

1 AGREEMENT FOR PROVISION OF
2 FISCAL INTERMEDIARY SERVICES
3 FOR THE
4 EMERGENCY MEDICAL SERVICES FUND PROGRAM
5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 ADVANCED MEDICAL MANAGEMENT, INC.
9 JULY 1, 2016 THROUGH JUNE 30, 2019

10
11 THIS AGREEMENT entered into this 1st day of July 2016, which date is enumerated for purposes
12 of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and
13 Advanced Medical Management, Inc., a California for-profit corporation (CONTRACTOR). This
14 Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

15
16 **W I T N E S S E T H:**

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18 WHEREAS, COUNTY established the Emergency Medical Services Fund (EMSF) Program in
19 accordance with Health and Safety Code Section 1797.98a; and

20 WHEREAS, a portion of the EMSF is designated as the Physicians' Allocation; and,

21 WHEREAS, CONTRACTOR, is the current fiscal intermediary for the EMSF Program services
22 specified herein; and,

23 WHEREAS, the parties wish to provide for equitable reimbursement of those providing EMSF
24 Program services with a minimum of administrative costs; and,

25 WHEREAS, the parties desire to state their respective rights and responsibilities related to
26 providing, claiming, and reimbursing EMSF Program services.

27 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Fiscal
28 Intermediary Services for Emergency Medical Services Fund Program services described herein to the
29 residents of Orange County; and

30 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
31 conditions hereinafter set forth: NOW, THEREFORE, IT IS MUTUALLY AGREED AS
32 FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2016 through September 30, 2019

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

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

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

Maximum Obligation:

Period One Maximum Obligation:	\$ 250,000
Period Two Maximum Obligation:	250,000
Period Three Maximum Obligation:	<u>250,000</u>
TOTAL MAXIMUM OBLIGATION:	\$ 750,000

Basis for Reimbursement: Fee-for Service

Payment Method: Payment in Arrears

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: Advanced Medical Management, Inc.
5000 Airport Plaza Drive, Suite 150
Long Beach, CA 90815-1260
Kristin Gates
Email: kgates@amm.cc
Voice: (562) 766-2000 – Ext. 273
Fax: (562) 766-2006

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

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

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

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

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

II. ALTERATION OF TERMS

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

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

5
6 **III. ASSIGNMENT OF DEBTS**

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

14
15 **IV. COMPLIANCE**

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

18 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA
19 policies and procedures relating to HCA’s Compliance Program, HCA’s Code of Conduct and General
20 Compliance Trainings.

21 2. CONTRACTOR has the option to adhere to HCA’s Compliance Program and Code of
22 Conduct or establish its own, provided CONTRACTOR’s Compliance Program and Code of Conduct
23 have been verified to include all required elements by ADMINISTRATOR’s Compliance Officer as
24 described in subparagraphs below.

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

29 4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it
30 shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures
31 to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.
32 ADMINISTRATOR’s Compliance Officer shall determine if CONTRACTOR’s Compliance Program
33 and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to
34 meet said standards or shall be asked to acknowledge and agree to HCA’s Compliance Program and
35 Code of Conduct if the CONTRACTOR’s Compliance Program and Code of Conduct does not contain
36 all required elements.

37 //

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

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

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

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

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

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

34 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
35 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
36 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
37 State of California health programs and have not been excluded or debarred from participation in any

1 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
2 any Ineligible Person in their employ or under contract.

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

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

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

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

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

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

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

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

32
33 **V. CONFIDENTIALITY**

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

37 //

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

8
9 **VI. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

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

1 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
2 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Total Maximum
3 Obligation the Maximum Obligation for the appropriate Period as well as the Total Maximum
4 Obligation. The reduction to the Maximum Obligation Maximum Obligation for the appropriate Period
5 as well as the Total Maximum Obligation shall be in an amount proportionate to the number of days in
6 which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.
7

8 **IX. INDEMNIFICATION AND INSURANCE**

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

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

26 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
27 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR’s insurance as an
28 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
29 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
30 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
31 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
32 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
33 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
34 by COUNTY representative(s) at any reasonable time.

35 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
36 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
37 //

1 amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the
 2 CEO/Office of Risk Management upon review of CONTRACTOR’s current audited financial report.

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

5 F. QUALIFIED INSURER

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

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

14 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
 15 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
Employee Dishonesty	\$1,000,000 per occurrence

30 H. REQUIRED COVERAGE FORMS

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

33 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA
 34 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

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

37 //

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

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

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

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

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

17 M. If CONTRACTOR’s Professional Liability policy is a "claims made" policy, CONTRACTOR
18 shall agree to maintain Professional Liability coverage for two (2) years following completion of
19 Agreement.

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

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

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

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

34 R. SUBMISSION OF INSURANCE DOCUMENTS

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

- 36 a. Prior to the start date of this Agreement.
- 37 b. No later than the expiration date for each policy.

1 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
2 changes to any of the insurance types as set forth in Subparagraph G. of this Agreement.

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

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

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

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

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

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

21
22 **X. INSPECTIONS AND AUDITS**

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

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

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

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

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

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11 **XI. LICENSES AND LAWS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 **XII. MAXIMUM OBLIGATION**

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

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

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XIII. MINIMUM WAGE LAWS

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

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

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

XIV. NONDISCRIMINATION

A. EMPLOYMENT

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

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

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

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

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

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

15 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
16 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
17 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
18 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
19 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
20 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
21 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
22 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
23 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
24 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
25 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
26 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
27 or more of the factors identified above:

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

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

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

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

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

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

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

27 28 **XV. NOTICES**

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

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

34 2. When faxed, transmission confirmed;

35 3. When sent by Email; or

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

1 B. 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 faxed,
3 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
4 Parcel Service, or any other expedited delivery service.

