a separate dedicated queue to ensure that their
9 calls are given top priority and are routed to CONTRACTOR’s most experienced Customer Service
10 Representatives.

11 6. CONTRACTOR’s Customer Service Representatives shall have access to all MSN
12 Program Benefit Plan design data, patient profiles, and patient drug history, online and in real time, via
13 Contractor’s claim processing system. The claims processing system builds profiles for each client
14 based upon claims submitted by retail pharmacies. The information contained in the profiles shall be
15 updated in a “real-time” mode, thereby providing accurate information to Customer Service
16 Representatives at all times.

17 F. MSN PROGRAM – IT REQUIREMENTS REGARDING THE ELIGIBILITY DATABASE

18 1. CONTRACTOR shall receive from the MSN Program’s third-party eligibility vendor,
19 currently NetChemistry, via a secure final transfer method, monthly eligibility files and daily update
20 files. Once the information is loaded into CONTRACTOR’s system, within 24 hours of receipt, the
21 information contained in the profiles shall be updated in a “real-time” mode.

22 2. CONTRACTOR shall provide the ability for ADMINISTRATOR, to add clients to
23 CONTRACTOR’s system between eligibility transmissions and/or override plan benefits for select
24 individuals as needed, on-line and in real time.

25 3. CONTRACTOR’s system shall be HIPAA compliant and allow for the level of access to
26 data to be determined based authorization levels (i.e., view only, limited updates, complete access).

27 4. Each eligibility file load shall result in the following series of reports:

28 a. Translation Error Report- If ADMINISTRATOR is not using a standard layout, the
29 eligibility file is translated into standard format accepted by CONTRACTOR’s claims processing
30 system and any errors identified.

31 b. Load Error Report- Any record that errs during the load process is identified on this
32 report.

33 c. Verification of Eligibility Load Report- Provides assurance that CONTRACTOR is
34 meeting the established performance standards. Rejection notification, resolution, and any requested
35 information pertaining to retroactive updates shall be facilitated through CONTRACTOR’s assigned
36 personnel.

37 //

1 d. If NetChemistry's files fall outside of the expected parameters including delay of
2 transmission, termination of member, or unreadable records, CONTRACTOR shall proactively contact
3 NetChemistry to resolve the issues. When an eligibility load occurs, CONTRACTOR shall
4 electronically send to NetChemistry a report detailing updated, termed and pending records.

5 G. MSN PROGRAM-WEBSITE

6 1. ADMINISTRATOR shall have access, as appropriate, to the following information via
7 CONTRACTOR's web site:

- 8 a. Alternative therapy drug comparison tool;
- 9 b. Online pharmacy services;
- 10 c. Pharmacy locator;
- 11 d. Claims history;
- 12 e. Formulary information;
- 13 f. Benefit information; and
- 14 g. Clinical newsletter with current drug and health information.

15 2. ADMINISTRATOR's shall be able to access the following services with a username and
16 password:

- 17 a. Membership eligibility updates;
- 18 b. Real-time claims tracking;
- 19 c. Prior authorization administration;
- 20 d. Online management and utilization reports; and
- 21 e. Secure, client-specific formulary drug lists.

22 3. Physician and Pharmacists shall be able to access, the following information via
23 CONTRACTOR's web site:

- 24 a. Secure, client-specific formulary drug lists;
- 25 b. Pharmacy manual;
- 26 c. Accreditation form;
- 27 d. Claims submission;
- 28 e. Frequently Asked Questions;
- 29 f. Newsletters and drug updates; and
- 30 g. Specialty pharmacy information.

31 4. CONTRACTOR shall protect members and their personal health information by putting in
32 place the following security measures:

- 33 a. Ensuring that all persons accessing the site shall be required to register and use a
34 password to access the site;
- 35 b. Ensuring that the website resides behind a firewall. CONTRACTOR shall contract
36 with a managed firewall service for intrusion detection 24 hours a day;
- 37 c. Ensuring that the website is secured through 128-bit encryption; and

1 d. Ensuring that information is stored securely on an application server

2 H. MSN PROGRAM – MANAGEMENT REPORTS

3 1. CONTRACTOR shall make an online reporting tool available to individuals designated by
4 the ADMINISTRATOR to enable the ability to drill down to the most specific level of detail desired.
5 ADMINISTRATOR shall be able to use the online reporting tool to create reports customized to the
6 needs of the MSN Program’s Benefit Plan design. ADMINISTRATOR shall be able, from any desktop,
7 to customize data and produce reports, graphs, and excel spreadsheets.

8 2. CONTRACTOR’s online reporting tool shall allow for unlimited flexibility in customizing
9 reports to meet each the MSN Program’s preferences and business needs. Each report shall have drill-
10 down functionality and the data shall correspond to invoiced claim amounts. ADMINISTRATOR shall
11 have the ability to develop ad-hoc reports with the complete analytical functions available in the online
12 reporting tool.

13 3. CONTRACTOR agrees to customize performance report packages according to the needs
14 and goals of the MSN Program. These reports may also be used to determine CONTRACTOR’s
15 adherence to performance guarantees. These reports shall be issued as requested by the
16 ADMINISTRATOR.

17 4. Unless otherwise waived by the ADMINISTRATOR, CONTRACTOR shall meet with
18 ADMINISTRATOR upon mutually agreeable schedule to present reports directed to benefit
19 management, formulary, and drug coverage enhancements. These meetings shall also review
20 performance statistics, clinical reviews, and account management reports and current projects. In
21 addition, a summary of customer service calls and prescription claims will be discussed to determine
22 whether any adjustments need to be made. At the discretion of the ADMINISTRATOR, the frequency
23 of the meetings may be modified. The following reports may be requested by the ADMINISTRATOR
24 to be presented at the quarterly meetings:

- 25 a. Key Performance Metrics: Claim Composition Benchmark Comparison;
- 26 b. Key Performance Metrics: PMPM Benchmark Comparison;
- 27 c. Financial Review (Not less than quarterly);
- 28 d. Recommendations/Value Add Savings Opportunities (Not less than quarterly);
- 29 e. FDA Approvals (Not less than quarterly);
- 30 f. Pending FDA Approvals (Not less than quarterly); and
- 31 g. Pending Significant Generics (Not less than quarterly).

32 I. MSN PROGRAM – CLAIMS ADJUDICATION

33 1. CONTRACTOR shall adjudicate claims according to each and every element of the MSN
34 Program Benefit Plan design as specified herein and including, but not limited to, formulary changes, or
35 any other changes to the MSN Program and communicated to CONTRACTOR which impact how or
36 which pharmaceuticals are provided and/or reimbursed.

37 //

1 2. CONTRACTOR shall adjudicate claims in accordance with the MSN Program Formulary
2 and shall provide information to the ADMINISTRATOR and PBM Auditor for optimization of the
3 MSN Program Formulary, including providing current, in-depth drug reviews and drug lists.

4 3. CONTRACTOR shall adjudicate and maintain an MSN Program maintenance drug list for
5 90-day supply, if applicable. CONTRACTOR's system shall also include the ability to exclude specific
6 categories for acute care only.

7 4. CONTRACTOR shall implement modifications and adjudicate claims in accordance with
8 any modification to the MSN Program Benefit Plan design requested by ADMINISTRATOR.
9 Dependent on the complexity and breadth of the plan parameter change, CONTRACTOR shall
10 implement a change request as soon as possible or practicable unless prior written approval has been
11 obtained from the ADMINISTRATOR.

12 5. CONTRACTOR shall properly adjudicate a 90-day supply for maintenance drugs at retail,
13 while providing only a 30-day supply for all other acute care medications, if requested by the
14 ADMINISTRATOR,

15 6. CONTRACTOR agrees to accurately process Claims received from Participating
16 Pharmacies, determine whether such Claims are covered on behalf of the ADMINISTRATOR within
17 the MSN Program Benefit Plan specifications and accurately calculate the price of such Claims. The
18 following electronic real-time, adjudication services shall be performed by CONTRACTOR upon
19 receipt of an electronic prescription Claim from a Participating Pharmacy:

20 a. Verification that the submitted Claim has been received from a valid Participating
21 Pharmacy.

22 b. Verification that the Claim submitted is for an MSN Program Enrollee and that the
23 MSN Program Enrollee is entitled to receive medications on the date of service based on information
24 provided to CONTRACTOR by the eligibility file.

25 c. Verification that the prescription is from an authorized provider based on information
26 provided to CONTRACTOR by the ADMINISTRATOR.

27 d. Verification that the Claim is within any quantity or days' supply limitations detailed
28 within the ADMINISTRATOR's MSN Benefit Plan specifications.

29 e. Accurately calculate the Claim cost in compliance with the MSN Program Benefit Plan
30 specifications provided to CONTRACTOR by the ADMINISTRATOR.

31 f. Accurately calculate the MSN Program Enrollee's Co-Payment, using the MSN
32 Program Benefit Plan specifications, if applicable.

33 g. Accurately accept or reject all Claims transmitted to Contractor by the Participating
34 Pharmacies, including rejecting Claims.

35 h. Accurately calculates each claim to ensure reimbursement follows pricing logic as
36 specified in Exhibit D to the Agreement.

37 i. Verification that the Claim is a Clean Claim.

1 7. Pharmacies
 2 a. Payment shall be limited to Participating Pharmacies physically located within the
 3 borders of Orange County. The MSN Program is required to reimburse emergency services provided to
 4 MSN Program Enrollees outside of Orange County, but within the United States. Upon sole discretion
 5 of the ADMINISTRATOR, prescription(s) filled as a result of or immediately following such
 6 emergency situations may be authorized for reimbursement at rates specified in Exhibit D to the
 7 Agreement.

8 b. All pharmacy claims to CONTRACTOR must be submitted within sixty (60) days of
 9 the date following the filling of the prescription. Claims submitted after this timeframe shall be denied.

10 c. CONTRACTOR shall pay pharmacies in accordance with CONTRACTOR’s contracts
 11 with its network pharmacies.

12 J. MSN PROGRAM – SPECIALTY PHARMACY SERVICES (SPECIALTY INJECTABLES)

13 1. The Specialty Pharmacy Services are considered a separate and non-exclusive service from
 14 the PBM services specified above. CONTRACTOR agrees that specialty injectable medications, and
 15 any other services provided through CONTRACTOR’s Specialty Pharmacy Services, are also subject to
 16 the MSN Program formulary.

17 2. CONTRACTOR agrees that unless otherwise authorized, in writing, by the
 18 ADMINISTRATOR, Specialty Pharmacy Services shall be provided by any willing provider in the
 19 community desiring to enter into an arrangement with CONTRACTOR for provision of services to
 20 MSN Enrollees. Specialty Pharmacy Services providers may be located outside of the County of
 21 Orange.

22 3. CONTRACTOR shall provide Specialty Pharmacy services for injectable and infused
 23 products for MSN Enrollees with complex chronic conditions including, but not necessarily limited to
 24 the following:

- 25 a. Cancer
- 26 b. HIV/AIDS
- 27 c. Hemophilia
- 28 d. Hepatitis C
- 29 e. Multiple Sclerosis
- 30 f. Crohn’s disease
- 31 g. Rheumatoid Arthritis
- 32 h. Growth hormone deficiency

33 4. CONTRACTOR’s Specialty Pharmacy Services shall include the following:

34 a. Centralized Call Center—CONTRACTOR shall ensure that its subcontracted providers
 35 for Specialty Pharmacy Services provide a 24/7 call center to provide immediate patient support and
 36 customer service.

37 //

1 b. Comprehensive Distribution Services- In most cases, CONTRACTOR shall be able to
2 provide delivery services anywhere in the county within 24 hours. This may include, as requested by
3 the MSN Program, delivery to County's contracted Skilled Nursing Facilities or other facilities as
4 directed by the MSN Program. If delivery cannot be made by CONTRACTOR within 24 hours,
5 ADMINISTRATOR may facilitate delivery of the medication through other contracted vendors at
6 ADMINISTRATOR's cost.

7 c. Professionally Trained Pharmacy Staff—CONTRACTOR shall provide access to
8 skilled professionals who work with the MSN Program to help achieve therapy efficacy and compliance.

9 5. CONTRACTOR shall provide access to skilled professionals who will have the ability to:

10 a. Oversee and track the patient's medication order and satisfaction.

11 b. Work with patients and their physician to answer questions about specialty medications
12 and the diseases they treat.

13 c. Help the patient properly access their benefit and assist the patient in navigating
14 through the complexities of reimbursement rules.

15 6. Specialized Disease Management and Compliance Programs— CONTRACTOR shall work
16 with the MSN Program to develop specific protocols and drug management programs to meet objectives
17 as may be requested by the ADMINISTRATOR.

18 7. CONTRACTOR's specialty pharmacy program center will be responsible for specialty
19 pharmacy services for the MSN Program. The specialty department shall be manned from 7:30 am to
20 6:30 p.m. PST Monday through Friday. In addition, a clinical pharmacist shall be available during
21 regular business hours in CONTRACTOR's administrative offices and via cell phone after office hours
22 in the event of an emergency.

23 8. Disaster Planning

24 a. In the event of a disaster, CONTRACTOR's specialty pharmacy processes shall be
25 covered under CONTRACTOR's overarching disaster recovery plan including arranging emergency
26 fulfillment from another supplier. All claim processing shall continue at CONTRACTOR's designated
27 remote facility. CONTRACTOR asserts that these protocols and procedures are fully tested annually.

28 b. CONTRACTOR shall be in communication with patients and provide telephone refill
29 reminders.

30 c. In the event that the specialty patient needs an emergency supply of medication due to a
31 lost shipment or other service disruption, CONTRACTOR shall arrange for a small amount of the
32 medication to be provided through an alternative pharmacy source to ensure continuation of care.