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

9 D. 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 shall, throughout the term
14 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
15 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 seven (7) 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 PRA requests related to, or arising out
32 of, this Agreement, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR
33 all information that is requested by the PRA request.

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XVII. RESEARCH AND PUBLICATION

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

XVIII. RIGHT TO WORK AND MINIMUM WAGE LAWS

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

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

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

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

XIX. SEVERABILITY

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

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XX. SPECIAL PROVISIONS

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

- 1. Making cash payments to intended recipients of services through this Agreement.
- 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
- 3. Fundraising.
- 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, or members of the Board of Directors or governing body.
- 5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.
- 6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
- 7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
- 8. Severance pay for separating employees.
- 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.

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

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

XXI. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR’s employees, agents, consultants, or subcontractors. CONTRACTOR

1 assumes exclusively the responsibility for the acts of its employees, agents, consultants, or
 2 subcontractors as they relate to the services to be provided during the course and scope of their
 3 employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be
 4 entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner
 5 to be COUNTY's employees.

6 7 **XXII. TERM**

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

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

16 17 **XXIII. TERMINATION**

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

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

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

- 26 1. The loss by CONTRACTOR of legal capacity.
- 27 2. Cessation of services.
- 28 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
 29 another entity without the prior written consent of COUNTY.
- 30 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
 31 required pursuant to this Agreement.
- 32 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
 33 this Agreement.
- 34 6. The continued incapacity of any physician or licensed person to perform duties required
 35 pursuant to this Agreement.
- 36 7. Unethical conduct or malpractice by any physician or licensed person providing services
 37 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR

1 removes such physician or licensed person from serving persons treated or assisted pursuant to this
2 Agreement.

3 D. CONTINGENT FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

34 8. To the extent services are terminated, cancel outstanding commitments covering the
35 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
36 commitments which relate to personal services. With respect to these canceled commitments,
37 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims

1 arising out of such cancellation of commitment which shall be subject to written approval of
2 ADMINISTRATOR.

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

5
6 **XXIV. THIRD PARTY BENEFICIARY**

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

10
11 **XXV. WAIVER OF DEFAULT OR BREACH**

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

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

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4 ADVANCED MEDICAL MANAGEMENT, INC.

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6 DocuSigned by:
7 BY: Paul Dew _____ DATED: 4/13/2016
8 D80298A781C34EB...
9 TITLE: Executive Vice President

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11
12 BY: _____ DATED: _____
13
14 TITLE: _____
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18
19 COUNTY OF ORANGE

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22 BY: _____ DATED: _____
23 HEALTH CARE AGENCY

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

29
30 BY:  _____ DATED: 4/11/16
31 DEPUTY
32
33

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

1 EXHIBIT A
2 TO AGREEMENT FOR PROVISION OF
3 FISCAL INTERMEDIARY SERVICES
4 FOR EMERGENCY MEDICAL SERVICES FUND PROGRAM WITH
5 ADVANCED MEDICAL MANAGEMENT, INC.
6 JULY 1, 2016 THROUGH SEPTEMBER 30, 2019
7
8 EMERGENCY MEDICAL SERVICES FUND PROGRAM
9

10 **I. DEFINITIONS**

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

13 A. "Active Labor" means labor at a time when there is inadequate time for safe transfer to another
14 hospital before delivery, and/or transfer of the patient may threaten the health and safety of the patient or
15 the unborn child.

16 B. "Cap-Initial" means initial payment of fifty percent (50%) of the Eligible Losses – TSR for
17 Physicians' Allocation – TSR and for all other Physicians' Allocations except Physicians' Allocation-
18 Other. For Physicians' Allocation – Other, Cap-Initial shall be specified by law or, if appropriate,
19 directed by ADMINISTRATOR.

20 C. "Cap-Final" means, at Final Payout, final payment of one hundred percent (100%) of Eligible
21 Losses – TSR for Physicians' Allocation – TSR and for all other Physicians' Allocations except
22 Physicians' Allocation-Other. For Physicians' Allocation – Other, Cap-Final shall be specified by law
23 or, if appropriate, as directed by ADMINISTRATOR.

24 D. "Claim" means a claim for compensation filed by a Physician in accordance with applicable
25 laws, regulations, or requirements to receive funds from any Physicians' Allocation for services
26 provided to a person who has not paid for Medical Emergency Services and for whom payment will not
27 be made by any responsible third party, through any private coverage, or by any program funded in
28 whole or in part by the federal government.

29 E. "Consultation" means the rendering by a specialty physician of an opinion or advice, or
30 prescribing treatment by telephone, when determined to be medically necessary by the on-duty
31 emergency room physician and/or specialty physician. Such Consultation includes review of the
32 patient's medical record, and the examination and treatment of the patient in person, when appropriate,
33 by a specialty physician who is qualified to give an opinion or render treatment necessary to stabilize the
34 patient.

35 F. "Continuously" means without interruption, twenty-four (24) hours per day throughout the term
36 of the Agreement.

37 //

1 G.. "Eligible Losses" means financial losses incurred by a Physician as the result of giving
 2 Emergency Medical Services in a Hospital to patients who do not have health insurance coverage for
 3 Emergency Services and/or Care, cannot afford to pay for Emergency Services and/or Care, and for
 4 whom payment will not be made by any responsible third party through any private coverage or by any
 5 program funded in whole or in part by the federal government. Eligible Losses shall not exceed Usual
 6 and Customary Charges.

7 H. "Eligible Losses-TSR" means financial losses incurred by a Physician as a result of giving
 8 Emergency Medical Services in a Hospital to patients who are unable to pay for such services, and for
 9 whom payment will not be made by a responsible third party through any private coverage or by any
 10 program funded in whole or in part by the federal government, which losses shall be reimbursed through
 11 the Physicians' Allocation - TSR. Eligible Losses-TSR shall not exceed Usual and Customary Charges.
 12 ADMINISTRATOR may modify this definition as allowed by law.

13 I. "Emergency Medical Condition" means a medical condition manifesting itself by acute
 14 symptoms of sufficient severity (including severe pain) such that the absence of immediate medical
 15 attention could reasonably be expected to result in:

- 16 1. Placing the patient's health, or with respect to a pregnant woman (or her unborn child), in
 17 serious jeopardy; or
- 18 2. Serious impairment to bodily functions; or
- 19 3. Serious dysfunction of any bodily organ or part

20 J. "Emergency Services and/or Care" means lawfully provided medical screening, examination,
 21 and evaluation of a patient in a Hospital by a Physician to determine if an Emergency Medical
 22 Condition or Active Labor exists, and if it does, the care, treatment and surgery by a Physician necessary
 23 to relieve or eliminate the Emergency Medical Condition or Active Labor (Health and Safety Code
 24 Section 1371.1); provided, however, such treatment shall be within the capabilities required of the
 25 Hospital as a condition of its emergency medical services permit, on file with the Office of Statewide
 26 Health Planning and Development.

27 K. "EMSF Program" means collectively all Physician services and administrative services for
 28 which reimbursement is authorized by the Agreement.

29 L. "Final Payout" means the final reimbursement to providers, as specified in Paragraph III.M. of
 30 this Exhibit A to the Agreement.

31 M. "Fiscal Year" means the period commencing July 1 and ending the following June 30.

32 N. "Fund" means the Emergency Medical Services Fund, an interest bearing trust fund established
 33 by the Orange County Board of Supervisors by Resolution No. 88-241 on February 24, 1988, as
 34 permitted by Health and Safety Code Section 1797.98a.

35 O. "Funds" means any payments, transfers, or deposits made by COUNTY, and any refunds,
 36 repayments, adjustments, earned interest or other payments made by, or recovered from, Physician,
 37 patient, third party, or other entity as the result of any duty arising from the Agreement.

1 P. "Hospital" means a general acute care hospital located in Orange County with an emergency
2 department licensed by the State of California to provide basic or comprehensive emergency services.

3 Q. "On-Call Physician" means a physician available for medical consultation to Emergency
4 Services staff to personally examine and treat the patient.

5 R. "Payout" means the periodic disbursement to Physicians of the monies from the Physicians'
6 Allocation in settlement of Claims filed in accordance with the terms of the Agreement and Health and
7 Safety Code Section 1797.98c, as it now exists or may hereafter be amended.

8 S. "Physician" means a licensed physician or surgeon or patient care services provided by, or in
9 conjunction with, a properly credentialed nurse practitioner or physician's assistant for care rendered
10 under the direct supervision of a licensed physician or surgeon who is present in the facility where the
11 patient is being treated and who is available for immediate consultation. For purposes of the expenditure
12 of the Physicians' Allocation – TSR, "Physician" shall not include services provided by a nurse
13 practitioner or physician's assistant.

14 T. "Physicians' Allocation" means that portion of the Fund designated for Physicians as specified
15 by law and inclusive of the following:

16 1. "Physicians' Allocation – Collections" means the designated portion of funds received by
17 COUNTY from penalty assessments on penal code violations.

18 2. "Physicians' Allocation – TSR" means Tobacco Settlement Revenues as specified by
19 Measure H to provide reimbursement for the first twenty-four (24) hours of uncompensated Emergency
20 Services and/or Care provided by Physicians.

21 3. "Physicians' Allocation – Other" means any funds not specifically identified in
22 subparagraphs R.1. through R.2. above, but which may be received by COUNTY and expressly deemed
23 by law, regulation, or other legal action, for reimbursement of uncompensated Emergency Services
24 and/or Care provided by Physicians.

25 U. "Recovery Account" means a separate account maintained by CONTRACTOR for monies
26 received by CONTRACTOR from Physicians, patients, or third party payors for services provided
27 pursuant to the Agreement.

28 V. "Recovery Trust Fund Account" means an account maintained by COUNTY for monies
29 received directly by COUNTY from Physicians, patients or Third Party payors for services provided
30 pursuant to the Agreement.

31 W. "Stabilized" means the point at which, in the opinion of the treating Physician, the patient's
32 medical condition is such that, within a reasonable medical probability, no material deterioration of the
33 patient's condition is likely to result from, or occur during, the transfer of the patient (Health and Safety
34 Code Section 1371.1(j)).

35 X. "Third Party Covered Claim" means a claim for reimbursement of Emergency Services and/or
36 Care, which services are covered, at least in part, by a non-COUNTY third party payor.