33 9. CONTRACTOR's specialty pharmacy shall have the ability to provide drop shipments to
34 patients and/or providers. CONTRACTOR shall provide billing to ADMINISTRATOR. As
35 appropriate, CONTRACTOR shall provide invoices directly to ADMINISTRATOR or administer
36 claims online in the case of medications with restricted distribution pharmacy networks.
37 ADMINISTRATOR shall not be billed directly by CONTRACTOR's specialty pharmacy and all

1 payments shall be made to CONTRACTOR for Specialty Pharmacy Services. Payments to
2 CONTRACTOR's specialty pharmacy will be reflected in CONTRACTOR's claim processing system
3 used for reporting Claims paid to Participating Pharmacies.

4 10. CONTRACTOR shall provide Specialty Pharmacy Services across all lines of business,
5 including through a specialty pharmacy network, specialty injectable provider sites and/or medical
6 providers. CONTRACTOR's specialty pharmacy shall be able to deliver all specialty products at the
7 patient's home, at work, or other designated site such as physician's office or specialty injectable
8 provider site. CONTRACTOR shall work with the MSN Program and its specialty population to
9 develop a cost-effective specialty program.

10 11. CONTRACTOR shall be able to provide Specialty Pharmacy Services across multiple
11 specialty service providers serving different sectors of this population and shall work with the MSN
12 Program as required.

13 12. CONTRACTOR shall adjudicate specialty claims electronically. Whenever feasible, all
14 specialty pharmacy claims shall be fully integrated in CONTRACTOR's system, providing ease of
15 analysis and reporting for ADMINISTRATOR.

16 a. Specialty Pharmacy Services shall be reported separately from the general PBM
17 Services specified above for the MSN Program.

18 b. CONTRACTOR's fully integrated claims processing system, on either an individual
19 patient basis or in aggregate, shall allow for any report offered under general MSN PBM Program
20 Services specified above to be run for Specialty Pharmacy Services only. ADMINISTRATOR or
21 designee shall also be able to access current claims information for ad hoc reporting through the
22 CONTRACTOR's reporting tool at no additional cost to ADMINISTRATOR. CONTRACTOR shall
23 provide monthly reports as requested.

24 **K. MSN PROGRAM – SEPARATION OF PROGRAMS**

25 The MSN Program and the BHS Program are two individual and separate programs within the
26 Agreement. Each program will be assigned a Program Manager or designee that CONTRACTOR shall
27 work with to address services within the specific programs. Communications or transactions regarding
28 the services for each program should be addressed to the assigned Program Manager or designee. Any
29 actions, lack of actions, notices, waivers, and/or breaches of one program shall not be deemed to be
30 applicable to the other program and CONTRACTOR's response to any such actions, lack of actions,
31 notices, waivers and/or breaches shall be limited to the applicable Program, including, but not limited to,
32 Termination Notices as provided for in the Notices paragraph of the Agreement.

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1 EXHIBIT C
 2 TO AGREEMENT FOR PROVISION OF
 3 PHARMACY BENEFIT MANAGEMENT SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 MEDIMPACT HEALTHCARE SYSTEMS, INC.
 8 JANUARY 1, 2014 THROUGH JUNE 30, 2017

9
 10 **BEHAVIORAL HEALTH SERVICES PROGRAM**
 11 **STATEMENT OF WORK**

12
 13 **I. DEFINITIONS**

14 The parties agree to the following terms and definitions for services provided for the BHS Program,
 15 and to those terms and definitions that, for convenience, are set forth elsewhere in this Exhibit C.

16 A. “Administrator” means any County Health Care Agency representative responsible for the
 17 general administration and program management of the Agreement, including but not limited to:
 18 Contractor’s compliance with the terms and conditions as specified herein; invoice receipt and payment
 19 authorization; and any notices to be provided on behalf of County as specified herein.

20 B. “BHS” or “BHS Program” means collectively the four divisions comprising the Behavioral
 21 Health Services Program: 1) Adult Mental Health Services, 2) Children and Youth Mental Health
 22 Services, 3) Alcohol and Drug Abuse Services, and 4) Correctional Health Services. These programs
 23 provide services to eligible Orange County adult residents who have serious and persistent mental
 24 disorder; children and youth who are behaviorally, emotionally or mentally disordered; and persons with
 25 substance abuse disorders. Services are provided directly by the County as well as a number of
 26 contracted community-based organizations.

27 C. “BHS Benefit Plan” means all the aspects of the BHS Program pertaining to prescription drug
 28 services – specifically the BHS Formulary including, but not limited to, maximum quantities, maximum
 29 days, benefit eligibility, benefit limitations, coordination of benefits (as specified herein) and the
 30 corresponding accurate price calculations.

31 D. “BHS Client” means a person receiving services in the BHS Program who has been registered
 32 in the BHS management information system known as IRIS.

33 E. “BHS Formulary” means the list of all prescription drugs and medications for each product line
 34 that is approved by the BHS Program for routine use and which may be dispensed through Participating
 35 Pharmacies to BHS Clients.

36 F. “BHS Program Manager” means the BHS Program Manager, or designee, responsible for
 37 directing the BHS Program’s efforts in fulfilling its obligations under the Agreement and for providing

1 communication and direction to Contractor as to the BHS Benefit Plan as specified in this Exhibit C.
2 The BHS Program Manager shall be the assigned Project Manager for the BHS Program.

3 G. "BHS Program Authorized Prescribers" means psychiatrists or psychiatric nurse practitioners
4 working for the County or a County-contracted community-based provider and included on the BHS
5 lists of authorized prescribers.

6 H. "Claim" means a Participating Pharmacy's billing or invoice for a single prescription for BHS
7 Formulary Drugs dispensed to a BHS Eligible Patient.

8 I. "Clean Claim" means a Claim which has no defect, impropriety or special circumstance,
9 including incomplete documentation that would delay timely payment by Contractor. A Participating
10 Pharmacy submits a clean claim by providing the required data elements on the standard claims forms,
11 along with any attachments and additional elements, or revisions to data elements, attachments and
12 additional elements, of which the Participating Pharmacy has knowledge.

13 J. "FDA" means the United States Food & Drug Administration.

14 K. "Participating Pharmacy" means a California licensed pharmacy located in Orange County
15 which has entered into an agreement with Contractor to dispense drugs to eligible BHS clients in
16 accordance with this Contract. These participating pharmacies are commonly known as the "Network
17 of Pharmacies" and are provided by contractor for the distribution of BHS Formulary medications to
18 BHS Clients.

19 L. "Pharmacy Benefit Management Services" or "PBM Services" means those services provided
20 by Contractor in accordance with this Contract and any other documents or correspondence provided by
21 the BHS Program relating to Benefit Plan design, formulary changes, or any other changes to the BHS
22 Program and communicated to Contractor which impact how or which pharmaceuticals are provided.

23 M. "PBM Auditor" means an independent third-party contracted with the BHS Program to screen
24 all Contractor invoices and supporting documentation from Participating Pharmacies for BHS Benefit
25 Plan eligibility, pricing, claim validity, formulary coverage, etc., for payment. As of the execution of
26 this Contract, the PBM Auditor is Pro Pharma Pharmaceutical Consultants, Inc. dba Pro Pharma.
27 Contractor agrees to allow audits related to County's claims activity to be performed by the PBM
28 Auditor. Should the PBM Auditor change during the term of this Agreement, County shall notify
29 Contractor within ten (10) business days of such change, and Contractor agrees to work with the new
30 PBM Auditor under the same terms and conditions as the current PBM Auditor.

31 N. "Pharmaceutical Manufacturer Patient Assistance Program" or "PAPs" means financial
32 assistance or free drug product to low income individuals to augment any existing prescription drug
33 coverage.

34 O. "Prescription" means each medication prescribed to a BHS Client which results in a
35 corresponding claim to Contractor from a Participating Pharmacy.

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II. CONTRACTOR'S RESPONSIBILITIES

The CONTRACTOR is responsible for administering and processing pharmacy claims for eligible services in accordance with the BHS Program Guidelines. The CONTRACTOR's responsibilities shall include, but not limited to, the following duties:

A. BHS PROGRAM – GENERAL BACKGROUND OF RX BENEFIT DESIGN

1. CONTRACTOR shall not be a plan fiduciary and shall not exercise discretion, authority, or control regarding administration of BHS Program Benefit Plan Design.

2. CONTRACTOR shall provide the services as stated and required by the BHS Program Benefit Plan as specified below.

3. CONTRACTOR agrees that the ADMINISTRATOR may modify, with ten (10) days written notice to CONTRACTOR, the BHS Program Benefit Plan designs to meet federal, state, or County requirements. CONTRACTOR may request additional time, if necessary.

4. Upon signed request, the ADMINISTRATOR may initiate benefit design changes, network modification, or add other services. Dependent on the complexity and breadth of the plan parameter change, CONTRACTOR shall implement a change as soon as possible or practicable but shall not take longer than ten (10) working days without written consent of the ADMINISTRATOR.

5. CONTRACTOR further agrees that it shall provide services in accordance with these modified BHS Program Plan Benefit designs.

B. BHS PROGRAM – RX BENEFIT DESIGN

1. CONTRACTOR shall reimburse only those medications that are on the BHS Program formulary which shall be developed and maintained by the BHS Program. The COUNTY, through the BHS Program is the payer of last resort for medically necessary medications in the treatment of mental illness prescribed by Authorized BHS Program Prescribers. BHS Program maintains a formulary restricted to generic formulations when they are available.

2. The ADMINISTRATOR or the PBM Auditor shall provide the BHS Program Formulary and any modifications thereafter to CONTRACTOR. For reference only, the most current BHS Program Formulary should be posted by the ADMINISTRATOR on the BHS website at: <http://ochealthinfo.com/bhs/about/formulary>.

3. In order to ensure that therapeutic integrity is maintained in the face of cost considerations, only generics rated as therapeutically equivalent (so-called "A" or "AB rated"), or rated equivalent to the pioneer product by the FDA are covered.

4. ADMINISTRATOR, in rare cases, may cover a non-formulary drug when approved in writing by the ADMINISTRATOR.

5. CONTRACTOR agrees that reimbursement of any medications authorized outside the scope of the BHS Program formulary, without a proper prior authorization from the ADMINISTRATOR, will result in an audit exception and funds withheld from CONTRACTOR in accordance with Exhibit D to the Agreement.

1 6. CONTRACTOR agrees that all medications must be provided by the Network of
2 Pharmacies provided by the CONTRACTOR. CONTRACTOR shall provide its Pharmacy Benefits
3 Management services based on the following BHS Program guidelines. Failure to do so without proper
4 authorization from the ADMINISTRATOR will result in an audit exception and funds withheld from
5 CONTRACTOR in accordance with Exhibit C to this Agreement.

6 7. CONTRACTOR agrees that all medications available in generic formulations must be
7 prescribed as generic. If a physician prescribes a brand name product, then the pharmacy is expected to
8 substitute with a generic formulation when one is available unless a prior authorization is provided by
9 ADMINISTRATOR to the CONTRACTOR.

10 8. CONTRACTOR agrees that all medications on the formulary have a quantity limit on the
11 number of units covered in a month's supply, and a dollar limit on the maximum payment that BHS will
12 approve. These quantity limits and maximum dollar thresholds are formulary limits on the usual dosage
13 and expense for each medication. Prescriptions for quantities in excess of the quantity limits or drug
14 costs in excess of the maximum dollar threshold require a prior authorization.

15 9. ADMINISTRATOR typically covers only a 45-day supply of medication at a time.
16 However, appointment times vary depending on the acuity of the patient and the next availability of
17 appointment. Accordingly, CONTRACTOR should have means to allow multiple prescriptions for one
18 or two week's duration of the same medication within a one month period. Similarly, CONTRACTOR
19 should have means to allow prescriptions for five or six week's duration.

20 10. ADMINISTRATOR has engaged a third-party PAP Manager to aid in obtaining PAP
21 eligibility for certain BHS Clients. As a result, these clients may need short-term prescription fills until
22 such time that the PAP is approved and effective.

23 a. Only authorized prescribers prescriptions will be covered by this medication benefit for
24 BHS. The list of authorized prescribers shall be provided to CONTRACTOR by the
25 ADMINISTRATOR.

26 b. Prior Authorization: The procedure allowing the prescribing of medications in a
27 manner not consistent with the BHS Benefit Plan design is as follows:

28 11. The BHS Program Prescribers determine that a medication outside of the BHS Program
29 formulary guidelines is needed for a client. ADMINISTRATOR shall enter Prior Authorization into
30 CONTRACTOR's database allowing the medication in question to be dispensed to the BHS Client.
31 CONTRACTOR shall reference the authorization for the medication in adjudicating Claims and for
32 inclusion by CONTRACTOR in the supporting documentation submitted to ADMINISTRATOR and
33 the PBM Auditor in support of CONTRACTOR's invoices.

34 12. The ADMINISTRATOR determines, for all Prior Authorization requests, if they are
35 approved. ADMINISTRATOR's decisions are final and binding. CONTRACTOR shall provide the
36 ability for the ADMINISTRATOR to electronically submit this authorization for same day adjudication.
37 CONTRACTOR shall reference the authorization for the medication in adjudicating Claims and for

1 inclusion by CONTRACTOR in the supporting documentation submitted to ADMINISTARTOR and
2 the PBM Auditor in support of CONTRACTOR's invoices.

3 13. Coordination of Benefits

4 a. The County, through its BHS Program is payor of last resort, however, when it is
5 determined that the client being served qualifies for the many other programs sponsored by the state and
6 federal agencies (e.g., Medi-Cal, Medicare Part D, Medicare "donut hole," etc.), services provided by
7 the BHS Program do not exclude these persons with other coverage. As a result, BHS Program
8 Prescribers prescribe medications for these persons as well.

9 b. ADMINISTRATOR desires to ensure that its clients are not financially deterred from
10 obtaining their medications and needing a higher level of care as a result of not maintaining their
11 medication regimens.

12 c. The BHS Program will cover co-pays, deductibles and any out-of-pocket expense for
13 certain groups as follows:

14 1) Medi-Cal: The cost of the medication should be billed by the Participating
15 Pharmacy to Medi-Cal as appropriate and the County shall be billed for the BHS Clients' Share of Cost
16 requirement as appropriate.

17 2) Medicare Prescription Drug Coverage Benefit, specifically Part D: The cost of the
18 medication should be billed by the Participating Pharmacy to Medicare as appropriate and the County
19 shall be billed for the BHS Clients' co-pay and/or deductible requirement as appropriate and/or the full
20 cost of the medication should the BHS Client be at a point in their Medicare pharmacy benefit that
21 requires they pay in full for the medication.

22 3) PAPs can provide assistance to Medicare Part D enrollees and interface with Part D
23 plans by operating "outside the Part D benefit" to ensure separateness of Part D benefits and PAP
24 assistance. The PAP's assistance on behalf of the PAP enrollee does not count towards a Part D
25 beneficiary's true-out-of-pocket cost ("TrOOP"). The calculation of TrOOP is important for determining
26 whether an individual has reached the threshold for catastrophic coverage under the Part D benefit and
27 at which point the BHS Program will cover the cost of medications for BHS Clients with Medicare
28 Part D.

29 4) The Parties agree that certain subgroups are also responsible for premiums. The
30 BHS Program, at its sole discretion, may want to consider subsidizing those, or subsidizing the
31 difference to change from a basic benefit to an enhanced benefit, depending on cost analyses. This does
32 not affect CONTRACTOR's responsibilities as discussed herein.

33 C. BHS PROGRAM – PHARMACY NETWORK MANAGEMENT

34 1. CONTRACTOR shall distribute informational materials to the Participating Pharmacies if
35 the BHS Program plan design changes or other network changes are made. Such communications shall
36 be approved by ADMINISTRATOR before distribution to the Participating Pharmacies.

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1 2. CONTRACTOR shall routinely communicate, upon approval of the ADMINISTRATOR,
2 policies and procedures regarding new drugs, therapeutic substitution, utilization management, and
3 adjudication standards and practices (particularly relating to coordination of benefits) to pharmacies in
4 the network.

5 3. CONTRACTOR agrees that any communications referencing the BHS Program shall be
6 approved by the ADMINISTARTOR, including educational materials, before any materials are
7 distributed to the pharmacy network. Educational materials that may be specifically related to the BHS
8 Program include:

- 9 a. Formulary and preferred drug lists;
- 10 b. Policies & procedures related to claims submission;
- 11 c. New product notifications;
- 12 d. Communication of new clinical guidelines;
- 13 e. Policies & procedures related to prior authorizations;
- 14 f. Patient compliance reminders;
- 15 g. MAC program details;
- 16 h. Policies & procedures related to member grievances; and
- 17 i. Benefits of optimizing generic drugs

18 4. CONTRACTOR shall manage Participating Pharmacy relationships, including
19 credentialing and contracting, which encompasses pharmacy program compliance, contractual disputes,
20 and re-credentialing.

21 a. CONTRACTOR may be requested by the ADMINISTRATOR to go into local areas to
22 better communicate with and educate pharmacists on issues that directly impact the BHS Clients being
23 served.

24 b. CONTRACTOR shall periodically survey pharmacies in order to better monitor the
25 satisfaction and needs of network pharmacies and shall share the results of these surveys with
26 ADMINISTRATOR.

27 c. If an analysis of the pharmacy network uncovers any pockets of clients who need better
28 access to pharmacies, then any local pharmacies not already contracted shall be invited to join the
29 network if qualified and meets CONTRACTOR's credentialing criteria.

30 d. At any time during the Agreement, CONTRACTOR shall terminate a pharmacy as a
31 Participating Pharmacy if its practices, or that of its agents or employees, are found to be engaging in
32 fraudulent activities or any activity which places the well-being of the BHS Client at risk and the
33 activity in question have not been corrected to the satisfaction of CONTRACTOR. Such request for
34 termination may also occur at the request of the ADMINISTRATOR and CONTRACTOR shall advise
35 the ADMINISTRATOR within five (5) business days of the action taken.

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1 D. BHS PROGRAM – CUSTOMER SERVICE

2 1. CONTRACTOR shall maintain a telephone number dedicated to facilitating
3 communication with the ADMINISTRATOR, ADMINISTRATOR's community-based
4 CONTRACTORS and providers submitting claims for the BHS Program. CONTRACTOR shall
5 provide a toll-free telephone number as all providers submitting claims will be Orange County based
6 service providers.

7 2. CONTRACTOR's customer service call center shall manage pharmacy communications.
8 CONTRACTOR's customer service call center shall feature live agents who answer the phone 24 hours
9 a day, seven days a week, 365 days a year. Pharmacists shall be available during regular business hours
10 to take calls that are transferred from the customer service area. CONTRACTOR shall also provide
11 emergency access to a registered pharmacist 24 hours a day. CONTRACTOR's call center shall handle
12 inquiries from network pharmacies to clarify coverage and prescription information for the BHS
13 Program.

14 3. CONTRACTOR shall also provide immediate answers to pharmacy questions through
15 access to plan design data, patient profiles and drug history, online and in real time.

16 4. CONTRACTOR shall use a call management tracking system to log calls and establish an
17 escalation procedure to handle caller inquiries. Each call shall be logged and given a code that translates
18 into the type of call received (e.g., eligibility, pharmacy location, co-pay or benefit question, etc.).
19 Notes are to be typed in from the customer service representative documenting the name of the
20 pharmacy, the name of the caller, the problem, and the solution.

21 5. CONTRACTOR shall train and instruct the customer service representatives in the
22 intricacies of the BHS Program plan design. CONTRACTOR shall provide the customer service
23 representatives written reference information regarding the BHS plan design, as approved by the
24 ADMINISTRATOR. Specific documentation for the customer service department shall be created by
25 CONTRACTOR based upon the needs of the BHS Program and corresponding plan designs.
26 CONTRACTOR shall provide follow-up refresher training at regular intervals. In addition,
27 CONTRACTOR shall monitor all calls and provide ADMINISTRATOR with quarterly statistics on call
28 performance.

29 6. CONTRACTOR's customer service representatives shall utilize AT&T's Language Line,
30 as required, which provides immediate interpreters in more than 140 languages. For the hearing and
31 speech impaired, CONTRACTOR shall provide TDD-TTY telecommunications.

32 7. If requested by the ADMINISTRATOR, CONTRACTOR shall be able to provide written
33 communication, supplied by County, in Spanish, Farsi and Vietnamese during the term of the
34 Agreement, which shall be reviewed and approved by the ADMINISTRATOR before distribution.
35 ADMINISTRATOR retains the option to translate necessary materials into other languages and provide
36 said materials to CONTRACTOR for use and distribution to BHS Clients as appropriate.

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1 E. BHS PROGRAM – STAFFING

2 1. CONTRACTOR shall assign an account team to oversee plan administration. This account
3 team shall schedule onsite meetings with the ADMINISTRATOR to review performance, address
4 concerns, and assist in program management.

5 2. CONTRACTOR shall ensure that the individuals who will have direct responsibility for
6 services provided in accordance with the Agreement shall meet the following needs:

7 a. Ensure that day-to-day program operations run smoothly, address non-routine member
8 issues, and respond to other plan maintenance issues and/or concerns.

9 b. Review utilization figures and make recommendations on updating benefit design,
10 locate opportunities to further control costs, review pharmacy program, monitor drug utilization
11 patterns, participate in quality improvement and utilization management efforts, coordinate with the
12 ADMINISTRATOR.

13 c. Research/document customer issues, monitor performance standards, and certify
14 operational issues or ADMINISTRATOR requests are addressed immediately.

15 d. Track plan utilization and costs, handle the analytical needs of the ADMINISTRATOR
16 as well as ad-hoc projects.

17 e. Oversee benefit design setup ensuring that all program-specific edits are correctly
18 programmed, performing continual quality checks, developing and maintaining informational materials
19 for customer service agents.

20 f. Determine the best way to send eligibility, manage the data load and exchange.

21 g. Submit required data files and reports, ensure data quality and accuracy, and update
22 data system as needed.

23 h. Ensures BHS Clients have access to pharmacies they frequent, maintain partnerships
24 with participating pharmacies

25 3. CONTRACTOR shall provide ADMINISTRATOR a minimum of sixty (60) days,
26 whenever practicably possible, advance written notice of any changes by CONTRACTOR to the
27 proposed account management team and a description of training for new team members.

28 4. CONTRACTOR's customer service call center system shall route specific plan calls to
29 groups of agents specifically trained on each particular plan. CONTRACTOR shall train a sufficient
30 number of Customer Service Representatives to handle call volume throughout the term of the
31 Agreement.

32 5. CONTRACTOR's Customer Service Representatives shall have access to all BHS Program
33 Benefit Plan design data, patient profiles, and patient drug history, online and in real time, via
34 CONTRACTOR's claim processing system. The claims processing system builds profiles for each
35 client based upon claims submitted by retail pharmacies. The information contained in the profiles shall
36 be updated in a "real-time" mode, thereby providing accurate information to Customer Service
37 Representatives at all times.

1 F. BHS PROGRAM – IT REQUIREMENTS REGARDING THE ELIGIBILITY DATABASE

2 1. CONTRACTOR shall receive from the ADMINISTRATOR, via a secure file transfer
3 method, daily eligibility files. Once the information is loaded into CONTRACTOR’s system, within 24
4 hours of receipt, the information contained in the profiles shall be updated in a “real-time” mode.

5 2. CONTRACTOR shall provide the ability to the ADMINISTRATOR to manually add
6 clients to CONTRACTOR’s system between eligibility transmissions and/or override plan benefits for
7 select individuals as needed, on-line and in real time.

8 3. CONTRACTOR’s system shall be HIPAA compliant and allow for the level of access to
9 data to be determined based authorization levels (i.e., view only, limited updates, complete access).

10 4. Each eligibility file load shall result in the following reports and immediately be made
11 available to ADMINISTRATOR’s Information Technology staff for their review:

12 a. Translation Error Report-If ADMINISTRATOR is not using a standard layout, the
13 eligibility file is translated into standard format accepted by CONTRACTOR’s claims processing
14 system and any errors identified.

15 b. Load Error Report-Any record that errs during the load process is identified on this
16 report.

17 c. Verification of Eligibility Load Report-Provides assurance that CONTRACTOR is
18 meeting the established performance standards. Rejection notification, resolution, and any requested
19 information pertaining to retroactive updates shall be facilitated through CONTRACTOR’s assigned
20 personnel.

21 5. If ADMINISTRATOR’s files fall outside of the expected parameters including delay of
22 transmission, termination of member, or unreadable records, CONTRACTOR shall proactively contact
23 the County to resolve the issues. When an eligibility load occurs, CONTRACTOR shall electronically
24 send to ADMINISTRATOR and to ADMINISTRATOR’s Information Technology Staff a report
25 detailing updated, termed and pending records.

26 G. BHS PROGRAM – WEBSITE

27 1. ADMINISTRATOR shall have access, as appropriate, to the following information via
28 CONTRACTOR’s web site:

- 29 a. Alternative therapy drug comparison tool
- 30 b. Online pharmacy services
- 31 c. Pharmacy locator
- 32 d. Copay calculator
- 33 e. Claims history
- 34 f. Formulary information
- 35 g. Benefit information
- 36 h. Clinical newsletter with current drug and health information
- 37 i. Drug search tool

1 2. ADMINISTRATOR shall be able to access the following services with a username and
 2 password. CONTRACTOR shall provide “tiered access” giving certain staff more limited access (i.e.,
 3 read only vs. ability to edit) than others.

- 4 a. Membership eligibility updates
- 5 b. Real-time claims tracking
- 6 c. Prior authorization administration
- 7 d. Online management and utilization reports
- 8 e. Secure, client-specific formulary drug lists

9 3. To protect members and their personal health information, the following security measures
 10 shall be in place:

- 11 a. All persons accessing the site shall be required to register and use a password to access
 12 the site
- 13 b. The Web site shall reside behind a firewall
- 14 c. The Web site shall be secured through 128-bit encryption
- 15 d. CONTRACTOR shall contract with a managed firewall service for intrusion detection
 16 24 hours a day
- 17 e. Information shall be stored securely on an application server

18 H. BHS PROGRAM – MANAGEMENT REPORTS

19 1. CONTRACTOR shall provide the EOB 110 Detail File and the BHS Formulary specifically
 20 for the BHS Program. Modification to the EOB 110 Detail File will be made upon submission of a
 21 Service Request. CONTRACTOR and ADMINISTRATOR will mutually agree to the standards for
 22 formatting and portability.

23 2. CONTRACTOR shall provide the following Standard Management Reports specifically for
 24 the BHS Program, at intervals to be determined by the BHS Program.

Standard Management Reports	
<u>Report Category</u>	<u>Potential Uses and Application</u>
Key Performance Indicators	Provides common key statistics about pharmacy benefit utilization and costs. Works with the Key Performance Indicators (KPIs) and values selected by the BHS Program. The KPIs are available by fill date or adjudicated date. Each KPI displayed provides data for the current Year-To-Date (YTD), previous YTD, YTD Variance, YTD % Variance, reporting month/quarter, previous month/quarter, Month/Quarter Variance, and Month/Quarter % Variance. Each KPI can be selected to display a corresponding line graph with the trend, actual, and forecasted performance. Use to analyze trends in utilization and costs.
Utilization Summary	Provides key utilization data grouped by the selected level of plan hierarchy. Results can be pre-ranked by number of members, utilizers, total cost, total claims, generic % total claims, generic cost per claim, brand cost per claim, average cost per claim, average cost Per Member Per Month (PMPM), or average cost Per User Per Month (PUPM). Use to compare costs and volumes across groups, determine costs and utilization levels.