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1 Y. “Undisbursed Payout” means an amount equal to the difference between the total of all
2 payments by COUNTY to CONTRACTOR intended for Payout, and the total of all Payouts made by
3 CONTRACTOR.

4 Z. “Usual and Customary Charge” means the amount which Physician normally or usually charges
5 the majority of its patients for a specified type of service, including the types of Emergency Services
6 and/or Care provided hereunder. Physician’s Usual and Customary Charges shall be subject to review
7 by ADMINISTRATOR, in conjunction with CONTRACTOR, to determine whether they conform to
8 Usual and Customary Charges made by other Orange County physicians. If Physician’s Usual and
9 Customary Charges are determined to exceed those of other Orange County Physicians, Physician may
10 be required to reduce charges as necessary to bring them into conformity.

11
12 **II. PHYSICIAN OBLIGATIONS**

13 A. In consideration of payments by COUNTY to CONTRACTOR for payment for Emergency
14 Services and/or Care pursuant to the Agreement, COUNTY’s obligation to Physicians shall be satisfied.

15 B. Acceptance by Physicians of payments made by CONTRACTOR in accordance with the
16 Agreement shall be deemed satisfaction in full of any obligation to Physicians, and no Physician shall
17 seek additional reimbursement from a patient, with respect to those claims for Emergency Services
18 and/or Care for which payment has been made.

19 C. Physicians shall provide Emergency Services and/or Care to all persons presenting for
20 emergency treatment. As a condition of reimbursement of Claims for Emergency Services and/or Care
21 provided by Physicians, Physicians shall comply with the Agreement and the terms of their enrollment
22 and the EMSF Program Rules, as they may be amended.

23 D. Physicians shall be required to enroll for participation in the EMSF Program. Enrollment
24 periods cover one (1) Fiscal Year. Physicians may enroll on-line at any time by visiting the Emergency
25 Medical Services Fund (EMSF) section of CONTRACTOR’s website at <http://ochca.amm.cc>. The
26 enrollment period shall be in effect for the period July 1st through June 30th of each Period. By
27 participating in the EMSF Program, each Physician acknowledges that the requirements of Health and
28 Safety Code Section 1797.98c, and/or any other applicable laws, regulations, or requirements, including
29 any amendments thereto, for all Claims submitted by Physician have been fulfilled, including, but not
30 limited to:

31 1. Physician has inquired if there is a responsible private or public, including MSN, third party
32 source of payment;

33 2. Physician expects to receive reimbursement for the Emergency Services and/or Care
34 provided (i.e., the service was not provided gratuitously);

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1 3. At least one-hundred twenty (120) calendar days have passed from the date the Physician
2 initially provided services and the physician billed the patient or responsible third party without receipt
3 of any payment/denial during that period and Physician has attempted to collect from patient or
4 responsible third party a minimum of two (2) times and received no payment; or the claims have been
5 rejected for payment by the patient and any responsible third party.

6 E. Physicians shall assist COUNTY, and CONTRACTOR in the conduct of any appeal hearings
7 conducted by COUNTY or CONTRACTOR in accordance with the Agreement.

8 F. Reimbursement provided through the Agreement shall be payment of last resort. Prior to
9 submitting any Claim to CONTRACTOR for reimbursement of Emergency Services and/or Care,
10 Physicians shall:

11 1. Use their reasonable best efforts to determine whether the claim is MSN, a third party, or
12 Primary Other Insurance covered claim.

13 2. Bill and use their reasonable best efforts to collect MSN, third party or Primary Other
14 Insurance covered claims to the full extent of such coverage.

15 G. With submission of a Claim, Physician shall give proof of non-coverage to CONTRACTOR, if
16 a third party or Primary Other Insurance denies coverage of the Claim. The Agreement shall not
17 reimburse deductibles and co-payments required by a person's Primary Other Insurance coverage.

18 H. Physician shall provide CONTRACTOR such records and other documentation as
19 CONTRACTOR may reasonably require to maintain centralized data collection and referral services in
20 support of third party revenue recovery activities.

21 I. If Physician receives any patient payment, third party or government reimbursement, or
22 reimbursement from a third party settlement, for services reimbursed through the Agreement, Physician
23 shall reimburse CONTRACTOR the amount equal to the EMSF payment.

24 J. As a condition of reimbursement through the Agreement, all Claims for reimbursement of
25 Emergency Services and/or Care shall be:

26 1. Initially received by CONTRACTOR by June 30th of each Period.

27 2. Submitted and completed in accordance with the Agreement.

28 3. Submitted no later than one (1) year after the date of service.

29 K. Unless otherwise directed by ADMINISTRATOR, all claims shall be submitted to:

30 Advanced Medical Management, Inc.

31 P.O. Box 3509

32 Long Beach, California 90853

33 L. Physicians may resubmit denied claims to CONTRACTOR; provided, however, Physicians
34 shall complete any necessary corrective action, and resubmit the claim no later than thirty (30) days
35 after notification of the rejection.

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1 M. Physicians submitting Claims for reimbursement under the Agreement, shall maintain records
2 that are adequate to substantiate the services for which Claims are submitted and the charges thereto.
3 Such records shall include, but not be limited to, individual patient charts and utilization review records.

4 N. RECORDS RETENTION

5 1. All financial records connected with the performance of the Agreement shall be retained by
6 Physicians for a period of seven (7) years after termination of the Agreement.