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Standard Management Reports	
<u>Report Category</u>	<u>Potential Uses and Application</u>
Utilization by Month	Provides summary information by month and percent of change, grouped by the plan hierarchy level selected. Within the report there is the ability to drill up or down through the plan hierarchy. Use to Compare costs and volumes across months, determine costs, see amount of change in costs from month to month and determine membership and utilization levels.
Utilization – Trend Reports	Provides summary information by month for a full calendar year or the current year-to-date. Data is summarized by the level selected within the plan hierarchy. Results can be based upon adjudicated date or fill date. This report includes graphical representation of member benefit utilization, ingredient costs with PMPM's, formulary and generic use, and member and plan payment distributions. Use to Compare costs and volumes across months, determine costs and volumes by month and year-to-date, monitor key utilization statistics such as generic and formulary, and utilization, amount paid per member, etc.
Utilization – Trend Analysis by Fill/Adjudication Date	Compare costs and volumes across months. Use to determine costs and volumes by month and year-to-date, monitor key utilization statistics such as generic and formulary, and utilization, amount paid per member, etc.
Member	<p>Provides key statistics on the top utilizing members. The number of top members can be specified and displayed in various formats such as: % of plan paid, Total Claims, % of total claims, Total Cost, Plan paid per claim, Total Patient Paid, Number of pharmacies, % of plan paid, Number of prescribers, and Generic % of total claims.</p> <p>The report results can be optionally constrained by disease, prescriber, pharmacy, and/or drug(s). Additionally, within the report, results can be re-ranked, drilled up or down through the plan, hierarchy, and drill into a top members profile for detailed claims information. Use to identify potential fraud and abuse, identify candidates for clinical intervention, and examine cost and volume outliers.</p>
Patient Profile by Date or Drug	Provides detailed claim information by member. The data can be displayed in fill date order or grouped by drug with subtotals. The report can be run for adjudicated and/or fill date ranges. Use for review a members claims activity and case management.
Members with Controlled Substance Prescriptions	Provides a detailed member profile, including member name, Rx number, date of fill, drug name, strength, prescriber, pharmacy, quantity, days' supply, amount paid and total cost, for any member who has obtained more than the defined threshold of controlled substances filled within the requested reporting period. Use to identify potential issues of fraud and abuse, and identify opportunities for possible clinical intervention
Drug – Top Utilized	<p>Provides key statistics on the top utilized drugs by Brand/Generic name, Label Name, NDC, Drug Class, Therapeutic Class, or Manufacturer. The number of top drugs to be displayed can be specified and several different ranking methods are available: % of plan paid, PMPM, % of total claims, Total Claims, Plan paid per claim, Total Cost, Plan paid per days' supply, Total Patient Paid, Generic % of total claims, and Total Plan Paid.</p> <p>The report results can be optionally constrained by disease, prescriber, pharmacy, and/or drug(s). Within the report there is ability to re-rank results, drill up or down through the plan hierarchy, and drill into the top pharmacies dispensing or top members utilizing those drugs. Use to monitor drug utilization and adherence to formulary, identify opportunities for intervention programs, and examine cost and volume outliers</p>
Drug – By Disease	Provides key statistics on your top disease categories based upon utilization. The number of top diseases to be displayed can be specified and several

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Standard Management Reports	
<u>Report Category</u>	<u>Potential Uses and Application</u>
Drug – By Disease (continued)	<p>different ranking methods are available: PMPM, % of total claims, Total Claims, Plan paid per claim, Generic % of plan paid, and Generic % of total claims.</p> <p>The report results can be constrained by disease, prescriber, pharmacy, and/or drug(s). Within the report results can be re-ranked, drilled up or down through the plan hierarchy and drill into the top prescribers or top members utilizing within disease categories. Use to monitor top diseases/conditions, identify opportunities for preventative care, and examine outliers.</p>
Drug Market Share	<p>Provides plan market share data by cost and volume for selected drug categories (GTC, STC, brand name, label name, NDC, GCN). For each drug/strength combination, the report provides costs and quantities per Rx, as well as market share percentages by volume and cost. Use to monitor the effectiveness of formularies, preferred product lists, and physician education programs, compare costs for similar agents within a therapeutic class, analyze market share data during Pharmacy and Therapeutics (P&T) Committee meetings to, and guide key formulary decisions</p>
Top Prescribers	<p>Provides key statistics on top prescribing physicians. The number of top prescribers can be displayed and several different ranking methods are available: % of plan paid, PMPM, % of total claims, Total Claims, and paid per claim, Total Cost, Plan paid per days supply, Total Patient Paid, Generic % of plan paid, Total Plan Paid, and Generic % of total claims.</p> <p>The report results can be constrained by disease, prescriber, pharmacy, and/or drug(s). Within the report results can be re-ranked, drill into the top members associated with those prescribers, and drill into a detailed prescriber profile for each physician. Use to identify potential fraud and abuse, identify opportunities for intervention and outreach, and examine outliers.</p>
Physician Profile	<p>Provides data related to prescriptions written by physicians within a designated specialty. Data includes physician ID, physician name, number of Rx's, amount paid, DAW1 %, average days' supply written, average amount paid per Rx, number of utilizing members, average number of Rx's per member, average amount paid per member, generic %, brand %, multisource %, and formulary %, for each prescriber. Use to monitor prescribing trends within a given specialty and identify opportunities for physician education</p>
Prescriber Profile by Therapeutic Class	<p>Compares costs associated to a prescriber against all other prescribers, by therapeutic class. The report provides total costs and claims, as well as average costs and claims across all physicians. Comparison totals and averages for the designated physician are provided with a % difference. Each therapeutic category can be drilled into for further detail on the underlying claims and drugs. Use to monitor prescribing trends within a given therapeutic class, identify opportunities for physician education, and compare costs associated to a given prescriber against benchmark data.</p>
Pharmacies	<p>Provides key statistics on your top utilized pharmacies. Data includes pharmacy name, ID, city and state, total cost, plan paid, patient paid, % of plan paid, generic % of plan paid, total claims, % of total claims, generic % of total claims, plan paid per claim, and PMPM, by pharmacy. The number of top pharmacies can be specified want displayed and several different ranking methods are available: % of plan paid, PMPM, % of total claims, Total Claims, Plan paid per claim, Total Cost, Total Patient Paid, Generic % of plan paid, Total Plan Paid, and Generic % of total claims.</p> <p>The report results can be constrained by disease, prescriber, pharmacy,</p>

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Standard Management Reports	
<u>Report Category</u>	<u>Potential Uses and Application</u>
Pharmacies (continued)	and/or drug(s). Within the report results can be re-ranked, drilled into the top members and/or physicians associated with those pharmacies. Use to identify potential fraud and abuse, monitor trends in your network, and examine outliers
Pharmacy Affiliations	Provides key statistics on top utilized pharmacies. Data includes chain/association name, ID, total cost, plan paid, patient paid, % of plan paid, generic % of plan paid, total claims, % of total claims, generic % of total claims, plan paid per claim, and PMPM, by pharmacy chain/association. The number of top affiliations can displayed as specified and several different ranking methods are available: PMPM, % of total claims, Total Claims, Plan paid per claim, Total Cost, Total Patient Paid, Generic % of plan paid, Total Plan Paid, and Generic % of total claims. The report results can be optionally constrained by disease, prescriber, pharmacy, and/or drug(s). Within the report results can be re-ranked. Use to identify potential fraud and abuse, monitor trends in the network, and examine outliers.
Prior Authorization	Provides detailed tracking on therapeutic prior authorizations. By prior authorization, data includes the PA #, drug name, member information, and key status and status dates associated with the prior authorization workflow. The level within the plan hierarchy can be specified based on data and sort desired. The report results can also be optionally constrained by the entry source of the PA (either CONTRACTOR or the BHS Program), and/or by PA status. Use to monitor therapeutic PA volume, track PA process duration and turnaround time, and identify PA approvals/denials.
BHS Formulary Report	Provides a list of BHS Formulary approved medications in a portable format that can be printed and shared by County staff. When the BHS Formulary is updated, this report will be modified by CONTRACTOR to include the most current BHS Formulary information and conform to all BHS Program report standards for formatting, portability and any detail as necessary.

3. CONTRACTOR agrees to customize performance report packages according to the needs and goals of the BHS Program and in a format mutually agreed upon by ADMINISTRATOR and CONTRACTOR. These reports may also be used to determine CONTRACTOR’s adherence to performance guarantees. These reports shall be issued as requested by the ADMINISTRATOR. These reports may include, but not be limited to, the following and as may be modified by the ADMINISTRATOR in consultation with CONTRACTOR:

- a. Plan Membership Demographics
- b. Plan Design Demographics
- c. Claim Composition Mail/Retail
- d. Claim Composition Plan
- e. Cost Composition Plan
- f. Key Performance Metrics: PMPMs
- g. Key Performance Metrics: Claim Composition Benchmark Comparison
- h. Key Performance Metrics: PMPM Benchmark Comparison
- i. Top 25 Plan Drugs by Cost

- 1 j. Top 25 Retail Drugs by Cost
- 2 k. Top 25 Plan Drugs by Volume
- 3 l. Top 25 Retail Drugs by Volume
- 4 m. Top 10 Plan Therapy Classes by Cost
- 5 n. Top 10 Retail Therapy Classes by Cost
- 6 o. Top 10 Plan Therapy Classes by Volume
- 7 p. Top 10 Retail Therapy Classes by Volume
- 8 q. Financial Review (Not less than quarterly)
- 9 r. Recommendations/Value Add Savings Opportunities (Not less than quarterly)
- 10 s. FDA Approvals (Not less than quarterly)
- 11 t. Pending FDA Approvals (Not less than quarterly)
- 12 u. Pending Significant Generics (Not less than quarterly)

13 4. CONTRACTOR shall meet with ADMINISTRATOR at least quarterly to present reports
 14 directed to benefit management, formulary, and drug coverage enhancements. These meetings shall also
 15 review performance statistics, clinical reviews, and account management reports and current projects. In
 16 addition, a summary of customer service calls and prescription claims will be discussed to determine
 17 whether any adjustments need to be made. At the discretion of the ADMINISTRATOR, the frequency
 18 of the meetings may be modified.

19 5. CONTRACTOR shall make an online reporting tool available to the ADMINISTRATOR
 20 to enable the ability to drill down to the most specific level of detail desired. ADMINISTRATOR shall
 21 be able to use the online reporting tool to create reports customized ADMINISTRATOR shall be able,
 22 from any desktop, to customize data and produce reports, graphs, and excel spreadsheets.

23 6. CONTRACTOR's online reporting tool shall allow for customized reports to meet each
 24 Program's preferences and business needs. Each report shall have drill-down functionality and the data
 25 shall correspond to invoiced claim amounts. ADMINISTRATOR shall have the ability to develop ad-
 26 hoc reports using the available functions in the online reporting tool in a format that is currently
 27 available in the online tool.

28 I. BHS PROGRAM – CLAIMS AJUDICATION

29 1. CONTRACTOR shall adjudicate claims according to each and every element of the BHS
 30 Program Benefit Plan design as specified herein and including, but not limited to, formulary changes
 31 and any other changes to the BHS Program and communicated to CONTRACTOR which impact how or
 32 which pharmaceuticals are provided and/or reimbursed.

33 2. CONTRACTOR shall adjudicate claims in accordance with the most current BHS Program
 34 Formulary and shall provide information to the ADMINISTRATOR and PBM Auditor for optimization
 35 of the BHS Program Formulary, including providing the ADMINISTRATOR with current, in-depth
 36 drug reviews and drug lists.

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1 3. If ADMINISTRATOR requests a modification to its BHS Program Benefit Plan design,
2 CONTRACTOR shall implement said modifications and adjudicate claims in accordance with the
3 modification. Dependent on the complexity and breadth of the plan parameter change, CONTRACTOR
4 shall implement a change request as soon as possible or practicable but shall not take longer than thirty
5 (30) working days.

6 4. CONTRACTOR agrees to accurately process Claims received from Participating
7 Pharmacies, determine whether such Claims are covered on behalf of the County within the Plan
8 specifications and accurately calculate the price of such Claims. The following electronic real-time,
9 adjudication services shall be performed by CONTRACTOR upon receipt of an electronic prescription
10 Claim from a Network Pharmacy:

11 a. Verification that the submitted Claim has been received from a valid Participating
12 Pharmacy.

13 b. Verification that the Claim submitted is for a BHS Client and that the BHS Client is
14 entitled to receive medications on the date of service based on information provided to CONTRACTOR
15 by the eligibility file.

16 c. Verification that the prescription is from an authorized BHS Program Prescriber based
17 on information provided to CONTRACTOR by the ADMINISTRATOR.

18 d. Verification that the Claim is within any quantity or days' supply limitations detailed
19 within the AMINISTRATOR's BHS Program Benefit Plan specifications.

20 e. Accurately calculate the Claim cost in compliance with the BHS Benefit Plan
21 specifications provided to CONTRACTOR by the ADMINISTRATOR. All applicable pricing
22 adjustments that may include but are not limited to discounts, pricing, rebates or any pass-through
23 savings must be accurately calculated as per the contract in the Claim cost.

24 f. Accurately calculate the BHS Client's Co-Payment, Share of Cost, and or deductible, if
25 applicable.

26 g. Accurately accept or reject all Claims transmitted to CONTRACTOR by the
27 Participating Pharmacy, including rejecting Claims.

28 h. Accurately calculates each claim to ensure reimbursement follows pricing logic as
29 specified in Exhibit D to the Agreement.

30 i. Verification that the Claim is a Clean Claim. CONTRACTOR agrees to submit the
31 necessary detail so ADMINSTRATOR and PBM Auditor can verify all adjudicated claims as clean
32 claims.

33 J. BHS PROGRAM-PHARMACIES

34 1. Payment shall be limited to Participating Pharmacies physically located within the borders
35 of Orange County. Payments may be made to pharmacies located outside the borders of Orange
36 County, at the discretion of ADMINISTRATOR.

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1 2. All pharmacy claims to CONTRACTOR must be submitted within thirty (30) days of the
2 date following the filling of the prescription. Claims submitted after this timeframe shall be denied.

3 3. CONTRACTOR shall pay pharmacies in accordance with CONTRACTOR’s contracts with
4 its network pharmacies.

5 4. CONTRACTOR shall adjudicate claims covered under other government programs such as
6 Medi-Cal and Medicare Part D including separate formularies or co-pays and/or deductibles as
7 described herein.