7 2. All patient records connected with the performance of the Agreement shall be retained by
8 Physicians for a period of seven (7) years after termination of the Agreement.

9 3. Records which relate to litigation or settlement of claims arising out of the performance of
10 the Agreement, or costs and expenses of the Agreement as to which exception has been taken by
11 COUNTY, state or federal governments, shall be retained by Physicians until disposition of such
12 appeals, litigation, claims or exceptions is completed.

13 4. All books of accounts and records shall be made available at a location within the County
14 of Orange, unless otherwise authorized, in writing, by ADMINISTRATOR.

15
16 **III. INTERMEDIARY OBLIGATIONS**

17 A. CONTRACTOR shall perform as fiscal intermediary on behalf of Physicians and COUNTY.

18 B. During the term of the Agreement, and for such time thereafter as required by the Agreement,
19 CONTRACTOR shall continuously provide sufficient staffing including production, supervisory and
20 management staff to ensure timely and efficient performance of the services herein.

21 1. CONTRACTOR agrees to provide the resources necessary to address any backlog claims
22 processing or an increased influx of claims within the time periods specified herein.

23 2. CONTRACTOR agrees that staff providing claims adjudication services shall, to the extent
24 possible and practical, be dedicated to the performance of the duties herein for the EMSF program.

25 3. CONTRACTOR shall ensure that a designated point of contact and alternate, when
26 necessary, is available at all times during regular business hours to respond to requests from
27 ADMINISTRATOR.

28 4. CONTRACTOR agrees that all services provided pursuant to the Agreement shall be
29 provided at CONTRACTOR's primary place of business and that no services may be outsourced outside
30 the contiguous United States of America without prior written consent of ADMINISTRATOR.

31 C. During the term of the Agreement, and for such time thereafter as required by the Agreement,
32 CONTRACTOR shall continuously provide fiscal intermediary services including, but not limited to,
33 the following:

- 34 1. Receiving, compiling, preserving, and reporting information and data.
- 35 2. Processing, denying, approving all Claims submitted.
- 36 3. Receiving, maintaining, collecting, and accounting for Funds.
- 37 4. Reimbursing Claims and making other required payments.

1 5. Establishing and maintaining all necessary policies and procedures pertaining to
2 CONTRACTOR’s responsibilities pursuant to the Agreement.

3 6. Routine storage and destruction of records.

4 7. Special retrieval of records.

5 D. CONTRACTOR shall cooperate with any audit requested by ADMINISTRATOR pursuant to
6 the Agreement and shall provide all claims records for the audit within (5) business days of the date of
7 the request. CONTRACTOR shall ensure that their response to any audit shall in no way delay claims
8 adjudication services provided in accordance with the Agreement.

9 E. CONTRACTOR shall reimburse Physicians up to the Cap-Initial for initial payment for
10 Emergency Services and/or Care provided up to the time the patient is Stabilized, which services shall
11 have been provided in general acute care hospitals that provide basic or comprehensive emergency
12 services.

13 F. CONTRACTOR shall require Physicians to submit Claims for reimbursement of Eligible
14 Losses and Eligible Losses-TSR on CMS 1500 claim forms which CONTRACTOR shall be able to
15 receive and process in an electronic or paper format that has been authorized by ADMINISTRATOR.
16 Electronic Claims shall be processed in accordance with HIPAA Transaction and Code Sets standards
17 and requirements. Paper Claims must be legible and accurately completed to be considered.

18 1. CONTRACTOR shall review all Claims to determine whether the services for which
19 reimbursement is sought are Emergency Services and/or Care, reimbursable pursuant to the Agreement,
20 and whether such services were rendered within appropriate time limits.

21 2. CONTRACTOR shall review Claims and may provide a medical review, as appropriate, in
22 accordance with its Operations Manual. CONTRACTOR shall keep a copy of its current Operations
23 Manual at its main facility which shall include CONTRACTOR’s policies and procedures relating to its
24 operations, including, but not limited to the activities specified herein.

25 3. CONTRACTOR shall deny all Claims that do not meet the conditions and requirements of
26 the Agreement and/or state regulations for Claim submission, processing, and reimbursement.

27 4. COUNTY shall engage CONTRACTOR, or authorize CONTRACTOR to enter into a
28 separate Agreement, for the provision of Recovery Services for the purpose of actively pursuing
29 reimbursement of claims paid for EMSF patients later determined to be eligible for Medi-Cal, MSN, or
30 having third party, primary or other primary insurance. All Providers shall cooperate in recovering
31 these costs. Except as otherwise directed by ADMINISTRATOR, monies recovered due to the efforts
32 of Recovery Services shall be reimbursed to COUNTY through CONTRACTOR and shall be deemed
33 “Active Recovery Funds.” Monies recovered or identified in advance of notice from Recovery Services,
34 and forwarded directly to CONTRACTOR to Provider, shall be deemed “Passive Recovery Funds.” For
35 Active Recovery Funds only, an administrative fee, as negotiated between ADMINISTRATOR and
36 CONTRACTOR, may be deducted by CONTRACTOR and then ten percent (10%) of the balance shall
37 be deposited into the HCA Recovery Account, with the remainder into the appropriate service account.