8 5. CONTRACTOR shall charge the BHS Program for the co-pay or co-pay balance (including
9 percentage co-pays), Share of Cost, deductible, and/or any out-of-pocket expense after the other
10 government program is charged for prescription drug costs.

11 6. ADMINISTRATOR shall provide CONTRACTOR all necessary eligibility and
12 coordination of benefits information in order for CONTRACTOR to administer the BHS Program
13 Benefit Plan Design as specified herein.

14 7. CONTRACTOR shall make available reports to the ADMINISTRATOR that includes BHS
15 Client specific detail on a claim by claim basis.

16 K. BHS PROGRAM- SEPARATION OF PROGRAMS

17 The MSN Program and the BHS Program are two individual and separate programs within the
18 Agreement. Each program will be assigned a Program Manager or designee that CONTRACTOR shall
19 work with to address services within the specific programs. Communications or transactions regarding
20 the services for each program should be addressed to the assigned Program Manager or designee. Any
21 actions, lack of actions, notices, waivers, and/or breaches of one program shall not be deemed to be
22 applicable to the other program and CONTRACTOR’s response to any such actions, lack of actions,
23 notices, waivers and/or breaches shall be limited to the applicable Program, including, but not limited to,
24 Termination Notices as provided for in the Notices paragraph of the Agreement.

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1 EXHIBIT D
 2 TO AGREEMENT FOR PROVISION OF
 3 PHARMACY BENEFIT MANAGEMENT SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 MEDIMPACT HEALTHCARE SYSTEMS, INC.
 8 JANUARY 1, 2014 THROUGH JUNE 30, 2017

9
10 **COMPENSATION**

11
12 **I. DEFINITIONS**

13 The parties agree to the following terms and definitions for services provided for the MSN Program,
14 and to those terms and definitions that, for convenience, are set forth elsewhere in Exhibits A-C to this
15 Agreement and in this Exhibit D.

16 A. "Acquisition Cost" means the cost of the Formulary Drug charged by the manufacturer to each
17 Covered Entity plus any Wholesaler fee.

18 B. "Actual Acquisition Cost" or "AAC" means the pharmacy reimbursement rate methodology
19 that a State may implement to replace AWP as the basis for drug pricing; which methodology shall be
20 based on the NADAC and approved by CMS for claiming against Medicaid and shall be based on
21 random surveyed pharmacies regarding their Acquisition Costs, as periodically updated.

22 C. "Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug
23 or medication dispensed as set forth in the current price list in recognized sources such as Medi-Span,
24 including its supplements, or other nationally recognized pricing source. The applicable AWP for
25 prescriptions dispensed at retail and mail services pharmacies and charged to County shall be based on
26 the actual package size submitted or such larger package size as agreed upon in the Participating
27 Pharmacy's contract with CONTRACTOR, whichever results in a lower cost to the County.

- 28 1. All quoted AWP's are based on manufacturer pass-through pricing.
- 29 2. CONTRACTOR's pricing shall contain no upcharges to the manufacturer's published
30 AWP.

31 D. "Brand Name Drug" means an FDA approved drug, which is manufactured and distributed by
32 an innovator drug company or its licensee, which has undergone testing for safety and efficacy for the
33 FDA under an Investigational New Drug Application sponsored by the innovator drug company, and
34 which has a proprietary name assigned to it by the manufacturer or distributor, or an FDA approved
35 drug which is defined by First Data Bank, Medi-Span, Inc., or another nationally recognized source as a
36 publisher of AWP's, mutually agreed upon by the parties as a Brand Name drug. While non-FDA
37 medications may be Brand Name Drugs, the Parties understand that these drugs may not be included in

1 the MSN or BHS Formularies as provided by the MSN and/or BHS Program Manager and/or PBM
2 Auditor.

3 E. "Dispensing Fee" means the standard Participating Pharmacy fee for filling a single prescription
4 payable to a Participating Pharmacy as agreed to in the agreement entered into by the Participating
5 Pharmacy and CONTRACTOR and as established in accordance with this Attachment B

6 F. "Federal Upper Limit (FUL)" means the federal payment ceiling that applies to drugs with three
7 or more generic versions. The FUL is set at 175% of the weighted average (determined on the basis of
8 manufacturer utilization) of the most recently reported monthly average manufacturer prices (AMP).
9 The FUL is published by CMS and other references such as, but not limited to, First Data Bank and
10 Medispan, Inc.

11 G. "Fiscal Year" means the period beginning July 1 and ending June 30.

12 H. "Generic Drug" means an FDA approved drug, which is manufactured and distributed under the
13 approval of the FDA through an Abbreviated New Drug Application, which is identified by its chemical
14 or non-proprietary name (as determined by the United States Adopted Names Council), and which is
15 listed in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations publication (the
16 "Electronic Orange Book") as therapeutically equivalent and interchangeable with drugs having an
17 identical amount of the same active ingredients, or a drug which is defined by First Data Bank or
18 Medispan, Inc., or another nationally recognized source mutually selected by the parties as a Generic
19 Drug. While non-FDA medications may be Generic Drugs, the Parties understand that these drugs may
20 not be included in the MSN or BHS Formularies as provided by the MSN and/or BHS Program
21 Manager and/or PBM Auditor.

22 I. "Generic Drug Ingredient Cost" means, for all generics, CONTRACTOR's Maximum
23 Allowable Cost (MAC) not to exceed the California Medicaid MAC or Federal Upper Limit (FUL),
24 whichever is the lowest.

25 J. "Lower of Pricing" means

26 1. For Claims paid when the MSN and BHS Programs are the primary payors of the drug
27 benefit: The lower of (1) CONTRACTOR's negotiated AWP less "x"% plus Dispensing Fee with
28 Participating Pharmacies, (2) Usual and Customary pharmacy charge, or (3) MAC plus Dispensing Fee,
29 as applicable to the medication prescribed, client, prescriber and pharmacy filling the prescription.

30 2. For Claims paid when the BHS Program is not the primary payor of the drug benefit: The
31 lower of (1) CONTRACTOR's negotiated AWP less "x"% plus Dispensing Fee with Participating
32 Pharmacies, (2) Usual and Customary pharmacy charge, (3) other payor/patient responsibility amount or
33 (4) MAC plus Dispensing Fee, as applicable to the medication prescribed, client, prescriber and
34 pharmacy filling the prescription.

35 K. "Maximum Allowable Cost (MAC)" means a list generated by CONTRACTOR representing
36 the upper limit price that the County will reimburse for generically available or multiple source
37 medications that are non-340B Covered Drugs. All MSN Formulary aggregate annual generic

1 ingredient cost at the point-of-sale shall be no more than the aggregate annual ingredient cost based on
 2 the lower of WAC x 1.2, CMS FUL Ingredient Cost, California Medi-Cal Maximum Allowance
 3 Ingredient Cost (MAIC), or AWP less 23%.

4 L. "National Average Drug Acquisition Cost" or "NADAC" means the single national price
 5 benchmark for pharmacy reimbursement developed by CMS and based on average drug acquisition
 6 costs which benchmark shall be derived from periodic surveys of actual costs paid by pharmacies net of
 7 discounts and rebates.

8 M. "Quarter" means a three (3)-month period beginning July 1, October 1, January 1, or April 1 for
 9 each Fiscal Year (e.g., Fourth Quarter means the period covering April, May and June).

10 N. "Usual and Customary" means the lowest price each Participating Pharmacy would charge to an
 11 MSN Eligible or BHS Client if the MSN Eligible or BHS Client were paying cash for the identical MSN
 12 or BHS Formulary Drug of the same date of services. This includes any applicable discounts including,
 13 but not limited to, senior discounts, frequent shopper discounts and other special discounts offered
 14 without a membership fee to customers, inclusive of the dispensing fee.

15 O. "Wholesale Acquisition Cost (WAC)" means the drug manufacturer's list price for the drug to
 16 wholesalers or direct purchasers in the Unites States, not including discounts, rebates, or reductions in
 17 price, for the most recent month for which the information is available, as reported in recognized
 18 wholesale price guides or other publications of drug pricing data.

19 II. PRICING

20
 21 A. CONTRACTOR shall be compensated for prescriptions filled under this Agreement for the
 22 MSN and BHS Programs as described in Exhibit B and Exhibit C the Agreement, at the following rates;
 23 as applicable in accordance with the Lower of Pricing logic which shall apply to all prescriptions at
 24 point-of-sale (POS).

25 B. CONTRACTOR agrees to accept the same as full compensation for performing all services and
 26 furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the
 27 responsibility of the CONTRACTOR, or unforeseen difficulties, which may arise or be encountered in
 28 the provision of the services until their acceptance; the risks connected with the services; and for
 29 performance by CONTRACTOR of all its duties and obligations hereunder.

30 C. Lower of Pricing shall be applied on a claim-by-claim basis at POS meaning individual claims
 31 will be adjudicated at POS at the lesser of a pass through of the contracted AWP discount, Usual &
 32 Customary (U&C), or Maximum Allowable Cost (MAC) price.

33 D. All claims must be adjudicated at pass through, with no spread, of contracted reimbursement
 34 rates for CONTRACTOR's network pharmacies and pharmacy chains. For example, individual claims
 35 will be adjudicated at POS at the lesser of a pass through of the contracted AWP discount, U&C, or
 36 MAC price, whichever provides the lowest price per adjudication. For Claims paid when the
 37 //

1 BHS Program is not the primary payor of the drug benefit, the lesser of pass through pricing shall
2 include other payor/patient responsibility amount.

3 E. Quarterly Reconciliation: For the purposes of calculating the Retail Brand and Retail Generic
4 Effective Rate Discount Guarantee, the aggregate guarantee will be calculated as below separately for
5 the MSN Program and the BHS Program: Amounts in the formula below will be calculated as of the
6 adjudication date for each claim and reported each quarter. The second through fourth quarters will also
7 include year-to-date calculations reported in a Quarterly Savings Calculations Report

8 F. For retail network and 90-day retail POS prescriptions, the following calculations shall also
9 apply:

- 10 1. Gross AWP discount is calculated by the total ingredient cost /total AWP
- 11 2. Target AWP discount is the guarantee in the contract for brand and separately for generic
- 12 3. Target ingredient cost is the difference between the gross AWP discount and the Target
13 AWP discount
- 14 4. Variance = Actual ingredient cost paid minus the target ingredient cost
- 15 5. Variances for brands and generics in each quarter are summed
- 16 6. Removed from the calculation are: claims processed outside of the retail network, non-drug
17 items, ingredient cost not populated or less than 0, AWP null, quantity = 0, U&C, 90-day claims
18 including specialty. CONTRACTOR shall provide a separate report to the ADMINISTRATOR and
19 BHS Program Manager, for informational purposes only, showing those claims included in the
20 calculation for which the AWP discount was greater than AWP less 95%.

21 G. Specifically for retail network prescriptions:

- 22 1. Brand name prescriptions pricing guaranteed across all claims at an effective rate of AWP
23 less 15.0% plus \$1.50 dispensing fee.
- 24 2. Generic medications pricing guaranteed across all claims at an effective rate of AWP less
25 78.0% plus \$1.50 dispensing fee for MSN or an effective rate of AWP less 77.0% plus \$1.50 dispensing
26 fee for BHS.

27 H. Specifically for the 90-day POS retail network:

- 28 1. Brand name prescriptions pricing guaranteed across all claims at an effective rate of AWP
29 less 18.0% plus \$0.25 dispensing fee.
- 30 2. Generic medications pricing guaranteed across all claims at an effective rate of AWP less
31 78.0% plus \$0.25 dispensing fee for MSN or an effective rate of AWP less 77.0% plus \$0.25 dispensing
32 fee for BHS.

33 I. Any shortfall after the above calculations as of the end of Fourth Quarter shall be covered dollar
34 for dollar by CONTRACTOR and any such amounts shall be paid to ADMINISTRATOR, for the
35 applicable program (MSN, Specialty Pharmacy, or BHS), within sixty (60) days after the end of the
36 Fourth Quarter.

37 //

J. CONTRACTOR and ADMINISTRATOR agree that the calculation for the Generic Effective Rate Discount Guarantee and the Brand Effective Rate Discount Guarantee, including Brand and Generic Dispensing Fees, as calculated in aggregate for each Program, may be summed together to determine total amount due to each Program, if any. CONTRACTOR AND ADMINISTRATOR further agree that amounts shall not be summed or aggregated across Programs.

K. If termination or non-renewal of the Agreement results in less than four Quarters of performance, the calculations shall be made from the First Quarter through the termination or non-renewal of the Agreement and any such amounts shall be paid to ADMINISTRATOR for the applicable program within sixty (60) days following the end of the Agreement.

L. For the MSN Program only: The guarantees are based upon ADMINISTRATORS's current book of business as of the effective date of this contract. CONTRACTOR reserves the right to revisit the guarantees within ninety (90) days after the first of the calendar year, and then quarterly if ADMINISTRATOR's utilization is materially different than the underlying assumptions made at the time of extending the guarantees.

GUARANTEE (G) OR ESTIMATE (E)				
Retail – Broad Network				
	MSN	BHS	Length of Guarantee	Amount at Risk
a. Name of Network	ORC01	ORC02		
b. Brand Discount % off AWP (1)	15.0% (G)	15.0% (G)	Through 9/30/2017	Dollar for dollar in the aggregate
c. Brand Dispensing Fee per Rx (2)	\$1.50 (G)	\$1.50 (G)	Through 9/30/2017	Dollar for dollar in the aggregate
d. MAC Pricing (Yes or No)	Yes	Yes		
e. MAC Generic/Multisource Discount %/Rx off Generic AWP (3)	80.0% (E)	79.0% (E)		
f. % Generic Rxs with MAC price	96.0% (E)	96.0% (E)		
g. Non-MAC Generic/Multisource Discount % off AWP	23.0% (E)	23.0% (E)		
h. Generic Dispensing Fee per Rx (4)	\$1.50 (G)	\$1.50 (G)	Through 9/30/2017	Dollar for dollar in the aggregate
i. Lower of UCR Pricing - % Effect	0.3% (E)	0.3% (E)		
j. Effective Discount Rate calculation – All Generics (MAC and non-MAC) (5)	78.0% (G)	77.0% (G)	Through 9/30/2017	Dollar for dollar in the aggregate

GUARANTEE (G) OR ESTIMATE (E)				
Retail – 90-day POS Network				
a. Name of Network	ORC01	ORC02		
b. Number of Pharmacies	63,000 (E)	63,000 (E)		
c. Brand Discount % off AWP (6)	18.0% (G)	18.0% (G)	Through 9/30/2017	Dollar for dollar in the aggregate
d. Brand Dispensing Fee per Rx	\$0.25 (G)	\$0.25 (G)	Through 9/30/2017	Dollar for dollar in the aggregate
e. MAC Pricing (Yes or No)	Yes	Yes		
f. MAC Generic/Multisource Discount %/Rx off Generic AWP (7)	78.0% (G)	77.0% (G)		
g. % Generic Rxs with MAC price	96.0% (E)	96.0% (E)		
h. Non-MAC Generic/Multisource Discount % off AWP	23.0% (E)	23.0% (E)		
i. Generic Dispensing Fee per Rx (8)	\$0.25 (G)	\$0.25 (G)	Through 9/30/2017	

(1) 1 - (Quarterly Aggregate Single-Source Brand Ingredient Cost at Point-of-Sale / Quarterly Aggregate Single Source Brand AWP at Point-of-Sale)

(2) Quarterly Aggregate Single-Source Brand Dispensing Fee at Point-of-Sale / Quarterly Aggregate Single Source Brand Claims.

(3) Including any Multi-Source Brand Ingredient Costs and with all compounds removed from the calculation.

(4) For all compounds removed from the calculation.

(5) This includes generic claims that pay at MAC as well as generic claims that do not pay at MAC in the aggregate.

(6) 1 - (Quarterly Aggregate Single-Source Brand Ingredient Cost at Point-of-Sale / Quarterly Aggregate Single Source Brand AWP at Point-of-Sale)

(7) Including any Multi-Source Brand Ingredient costs as a result of a Prior Authorization and with all compounds removed from the calculation

(8) All compounds removed from the calculation.

M. The MAC fee schedule must guarantee prices that are no more than the aggregate annual ingredient cost based on the lower-of WAC x 1.2, the California Medi-Cal MAIC, the CMS FUL pricing schedules, or AWP less 23%.

N. The aggregate MAC discount estimate is a weighted average estimate calculated by a dollar cost average weighted by the number of claims for each paid discount calculated for those medications which process with a MAC price.

1 O. On a monthly basis, CONTRACTOR shall provide ADMINISTRATOR and the PBM Auditor
2 with a copy of its competitive MAC list upon execution of the Agreement.

3 P. CONTRACTOR agrees to minimize movement of drugs off the MAC list from month to
4 month. CONTRACTOR shall advise ADMINISTRATOR and the PBM Auditor of reasons a
5 medication has been removed from the MAC list, which may include:

- 6 1. A drug's loss of 'A' rating, if pioneer drug is A rated.
- 7 2. Discontinuance by the manufacturer.
- 8 3. Increase in the cost of the product, decreasing the price spread.
- 9 4. Re-evaluation by the MSN and BHS Medical Directors with the PBM Auditor, which
10 reason shall be provided to CONTRACTOR.
- 11 5. Re-evaluation by CONTRACTOR's P&T committee, which reason shall be provided to the
12 ADMINISTRATOR and the PBM Auditor.

13 6. Supply of the medication is less than the demand and manufacturer is not able to provide
14 sufficient amount to the market.

15 7. Other instances as mutually agreed to by the Parties.

16 Q. CONTRACTOR's MAC lists are considered proprietary and shall remain the sole property of
17 CONTRACTOR. The information contained in such documents and any data obtained by virtue thereof
18 are considered confidential and shall not be released by ADMINISTRATOR to any third party without
19 the written consent of CONTRACTOR. CONTRACTOR acknowledges that, pursuant to California
20 law, all information contained in the Agreement is public record subject to disclosure to any member of
21 the public who requests it. The ADMINISTRATOR will attempt to notify CONTRACTOR if
22 disclosure is requested of information that CONTRACTOR has indicated is proprietary/trade secret
23 information, in order to give CONTRACTOR an opportunity to seek a court order prohibiting disclosure
24 of such information. However, due to the short statutory time period of the ADMINISTRATOR's
25 responses to request for public records, the ADMINISTRATOR will be able to give CONTRACTOR
26 only a short period of time in which to seek such a court order before the ADMINISTRATOR will be
27 required to disclose the requested information. Further, it is entirely CONTRACTOR's responsibility to
28 assert that information CONTRACTOR believes is proprietary/trade secret information should not be
29 disclosed; ADMINISTRATOR will not make such a claim for CONTRACTOR, but will obey a valid
30 court order obtained by CONTRACTOR prohibiting disclosure of such information.

31 R. CONTRACTOR agrees that brand, generic, multisource, and over-the-counter (OTC) drug
32 definitions must be consistent with the FDA "Electronic Orange Book" found at:

33 <http://www.accessdata.fda.gov/scripts/cder/ob/default.cfm>

34 S. CONTRACTOR shall dispense generic prescriptions according to state laws (and of the
35 receiving state for mail service)

36 T. CONTRACTOR shall provide generic substitution in all instances where an FDA "AB" or "A"
37 rated generic drug (or rating similar to the pioneer medication) is manufactured. This shall be

1 mandatory regardless of the number of manufacturers and the time period since the pioneer drug lost
2 patent protection.

3 U. CONTRACTOR shall adjudicate Claims in compliance with the benefit structures of the
4 MSN Program and BHS Program, as specified in Exhibit B and Exhibit C of the Agreement, including
5 formulary rules, formularies, generic dispensing requirements, quantity limits, maximum dollar limits,
6 etc.

7 V. CONTRACTOR guarantees that no generic waiting periods shall apply to MSN Program and
8 BHS Program benefits, in that as soon as pioneer medications lose patent protection, they must be
9 dispensed as generic.

10 W. All MSN and BHS Formulary generics, branded generics, and multisource agents must be
11 substituted with generics so long as at least one generic is FDA "A" rated or rating equivalent to the
12 pioneer product, (e.g. sustained release tablets and capsules) is marketed.

13 **III. SPECIALTY PRICING**

14
15 A. When specialty pharmacy services are provided by CONTRACTOR's preferred specialty
16 pharmacy provider, which as of the execution of the Agreement is Diplomat Pharmacy,
17 ADMINISTRATOR or shall compensate CONTRACTOR for prescriptions filled under the Agreement
18 for Specialty Pharmacy Services for the MSN Program as applicable in accordance with the Lower of
19 Pricing logic which shall apply to all prescriptions at point-of-sale (POS) through CONTRACTOR's
20 specialty pharmacy providers.

21 B. When specialty pharmacy services are not provided by CONTRACTOR's preferred specialty
22 pharmacy provider, COUNTY shall compensate CONTRACTOR for prescriptions filled under the
23 Agreement for specialty pharmacy services for the MSN Program at the retail rates, as applicable in
24 accordance with the Lower of Pricing logic which shall apply to all prescriptions at point-of-sale (POS)
25 through the specialty pharmacy providers.

26 C. ADMINISTRATOR and CONTRACTOR agree that the drugs listed in Exhibit 1 to this
27 Contract are available through CONTRACTOR's specialty pharmacy provider, but may not necessarily
28 be allowed medications on either the MSN formulary or BHS Formulary and shall not be provided to
29 MSN Enrollees or BHS Clients without a prior authorization.

30 D. CONTRACTOR shall provide specialty pharmacy discount rates, and shall guarantee said rates
31 through the term of this Agreement. This shall be deemed the "Specialty Drug Listing".

32 E. CONTRACTOR and ADMINISTRATOR understand that the Specialty Drug Listing may be
33 changed from time to time and CONTRACTOR shall provide each updated list to the
34 ADMINISTRATOR and PBM Auditor.

35 F. CONTRACTOR agrees to accept the same as full compensation for performing all services and
36 furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the
37 responsibility of the CONTRACTOR, or unforeseen difficulties, which may arise or be encountered in

1 the provision of the services until their acceptance; the risks connected with the services; and for
 2 performance by CONTRACTOR of all its duties and obligations hereunder.

3 G. If CONTRACTOR adds additional preferred specialty pharmacy providers, the Specialty Drug
 4 Listing may be modified to reflect the rates of that specific preferred specialty pharmacy provider.

6 **IV. ADJUSTMENTS TO PRICING**

7 A. Rates specified in the Paragraph II Pricing, may be amended to reflect any adjustments as a
 8 result of one or more of the following. Any amendments shall be agreed to in writing between
 9 CONTRACTOR and ADMINISTRATOR and shall retain, at a minimum, the same length of guarantee
 10 as the original or last negotiated rate, as applicable.

11 B. CONTRACTOR agrees to adjust its rates based on the results of an annual survey of the market
 12 basket for AWP discounts completed by ADMINISTRATOR, PBM Auditor or CONTRACTOR as
 13 requested by the ADMINISTRATOR.

14 C. The annual survey shall be completed no earlier than May 15 and no later than June 1 for each
 15 year the Agreement is in effect, with any adjustments effective the immediately following July 1.

16 D. Adjustments shall be made only for significant increases in the AWP discount which are greater
 17 than or equal to five percent (5%) in marked basket rates from the prior year.

18 E. If the Claims volume increases or decrease by more than 50% for either the MSN Program or
 19 the BHS Program, CONTRACTOR and the ADMINISTRATOR may adjust CONTRACTOR's rates
 20 for the applicable Program to reflect the impact of the change in Claims volume.

21 F. As of the execution of the Agreement, an estimated 16,000 prescriptions are anticipated to be
 22 filled per year for the MSN Program. COUNTY acknowledges that this is a reduction from the over
 23 400,000 prescriptions annually for which CONTRACTOR based its pricing as specified herein for the
 24 period July 1, 2012 through December 31, 2013. CONTRACTOR agrees to continue the pricing as
 25 specified herein and re-evaluate the need for any pricing adjustments after review of the Claims data for
 26 the period January 1, 2014 through March 31, 2014.

27 G. As of the execution of the Agreement, over 44,000 prescriptions are filled per year for the BHS
 28 Program.

29 H. If the State of California Medicaid Program transitions to a reimbursement model based on
 30 AAC and/or NADAC, and CONTRACTOR is required to submit its invoices for Medicaid
 31 reimbursement reflecting these reimbursement models, then CONTRACTOR, and the
 32 ADMINISTRATOR shall review its rates specified herein for conversion to the new rate structure as
 33 mutually agreed to, in writing, by the parties.

34 **V. ADMINISTRATIVE FEES**

35 A. CONTRACTOR shall be compensated for the administrative fees or rates as specified below.
 36 CONTRACTOR's based administration fees shall include the following services:
 37

1. Processing and payment of all Claims
2. Concurrent Drug Utilization Reviews (DUR)
3. Monthly and quarterly standard reports
4. Administration of a standard MAC program
5. Standard benefit design and implementation services
6. Eligibility management
7. EOB Claims payment detail sent to Participating Pharmacies
8. Biweekly Check-Run Control Totals
9. Pharmacy Network Administration
10. MedAccess® - 28 users.
11. MedOptimize® -4 users
12. Administrative Overrides
13. Toll free customer service help desk
14. On-line messaging to pharmacy
15. Standard ID Cards (2 per family)
16. Member Portal Website Access
17. Administrative Fee Detail
18. Ancillary and Optional Fees

Administrative Fee Detail			
Service	Guarantee (G) or Estimate (E)	Length of Guarantee	Amount at Risk
a. Electronic Network Claims Processing (MSN/BHS will pay only for paid claims)	\$1.91 (G)	Through 9/30/2017	
b. Paper Processing Charge (paid claims)	\$2.25 (G)	Through 9/30/2017	
c. Other Mandatory/Required Fees	N/A	CONTRACTOR's quoted administrative fee includes all standard services detailed in the Statements of Work – Exhibit B and Exhibit C	
d. Additional MedAccess Users	\$500/user/month	Through 9/30/2017	
e. Additional MedOptimize Users	\$500/user/month	Through 9/30/2017	

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Ancillary and Optional Fees			
Service	Metric	Price	Comments
a. Ad Hoc Communication and Translations	Time and Materials	Varies by Request	To be mutually agreed to in advance and in writing between CONTRACTOR and the applicable Program Manager with concurrence by the HCA Administrator.
b. ePrescribing	Per Query	\$0.178	
c. Custom Clinical Programs	Varies by Request	Varies by Request	To be mutually agreed to in advance and in writing between CONTRACTOR and the applicable Program Manager with concurrence by the HCA Administrator.
d. Clinical Prior Authorizations (manual review only)	Per Prior Authorization	\$24.00	
e. Custom IT Programming	Per Hour	\$200.00	
f. Fraud, Waste, and Abuse			
1) Pharmacy Audits – Documentation and Verification audit services	Included with Fraud, Waste, and Abuse Services	N/A	To be mutually agreed to in advance and in writing between CONTRACTOR and the applicable Program Manager with concurrence by the HCA Administrator. CONTRACTOR’s travel expenses shall be subject to the same rules, guidelines, and limitations as those pertaining to County employees
2) Pharmacy Audits - On-site audit services	Varies by Request	25% recovery OR \$150 per hour plus travel expenses and follow up report preparation	
3) Pharmacy Audits – Client specific on-site audits	Per Pharmacy Location	\$500 and 25% recovery fee	
4) Fraud, Waste, and Abuse (“FWA”) Program – Prospective, retrospective and research & investigation	Per Member Per Month	\$0.20	
5) FWA – Five (5) standard quarterly reports	Included in the FWA Program if MSN and/or BHS Program Manager opts for entire Program OR	N/A if opt for Program OR \$250	
6) FWA Custom Audit Reports	OR		
			The MSN and/or BHS Program Manager must submit a request, with a cc to the HCA Administrator, to initiate the FWA Program
			To be mutually agreed to in advance and in

Ancillary and Optional Fees			
Service	Metric	Price	Comments
	Per Quarter Quoted upon request	Quoted upon request	writing between CONTRACTOR and the applicable Program Manager with concurrence by the HCA Administrator.
I. Direct Member Reimbursement (DMR)	Per DMR Claim	\$2.25	
II. Paper Claim - Coordination of Benefits (COB)	Per COB Claim	\$2.75	
III. Medication Therapy Management Program (MTMP)	Per Member Per Month	\$0.35	
IV. Clinical Program Manager Time (beyond 20 hours per month)	Per Hour	\$225.00	

VI. FRAUD, WASTE, ABUSE (FWA)

A. CONTRACTOR's FWA Program further scrutinizes Participating Pharmacies, Eligible Members, or prescribers that CONTRACTOR identifies as displaying potentially fraudulent and/or suspicious behaviors based on documentation and verification or onsite audits. Additional information on suspicious activity may be received from the ADMINISTRATOR; CONTRACTOR's customer service center; news media and journals; and anti-fraud organization meetings and communications.