1 5. CONTRACTOR shall use its best efforts to collect any monies paid, in any form, for non-
2 reimbursable services or for payment to any Physician or other entity not entitled under the Agreement
3 to such payment if the result of inaccurate or inappropriate processing by CONTRACTOR. Upon
4 becoming aware that such payments are uncollectible, CONTRACTOR shall submit to
5 ADMINISTRATOR a plan of corrective action. Upon review by ADMINISTRATOR,
6 CONTRACTOR may be subject to disallowances for said payments.

7 G. COUNTY shall enter into or authorize CONTRACTOR to enter into a separate Agreement for
8 the provision of providing a Medi-Cal eligibility list. CONTRACTOR shall match all EMSF Claims
9 against the Medi-Cal eligibility list and MSN information, as available, at least every two (2) weeks to
10 determine eligibility of Claims.

11 1. If a Claim is determined to be eligible for Medi-Cal reimbursement, CONTRACTOR shall
12 notify Physician with their remittance advice in the next payment cycle that their Claim is denied based
13 on information from the database.

14 2. If a Claim is determined to be eligible for MSN based on patient eligibility,
15 CONTRACTOR shall process the Claim as an MSN claim if it meets all criteria for MSN payment. If
16 the Claim does not meet all criteria for MSN Payment, CONTRACTOR shall process the claim as an
17 EMSF claim, pursuant to all EMSF criteria.

18 H. CONTRACTOR shall completely process (defined as paid or denied) all Claims received by
19 June 30th of each Period by July 31st of each Period.

20 I. CONTRACTOR shall process all claims received as soon as possible, and in no event later than
21 sixty-five (65) calendar days after their receipt. Processed Claims, for purposes of the Agreement, is
22 defined as claims paid, denied, or pended at ADMINISTRATOR's request, within sixty-five (65)
23 calendar days of receipt and includes, but is not limited to, administrative time to receive claims into
24 CONTRACTOR's claims processing system, processing time through its pre-processing (On-Base)
25 system, adjudication processing time through its (E-Z Cap) system, and administrative time to create
26 and mail payments to providers. CONTRACTOR shall process, as defined above, ninety percent (90%)
27 of all claims received within sixty-five (65) calendar days of their receipt by CONTRACTOR, unless
28 CONTRACTOR does not have sufficient funds in the Account to pay such claims, or if
29 CONTRACTOR has been directed by ADMINISTRATOR to hold claims pending COUNTY's receipt
30 and disbursement of Funds.

31 1. CONTRACTOR shall submit to ADMINISTRATOR a monthly Processing Timeliness
32 Report, as required by this Exhibit A to the Agreement.

33 2. At its sole discretion, ADMINISTRATOR may assess a penalty (Penalty Assessment) if
34 CONTRACTOR fails to process and reimburse claims in accordance with the standards set forth herein,
35 as evidenced by the above monthly Processing Timeliness Report. CONTRACTOR shall be subject to
36 such penalty for its performance commencing ninety (90) calendar days after execution by the parties.

37 //

1 a. The Penalty Assessment, if any, shall be equal to one-hundred dollars (\$100) for every
2 percentage point below ninety percent (90%), and shall be deducted from the monthly administrative
3 payment otherwise due CONTRACTOR for services provided pursuant to the Agreement.

4 b. Penalty Assessments, if any, shall be retained in the Fund for distribution to Physicians
5 in accordance with the Agreement.

6 c. If claims received during any month exceed the previous three (3)-month average by at
7 least twenty-five percent (25%), CONTRACTOR shall be provided an additional ten (10) days to
8 process such claims; provider, however, CONTRACTOR may request additional processing time
9 commensurate with the actual number of Claims received.

10 J. Any unapproved Claims for Emergency Services and/or Care which are received by June 30th
11 of each Period shall be null and void after January 31st following termination of each Period.

12 K. CONTRACTOR shall notify Physicians in writing of the reason for any denial of a Claim(s).

13 L. Claims payment to Physicians shall be calculated as a percentage of the national Medicare
14 Resource Based Relative Value Scale (RBRVS) so as to achieve equitable distribution of funding to
15 physicians in each fiscal year.

16 1. If it is determined after March 31st, for each Period that continued payment of the
17 established RBRVS through June 30th, for each Period, will exceed available Funds,
18 ADMINISTRATOR may direct CONTRACTOR to pay Claims up to the amount of remaining available
19 Funds at the presently established RBRVS, less estimated administrative costs for CONTRACTOR,
20 COUNTY, and any other Agreements in support of the EMSF Program; suspend payment of all
21 remaining Claims submitted through June 30th; or pay those suspended Claims in the following Fiscal
22 Year at the RBRVS established for that following Fiscal Year.

23 2. At Final Payout, if adjustments to reduce the RBRVS were made during the Fiscal Year,
24 funds shall be first used to pay those Physicians who received payment at an RBRVS less than that paid
25 to any Physicians at any other time during the Fiscal Year, up to the maximum RBRVS paid during the
26 year, not to exceed the allowable Cap-Final. Any other remaining Funds shall then be distributed as
27 provided in subparagraph M. below.

28 3. At Final Payout, if adjustments to increase the RBRVS were made during the Fiscal Year,
29 funds shall be first used to pay those Physicians who received payment at an RBRVS less than that paid
30 to any Physicians at any other time during the Fiscal Year, up to the maximum RBRVS paid during the
31 year, not to exceed the allowable Cap-Final. Any other remaining Funds shall then be distributed as
32 provided in subparagraph M. below.

33 M. No later than July 31st following each Period:

34 1. ADMINISTRATOR shall perform a final reconciliation of Funds remaining in the EMSF
35 Trust Fund, CONTRACTOR's Account, and the Recovery Accounts for the purpose of determining the
36 amount to distribute to Physicians as Final Pay after all other obligations provided through this
37 Agreement are met.

1 a. CONTRACTOR shall report to ADMINISTRATOR, the value of any pending Claims
2 and the date the claims are anticipated to be paid.

3 b. CONTRACTOR and ADMINISTRATOR shall determine if there are any other EMSF
4 Funding Obligations (such as those that may pertain to outside audits of physicians specified in
5 Paragraph O, as may be required).

6 2. ADMINISTRATOR shall report to CONTRACTOR the Fund balance, if any, to be
7 distributed through Final Payout. CONTRACTOR shall invoice COUNTY for this amount, which
8 amount COUNTY shall pay, and CONTRACTOR shall deposit in the Account. CONTRACTOR shall
9 disburse such Funds, the balance of all other monies in the Account and any other accounts maintained
10 for the purposes of the Agreement, and any earned interest, to Physicians in the manner specified in the
11 Agreement. After adjustments, if any, in accordance with subparagraphs L.2. and L3. above, Funds
12 shall be distributed proportionately, based on the dollar amount of Claims submitted and paid to all
13 physicians and surgeons who submitted qualifying claims during the year, in accordance with Health
14 and Safety Code Section 1797.98a(d).

15 3. No later than August 31st following each Period, CONTRACTOR shall submit a Final
16 Payout Report, by Physician and Physician Group, as appropriate, to ADMINISTRATOR for approval.

17 4. Immediately prior to Final Payout, CONTRACTOR shall deposit any Recovery Trust Fund
18 Account balance into the Fund as directed by ADMINISTRATOR.

19 5. CONTRACTOR shall complete Final Payout to Physicians, no later than September 30th
20 following each Period; provided, however, ADMINISTRATOR and CONTRACTOR may mutually
21 agree, in writing, to extend this date.

22 N. CONTRACTOR shall provide to ADMINISTRATOR the distribution of Claims within four (4)
23 calendar days of each Payout to Physicians (i.e., the number and dollar value of Claims submitted, paid
24 and denied), and the percentage of reimbursement of those Claims when compared against the actual
25 billed charges (loss) of the provider.

26 O. As a follow up to an independent financial audit under a separate contract with COUNTY, if
27 any amount paid for a Claim is determined to be ineligible, unsubstantiated, or paid by any other
28 payment source, CONTRACTOR shall demand a refund from the Physician equal to the amount of that
29 payment plus twenty-five percent (25%).

30 1. If a pattern of ineligible or unsubstantiated Claims, or Claims paid by any other payment
31 source, is identified, in addition to the refund, CONTRACTOR shall demand a penalty which is equal to
32 one hundred percent (100%) of the refund to compensate for audit costs and lost use of Physicians'
33 Allocation funds.

34 2. If the pattern of ineligible or unsubstantiated claims found pursuant to subparagraph O.1.
35 above is determined by ADMINISTRATOR to be continuing, the Physician may be excluded from
36 submitting future requests for reimbursement.

37 //

1 3. Any refunds or penalties shall be paid to CONTRACTOR and deposited into the Recovery
2 Account.

3 P. Appeal Process for Denied Claims:

4 1. All Providers may appeal to ADMINISTRATOR’s Medical Director only those claims
5 denied by CONTRACTOR for which the service claimed was determined to be outside the scope of
6 reimbursable services. Such appeal shall be made, in writing, to ADMINISTRATOR’s Medical
7 Director, no later than ninety (90) calendar days after notification of denial. ADMINISTRATOR’s
8 Medical Director shall decide upon the appeal within thirty (30) calendar days.

9 2. If a denied claim is not resubmitted and/or appealed in writing to ADMINISTRATOR’s
10 Medical Director, within ninety (90) calendar days after notification of denial, CONTRACTOR’s
11 determination shall be final, and the affected Provider shall have no right to further review of the claim.

12 Q. CONTRACTOR shall provide, with respect to Physicians, such printing, mailing and training as
13 may be reasonably required by COUNTY and reasonably within the capacity of CONTRACTOR to
14 undertake.

15 R. CONTRACTOR shall maintain a telephone number dedicated to facilitating communication
16 with Physicians and/or their billing offices and an on-line inquiry system regarding claim status or other
17 issues. CONTRACTOR shall notify Physicians in writing of such phone number or on-line inquiry
18 system and its hours of operation.

19
20 **IV. COUNTY OBLIGATIONS**

21 A. COUNTY shall provide general oversight of the EMSF Program, including appropriate
22 financial and contract monitoring and review and analysis of data gathered and reported. COUNTY
23 shall also provide appropriate evaluation and standards assurance of the EMSF Program.

24 B. COUNTY shall administer the Physicians’ Allocation in accordance with all applicable
25 governmental laws, regulations, and requirements as they exist now or may be hereafter amended or
26 changed. If any portion of the Agreement is deemed to be or becomes inconsistent with the law,
27 including any regulations thereto, the law shall prevail. Deposits into the Fund shall be as follows:

28 1. Physicians’ Allocation – Court Fine Collections: COUNTY shall deposit in the Fund, fifty-
29 eight percent (58%) of collections made pursuant to Penal Code Section 1463, as it now exists or may
30 hereafter be amended or changed. Health and Safety Code Section 1797.98a(b)(4) allows for the
31 creation of a reserve of up to fifteen percent (15%) of collections. COUNTY may decide to create such
32 a reserve. Such reserve amounts, if any, shall be deducted prior to COUNTY’s deposit of collections in
33 the Fund.