B. The FWA Program is not included in the negotiated administrative fee and participation in the FWA Program must be requested, in writing, by the ADMINISTRATOR and/or the MSN and BHS Program Managers for their respective areas. If either Program Manager elects to participate in the FWA Program, the following services shall be included in the above quoted PMPM rate.

1. Prospective Audit – CONTRACTOR's prospective audit tool reviews approved Claims for discrepancies prior to payment. The adjudicated Claims are screened using approximately thirty (30) FWA algorithms. CONTRACTOR's auditor contacts Participating Pharmacies with discrepancies via phone or fax requesting the prescriber instructions for dispensed medication(s). The auditor strives to complete the investigation prior to Claims payment processing. The ADMINISTRATOR receives a report each quarter identifying any loss prevented by CONTRACTOR's early pre-payment intervention.

2. Retrospective Audit – CONTRACTOR's FWA retrospective Claim audit will focus on known and suspected areas of aberrant behavior, using MEDIC reported targets, areas of high incidence

1 of fraud and other potential areas of FWA, data mining, and other reports. Special desk audits may be
 2 done to monitor individuals, Participating Pharmacies and/or regions known to have a history of
 3 fraudulent activity. The ADMINISTRATOR receives five (5) reports and a quarterly summary report
 4 outlining all audit activity completed during the quarter.

5 3. Research and Investigation – The ADMINISTRATOR may request that CONTRACTOR
 6 conduct additional research on Participating Pharmacies, Eligible Members, or prescribers displaying
 7 potentially fraudulent and/or suspicious behaviors based on information provided to the
 8 ADMINISTRATOR by CONTRACTOR, Eligible Members or the MSN and/or BHS Program’s special
 9 investigations unit. CONTRACTOR will research reported suspicious activity and which may include
 10 contacting applicable parties by letter, fax or telephone. A report is completed and sent to
 11 ADMINISTRATOR.

12 **VII. TRAVEL**

13
 14 Except as specified in the above table, any expenses incurred as a result of travel to and from
 15 meetings will be borne by the respective Party.

16 **VIII. TAXES**

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 18 If any taxes, assessments and/or similar fees (“Tax(es)”) are imposed on CONTRACTOR or a
 19 Participating and/or Contract Pharmacy by a governmental authority based upon the provision of
 20 pharmacy services to County clients provided herein, ADMINISTRATOR shall be responsible for
 21 payment of such Taxes. Participating and/or Contract Pharmacy will transmit the applicable Tax amount
 22 imposed upon such Participating and/or Contract Pharmacy through the online claim system.
 23 ADMINISTRATOR shall be responsible for determination and payment of any Tax or other assessment
 24 that may apply in any State in which ADMINISTRATOR does business or in which
 25 ADMINISTRATOR provides pharmacy services to County clients. In the event any Tax is imposed
 26 upon CONTRACTOR relating to the provision of pharmacy services to County clients hereunder,
 27 CONTRACTOR will notify ADMINISTRATOR of the applicable Tax amount and ADMINISTRATOR
 28 shall reimburse CONTRACTOR such amount. In no event shall CONTRACTOR be liable for any such
 29 taxes, assessments, or similar fees or the calculation thereof.

30 **IX. REBATES**

31
 32 A. Rebate pass-through – CONTRACTOR shall offer a transparent rebate pass-through based on
 33 rebates earned. Rebate Program-CONTRACTOR contracts with certain Pharmaceutical Manufacturers
 34 for rebates. Under CONTRACTOR’s Rebate Program, ADMINISTRATOR shall be eligible to receive
 35 //
 36 rebates from certain Pharmaceutical Manufacturers for prescription drugs dispensed to MSN Enrollees
 37 or BHS Clients who are covered by each Program’s Benefit Plan that meets the following criteria:

1 1. The Programs develop, publish, present and distribute a drug Formulary or other drug
2 product selection guide and preferred product list, including all subsequent revisions to the formularies
3 as provided by ADMINISTRATOR during the RFP process;

4 2. The Programs provide feedback to all prescribers to ensure compliance with the County
5 drug Formulary and Formulary revisions and updates via established communication mechanisms (e.g.,
6 retrospective drug utilization review/evaluation programs, provider newsletters, contract compliance
7 programs); and

8 3. The Programs meet any other eligibility inclusion criteria of the respective Pharmaceutical
9 Manufacturers.

10 4. Each Quarter, ADMINISTRATOR shall provide CONTRACTOR with both a print and
11 electronic copy of a comprehensive print Formulary, applicable to that quarter to be eligible for rebates,
12 in a format mutually agreeable via web link or other agreed upon access. ADMINISTRATOR
13 acknowledges that whether and to what extent Pharmaceutical Manufacturers are willing to provide
14 rebates to ADMINISTRATOR will depend upon the Benefit Plan adopted by the MSN Program and the
15 BHS Program, as well as CONTRACTOR receiving sufficient information regarding each Claim that is
16 submitted to Pharmaceutical Manufacturers for rebates.

17 5. Rebate quotes must be itemized by rebate guaranteed for each applicable MSN Program or
18 BHS Program formulary, and by MSN Program or BHS Program formularies that will be designed
19 according to lowest net drug cost before rebates.

20 6. Rebate guarantees reporting shall include earned versus paid rebates by claim count.
21 CONTRACTOR shall “true up” payments against the rebate guarantee.

22 7. Rebate guarantees require acceptance of arbitration for mediation of un-reconciled rebate
23 receipts.

24 B. Earned Rebate – CONTRACTOR shall pay 100% of earned rebates, no later than:

25 1. One hundred eighty (180) days following the last quarter of the plan contract year after the
26 Annual True-up has been completed.

27 2. Following the initial payment, CONTRACTOR shall provide quarterly billing estimates to
28 the ADMINISTRATOR and monthly disbursements to the ADMINISTRATOR for both the MSN
29 Program and the BHS Program such that rebates shall be paid to ADMINISTRATOR within sixty (60)
30 days of receipt by CONTRACTOR.

31 3. At ADMINISTRATOR’s sole discretion, disbursement by CONTRACTOR may be made
32 via electronic fund transfer (EFT), paper check, or as an invoice credit.

33 C. Rebate Disbursements – With each rebate disbursement to ADMINISTRATOR,
34 CONTRACTOR shall provide the following with ADMINSTRATOR’s understanding that the sum of

35 //
36 the Claims submitted by CONTRACTOR’s to the company from which the rebates are being pursued
37 may be more than what CONTRACTOR actually receives and passes through to ADMINISTRATOR.

1 1. For the MSN Program, a detail of the claims submitted by CONTRACTOR to the company
2 from which the rebates were being pursued, including CONTRACTOR’s invoice number to County on
3 which each Claim being credited was initially paid.

4 2. For the BHS Program:

5 a. A detail of the claims submitted by CONTRACTOR to the company from which the
6 rebates are being pursued, including CONTRACTOR’s invoice number to ADMINISTRATOR on
7 which each Claim being credited was initially paid and percentage of use by the Division code (aka Job
8 Number to County) assigned by ADMINISTRATOR in the eligibility file.

9 b. A report breaking down the amount of the rebate actually received based on the
10 percentage of use calculated.

11 D. Rebate Guarantees – For purposes of defining rebate guarantees, “all pharmaceutical rebates”
12 refers to base, formulary, incentive, and market share rebates.

13 1. Discounts attributed to CONTRACTOR’s timely payment of invoices for medications and
14 its mail service pharmacy are not considered rebates.

15 2. CONTRACTOR shall report to ADMINISTRATOR any fees received from pharmaceutical
16 companies that are not permitted to be passed through.

17 3. Rebate Disclosure; Liability- CONTRACTOR agrees that it will fully comply with any
18 disclosure requirements under applicable Law, including but not limited to the Employee Retirement
19 Income Security Act, as amended, 29 U.S.C. 1001 et seq. (“ERISA”). Accordingly, CONTRACTOR
20 shall disclose to its Eligible Members any and all information relating to the Rebate Program including
21 commissions, rebates, and discounts required to be disclosed. In providing services under the
22 Agreement, CONTRACTOR is not acting as a fiduciary (as defined in Section 3.21(a) of ERISA) of
23 ADMINISTRATOR’s prescription drug program and ADMINISTRATOR shall not name
24 CONTRACTOR as a plan fiduciary. ADMINISTRATOR waives, releases, and forever discharges
25 CONTRACTOR from any claims, demands, losses, attorneys’ fees, costs, expenses, or liabilities of any
26 nature, whether known or unknown, arising from (i) a Pharmaceutical Manufacturer’s failure to pay any
27 rebate; (ii) a Pharmaceutical Manufacturer’s breach of an agreement related to this Contract; (iii) any
28 rebate amounts CONTRACTOR does not bill a Pharmaceutical Manufacturer; or (iv) a Pharmaceutical
29 Manufacturer’s negligence or misconduct.

30 4. Exclusivity – ADMINISTRATOR hereby appoints CONTRACTOR as its exclusive agent
31 for the purpose of Manufacturers. ADMINISTRATOR represents and warrants that it does not have any
32 existing direct rebate and/or chargeback agreements, General Purchasing Organizations (“GPO”)
33 arrangements or any other discount that would make ADMINISTRATOR ineligible for commercial
34 rebate qualification with any Pharmaceutical Manufacturer and also agrees that during the term of the
35 Agreement ADMINISTRATOR will not negotiate or arrange for rebates on the purchase of Covered
36 Benefits from any Pharmaceutical Manufacturer. In the event of a breach of this Section by
37 ADMINISTRATOR, CONTRACTOR may terminate the Agreement or immediately terminate

ADMINISTRATOR’s participation in the Rebate Program and may retain 100% of any and all rebates that have not been remitted to ADMINISTRATOR as of the date of such termination.

5. Non-Eligible Rebate Data – Drug utilization which has been submitted to Pharmaceutical Manufacturers by any entity other than CONTRACTOR including, but not limited to:

a. Medicaid; (Medi-Cal)

b. Medicare;

c. Other state or federal health care program which receives rebates, discounts, chargebacks directly from Pharmaceutical Manufacturers; or

d. Other forms of price reduction directly from Pharmaceutical Manufacturers, including but not limited to GPO or other upfront discounts, shall not be eligible to participate in the Rebate Program. ADMINISTRATOR shall clearly identify to CONTRACTOR those Eligible Members whose drug utilization has been otherwise submitted to Pharmaceutical Manufacturers or whose Claims have been or will be filed for reimbursement with Medicaid, Medicare, any state or federal health care program, or any other price reduction programs. If ADMINISTRATOR fails to identify such members, pharmacies or Claims and any Pharmaceutical Manufacturer’s audit of its rebate program reveals improperly calculated rebates involving such members or Claims, then ADMINISTRATOR shall be solely responsible for the reimbursement of any rebates improperly made based on such drug utilization, audit costs charged to CONTRACTOR, and any other documented costs incurred by CONTRACTOR as a result of ADMINISTRATOR’s failure. Notwithstanding the foregoing, this provision shall not be construed to prohibit ADMINISTRATOR from participating in Medicare or Medicaid risk contracting.

6. Other Pharmaceutical Relationships. Nothing in the Agreement shall preclude CONTRACTOR from pursuing other, independent sources of revenue from Pharmaceutical Manufacturers, and engaging in other revenue-producing relationships with Pharmaceutical Manufacturers. CONTRACTOR may receive fees or other compensation from Pharmaceutical Manufacturers, including, without limitation, administrative fees not exceeding three percent (3%) of the aggregate cost of the pharmaceutical products dispensed to Members, and fees for property provided or services rendered to a Pharmaceutical Manufacturer. The term “rebate” as used in the Agreement does not include these fees and discounts which belong exclusively to CONTRACTOR.

Rebate Guarantees				
	Guarantee (G) or Estimate (E)		Length of Guarantee	Amount at Risk
	MSN	BHS		
Formulary Rebate Pass- thru %	100.00%	100.00%	Through 9/30/2017	

E. Specialty Pharmacy Services

1. For Specialty Pharmacy Services, CONTRACTOR shall provide a transparent rebate pass-

1 through of 100% all earned rebates per all brand claims and provide reporting which shall include
2 earned versus paid rebates by claim count. CONTRACTOR shall “true up” payments against the rebate
3 guarantee.

4 2. The parties agree that CONTRACTOR shall maintain billed, un-collected rebates if the
5 County elects to terminate the Agreement without cause.

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7 **X. CLAIMS AND DISBURSEMENTS**

8 **A. INVOICES**

9 1. CONTRACTOR’s invoices shall be based on the fees and pricing methodology specified in
10 this Exhibit D to the Agreement. CONTRACTOR shall submit separate detailed invoices for the MSN
11 and BHS Program as specified in the Agreement.

12 2. All invoices shall clearly state the corresponding Administrative Fees and the per claim fees
13 paid.

14 3. Invoices shall be submitted via U.S. mail or electronic mail (email) to the CONTRACTOR
15 address as specified in the Contract Reference section of the Agreement. Address may be modified by
16 the ADMINISTRATOR with ten (10) business days written notice to CONTRACTOR.

17 4. Documentation supporting the invoice shall be made available through an FTP site on the
18 same day the invoices are sent.

19 5. CONTRACTOR shall submit invoices to ADMINISTRATOR on a semi-monthly cycle;
20 provided, however, that CONTRACTOR may change its invoice cycle upon thirty (30) calendar days
21 prior written notice to the ADMINISTRATOR.

22 6. Payment to CONTRACTOR should be released by ADMINISTRATOR no later than
23 twenty-one (21) days after receipt of the correctly completed invoice form(s).

24
25 7. Concurrent with the submission of the invoice to ADMINISTRATOR above, the following
26 shall have access to the invoices and supporting documentation from CONTRACTOR’s on-line
27 reporting system known as MOR, which persons may be modified by the ADMINISTRATOR with ten
28 (10) business days written notice to CONTRACTOR. Access to the corresponding Claims file for each
29 invoice shall also be provided to the following:

- 30 a. PBM Auditor
- 31 b. MSN Program Manager
- 32 d. BHS Program Manager
- 33 e. HCA Contracts Development and Management

34 8. Invoicing Format- CONTRACTOR’s invoices shall be on forms mutually agreed to by the
35 CONTRACTOR and ADMINISTRATOR. At minimum, invoices shall include the following
36 information, which may be modified by mutual written agreement between CONTRACTOR and
37 ADMINISTRATOR:

- 1 a. Title of the invoice identifying the services provided
- 2 b. Invoice must be provided to ADMINISTRATOR on CONTRACTOR's letterhead
- 3 c. CONTRACTOR's "Remit To" name and address
- 4 d. Invoice number, which must be unique for each individual invoice submitted
- 5 throughout the term of the Agreement.
- 6 e. Invoice date
- 7 f. Service period covered

8 B. ISSUE RESOLUTION – ADMINISTRATOR will review all reports, statements, and invoices
9 provided by CONTRACTOR to ADMINISTRATOR, and shall notify CONTRACTOR in writing of
10 any errors or objections within sixty (60) days of receipt by ADMINISTRATOR of such report,
11 statement or invoice. Specifically, this shall apply to all service requests, benefit change requests,
12 pharmacy operations change requests, acceptance tests, implementation questionnaires, statements of
13 work, etc. Unless ADMINISTRATOR notifies CONTRACTOR in writing of any errors or objections
14 within the sixty (60) day period, all the information contained therein, will be deemed accurate,
15 complete, and acceptable to ADMINISTRATOR. The parties shall use reasonable efforts to resolve the
16 discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final,
17 binding, and conclusive upon the parties. If a party owes money, that party shall pay such sums to the
18 other party within thirty (30) days of the delivery of the conclusive findings.

19 C. CREDIT INVOICES

20 1. CONTRACTOR shall issue credit invoices as may be required to be provided by
21 CONTRACTOR as a result of, but not limited to: its own determinations in reviewing its adjudication
22 processes, funds returned from Participating Pharmacies or on behalf of an MSN Enrollee or BHS
23 Client, or as the result of an ISA Report finding.

24 2. Credit Invoices shall be issued on the same cycle as CONTRACTOR's invoices for
25 reimbursement and shall be issued with the next immediate invoice(s) following CONTRACTOR
26 becoming aware that a credit is due ADMINISTRATOR.

27 3. Separate credit invoices shall be issued for the MSN Program and the BHS Program.

28 4. For credit invoices generated on or before the corresponding invoices for Claims through
29 June 30, ADMINISTRATOR shall deduct the amount of the credit invoice from the amount due
30 CONTRACTOR for that invoice period.

31 5. For credit invoices for Claims on or before June 30, which would be issued after the
32 corresponding invoice for Claims through June 30, CONTRACTOR shall include a check in an amount
33 equal to the credit invoice.

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36 6. CONTRACTOR shall include, with each credit invoice:

- 37 a. A report detailing CONTRACTOR's invoice number to ADMINISTRATOR on which

1 each Claim being credited was initially either within the complete electronic pharmacy claims detail in
2 NCPDP 5.1, D.0, or most recent format, that accompanies each invoice, or as a separate electronic file,
3 the equivalent detail showing the Claim as a credit and including the date the prescription was filled.

4 b. Payment made by the ADMINISTRATOR shall not preclude the right of the
5 ADMINISTRATOR from thereafter disputing any items or services involved or billed under the
6 Agreement which may be discovered after any audit conducted in accordance with the Agreement,
7 which could not have been discovered through the PBM Auditor and identified as a finding on the
8 ISA Report.

9 7. ADMINISTRATOR agrees that it will reimburse CONTRACTOR for all approved services
10 provided up to the date of termination of the Agreement.

11 8. ADMINISTRATOR understands that in accordance with CONTRACTOR's agreements
12 with its network pharmacies, with shall include Participating, Contract, and Specialty Pharmacies,
13 CONTRACTOR is not required to render payments to Participating, Contract and/or Specialty
14 Pharmacies for Claims unless and until CONTRACTOR has received payment for the Claims from
15 ADMINISTRATOR. In the event CONTRACTOR renders Claims payments to any or all of these
16 Pharmacies prior to receipt of Claims payment from ADMINISTRATOR, such payments shall not
17 constitute a waiver of any of CONTRACTOR's remedies with respect to non-payment and shall not
18 establish a course of dealing between CONTRACTOR and ADMINISTRATOR.

19 D. PERFORMANCE GUARANTEES

20 1. ADMINISTRATOR shall require performance guarantees and penalties, as specified in this
21 Paragraph V, from CONTRACTOR to ensure minimum standards are met during the term of the
22 Agreement.

23 2. The MSN Program or BHS Program Managers shall provide CONTRACTOR written
24 notice of CONTRACTOR's failure or inability to meet the specific standard(s) as set forth in this
25 Performance Guarantee paragraph, with a copy to the ADMINISTRATOR.

26 3. ADMINISTRATOR must report any potential errors or discrepancies it identifies for the
27 applicable Measurement Period, including those not included in the performance guarantee report
28 package, to CONTRACTOR within thirty (30) days from date CONTRACTOR delivers the fourth
29 quarter report package to ADMINISTRATOR.

30 4. Any errors or discrepancies reported outside this thirty (30) day reporting period will be
31 excluded from all performance guarantee determinations for the applicable Measurement Period.

32 5. Unless otherwise directed by the ADMINISTRATOR or the BHS Program Manager,
33 penalty amounts deemed shall be shown as credits on the applicable invoice(s) for the MSN Program
34 and/or the BHS Program.

35 //

36 6. The total amount at risk for CONTRACTOR for performance guarantees is limited to 50%
37 of each Program's total annual claims administration fees, per calendar year.

1 7. CONTRACTOR shall provide ADMINISTRATOR a quarterly performance guarantee
2 report of CONTRACTOR's performance on the Performance Standards. Calculations that result in non-
3 whole number values (i.e. ending 0.01 – 0.99) will be rounded to the nearest whole number using
4 traditional rounding logic (0.00 – 0.49 round down and 0.5 - .0.99 round up).

5 8. Notwithstanding any other provision of this Contract, the parties acknowledge and agree
6 ADMINISTRATOR's remedy for CONTRACTOR's failure to meet its Performance Standards is
7 limited to the payment amounts listed below. Any Claim eligible for payment under one Performance
8 Standard is not under any circumstance eligible for a payment under any other Performance Standard or
9 otherwise eligible for a remedy under any other provisions of the Agreement.

10 9. Amounts at risk for CONTRACTOR shall not exceed 20% for any one performance
11 category as identified below.

12 10. Should the performance guarantee be met for either the MSN Program or BHS Program
13 following any calendar year, additional penalties shall not be taken against any balance remaining for
14 the other Program.

15 11. The performance guarantees shall each be measured monthly and reported quarterly for the
16 purpose of CONTRACTOR taking corrective action, and reconciled annually by the Parties on a
17 calendar year basis, with the first period commencing from October 1, 2012.

18 12. CONTRACTOR shall submit the quarterly reports to the ADMINISTRATOR no later than
19 sixty (60) days following the end of the quarter with corresponding copies to the MSN Program
20 Manager and the BHS Program Manager.

21 13. CONTRACTOR shall submit the annual reports to the ADMINISTRATOR no later than
22 ninety (90) days following the end of the calendar year with corresponding copies to the MSN Program
23 Manager and the BHS Program Manager.

24 14. With the exception of the first calendar year period which shall be from October 1, 2012
25 through December 31, 2012, the annual performance level shall be calculated based on the twelve (12)
26 month aggregate, or portion thereof as adjusted for the commencement and termination of the
27 Agreement, each calendar year the Agreement is in effect.

28 15. CONTRACTOR and ADMINISTRATOR agree that the aggregate guarantees will be
29 calculated and paid separately for the MSN Program and the BHS Program.

30 16. If the performance guarantees are effective for less than a full calendar year, the payment
31 amounts will be prorated for the portion of the Measurement Period.

32 17. No claim(s) shall be eligible for payment in more than one Measurement Period.

33 18. ADMINISTRATOR shall submit to CONTRACTOR a report summarizing any
34 ADMINISTRATOR documented instances in which CONTRACTOR may have failed to meet a
35 performance guarantee specified below no later than thirty (30) days following the end of the quarter
36 and calendar year, respectively, with corresponding copies to the MSN Program Manager and the BHS
37 Program Manager.

19. CONTRACTOR and ADMINISTRATOR shall reconcile all information and shall come to mutual written agreement on the annual performance guarantees no later than ninety (90) days following end of the calendar year with payment, if any, to be sent to ADMINISTRATOR.

20. Performance Guarantees Exception - Notwithstanding any other provision of the Agreement, the CONTRACTOR and ADMINISTRATOR acknowledge and agree that for the calculation of Performance Guarantees, Subrogation Claims shall not factor into or be considered in the calculation of such Guarantees.

Performance Guarantee				
Performance Category	Performance Criteria	Performance Standard	Contractor Risk* Not to Exceed %	
			MSN	BHS
1. Enrollment/Eligibility	Timeliness of eligibility loading	Load eligibility file within 24 hours after receipt of loadable file	5%	5%
			\$250 per failed occurrence	
2. Reporting	Timeliness of monthly and quarterly Standard Reports	Standard Monthly and quarterly reports will be made available to County no more than twenty (20) days after the end of the reporting cycle, unless otherwise specified herein.	5%	5%
			\$250 per day, per report that is more than three (3) days late	
	Accuracy of Reporting	99%	5%	5%
			\$250 per point below 99%	
3. Customer Service	Average speed of answer	Calls will be answered on average of 30 seconds or less	5%	5%
			\$350 per month target is exceeded	
	Call abandonment rate	Less than 3%, excludes calls abandoned within the first 30 seconds	5%	5%
			\$350 per point above 3% for calls abandoned	
4. Network Pharmacy Management	On-site Audits	CONTRACTOR shall audit a minimum of 3% of utilized network Participating Pharmacies that process a minimum of 200 Claims per month	5%	5%
			\$1,000 per point below 3%	
	Desk Audits	CONTRACTOR shall audit a minimum of 5% of utilized network Participating Pharmacies that process a minimum of 200 Claims per month.	5%	5%
			\$1,000 per point below 5%	
5. Network Access	Member Network Access	CONTRACTOR shall guarantee access based on the CMS	5%	5%

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Performance Guarantee				
Performance Category	Performance Criteria	Performance Standard	Contractor Risk* Not to Exceed %	
			MSN	BHS
		guidelines as follows: Urban = 90% of members within 2 miles of 1 pharmacy Suburban = 90% of members within 5 miles of 1 pharmacy	Urban = \$500 per point below 90% Suburban = \$500 per point below 90%	
6. Point-of-Sale Network System	Reliability of Claims processing system	99% system availability (excluding scheduled downtime for maintenance)	5%	5%
			\$250 per point below 99%.	
7. Specialty Pharmacy Services	Timeliness of prescription delivery	98% of prescriptions shall be delivered by the need by date, as established by physician and/or Eligible Person. Excludes prescriptions requiring intervention due to delays resulting from prior authorization, physician/patient responses, and/or courier delays.	1%	0%
			\$250 for each percentage point below 98%	
8. Claims Adjudication	Claims Accuracy	99% of all Claims paid accurately, relating to formulary and prior authorization requirements.	5%	5%
			\$100 per point below 99%.	
	Claims Accuracy – COB	99% of all Claims in which the BHS Program is not the primary payor paid accurately in accordance with the BHS Benefit Plan design	0%	5%
			\$100 per point below 99%.	
Submission of complete electronic pharmacy claims detail with invoice	100% of all Invoices submitted for each Program shall have corresponding complete electronic pharmacy claims detail submitted to the PBM Auditor in NCPCP 5.1, D.O, or most recent format.	5%	5%	
		\$100 per point below 100%.		
Submission of updated MAC list with each invoice	100% of all Invoices submitted to the County for each Program shall include MAC list submitted to the PBM Auditor.	5%	5%	
		\$100 per point below 100%.		
9. Account	Call responsiveness and problem resolution	95% response rate to any account management request or issue within 48 hours	5%	5%
			\$250 per point below 95%.	

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Performance Guarantee				
Performance Category	Performance Criteria	Performance Standard	Contractor Risk* Not to Exceed %	
			MSN	BHS
Management		95% problem resolution rate within three (3) business days	5%	5%
			\$250 per point below 95%.	
		100% of issues will be resolved or have a resolution plan in place in less than five (5) business days with the exception of circumstances beyond CONTRACTOR's control.	5%	5%
			\$250 per point below 100%.	
	Client Satisfaction	90% of Key County contacts reporting they are satisfied or very satisfied with CONTRACTOR's account team through an annual satisfaction survey that will measure 14 service attributes. Satisfaction is defined as a rating of 6 or higher on a 10-point scale:	5%	5%
			\$250 per point below 95%.	
		TOTAL	100% of Annual Maximum	100% of Annual Maximum