34 2. Physicians’ Allocation – TSR: COUNTY shall appropriate in the County General Fund an
35 amount equal to TSR funds specifically designated for emergency medical services provided by
36 emergency room physicians and emergency room on-call physician specialists, in accordance with all
37 //

1 applicable governmental laws, regulations, and requirements as they exist now or may hereafter be
2 amended or changed.

3 3. Physicians' Allocation – Other: COUNTY shall deposit into the Fund, or in the County
4 General Fund, as appropriate, any funds not specifically identified in the Agreement but expressly
5 deemed by law, regulation, or other legal action, to be used for partial reimbursement of uncompensated
6 Emergency Services and/or Care provided by Physicians.

7 C. Monies in the Fund shall be treated in the same fashion as all other monies held by COUNTY in
8 trust funds, and COUNTY may commingle said monies with other monies for purposes of investment.

9 D. ADMINISTRATOR shall provide a monthly fund balance report to CONTRACTOR, which
10 shall include deposits and expenditures from all funds received by COUNTY for the EMSF Program.

11
12 **V. FUNDING AND PAYMENTS**

13 A. Total Administrative Costs

14 1. The total of all administrative costs paid to CONTRACTOR, plus administrative costs
15 retained by COUNTY, for its costs as well as costs for other Agreements in support of the EMSF
16 Program, shall not exceed ten percent (10%) of all deposits to and appropriations for the Physicians'
17 Allocation for each Period.

18 2. COUNTY shall be reimbursed for its administrative costs up to the actual cost of services
19 or ten percent (10%) of all non-TSR deposits to and appropriations for the Physicians' Allocation plus
20 one percent (1%) of the TSR deposits to and appropriations for the Physicians' Allocation, whichever is
21 less.

22 3. To the extent that the total of all Administrative Costs paid are less than the ten percent
23 (10%) maximum allowed for Administrative Costs, the savings shall remain in the Physicians'
24 Allocation for distribution to Physicians.

25 B. CONTRACTOR Payments – Administration

26 1. For fiscal intermediary services provided by CONTRACTOR in accordance with the
27 Agreement, COUNTY shall, upon receipt of an appropriate invoice, pay CONTRACTOR monthly, in
28 arrears, as follows; provided however the total for each Period shall not exceed COUNTY's Maximum
29 Obligation to INTERMEDIARY for each Period as specified in the Referenced Contract Provisions of the
30 Agreement:

31 a. Period One – \$2.50 per Claim received by CONTRACTOR from Physicians during the
32 period between and including July 1, 2016 through June 30, 2017 for Emergency Services and/or Care
33 provided within one year of the Claim being submitted;

34 b. Period Two - \$2.50 per Claim received by CONTRACTOR from Physicians during the
35 period between and including July 1, 2017 through June 30, 2018 for Emergency Services and/or Care
36 provided within one year of the Claim being submitted ; and
37 //

1 c. Period Three - \$2.50 per Claim received by CONTRACTOR from Physicians during
2 the period between and including July 1, 2018 through June 30, 2019 for Emergency Services and/or
3 Care provided within one year of the Claim being submitted.

4 d. CONTRACTOR and ADMINISTRATOR agree to a discounted group rate of \$2.00 per
5 claim if a group, consisting of four programs exists: 1) Medical Safety Net Program, 2) Emergency
6 Medical Services Fund Program, 3) Public Health Services Program, and 4) Correctional Health
7 Program

8 e. The parties agree that Claims for Emergency Medical Services and/or Care for each
9 Period may be received by CONTRACTOR up to three (3) months following the end of each Period and
10 that CONTRACTOR shall be reimbursed by COUNTY for said claims upon submission of an
11 appropriate invoice to ADMINISTRATOR.

12 f. For the purposes of reimbursement to CONTRACTOR, a Claim shall be reimbursed
13 regardless of the adjudication result, including but not limited to Claims that are paid, denied,
14 duplicates, and resubmitted.

15 2. Upon approval of ADMINISTRATOR, CONTRACTOR may use a portion of any interest
16 earned by the Funds or Recovery Funds to offset actual cost of postage associated with any mailings,
17 except check and Explanation of Benefit (EOB) mailings, required in accordance with the Agreement.
18 Contractor shall report to County the amount of interest charged against postage. CONTRACTOR shall
19 use any remaining interest to reimburse claims in accordance with the Agreement.

20 C. CONTRACTOR Payments – Physician Reimbursement:

21 1. All funds received by CONTRACTOR in accordance with this subparagraph C. shall be
22 used by CONTRACTOR to reimburse Physician Claims.

23 2. COUNTY shall pay CONTRACTOR, upon receipt of an appropriate invoice, an initial
24 provisional payment of one-million one-hundred twenty-five thousand dollars (\$1,125,000) for each
25 Period. Such funds shall be immediately deposited by CONTRACTOR into an interest-bearing EMSF
26 Account (Account) for reimbursement of EMSF Physician Claims received by CONTRACTOR on or
27 after July 1st of each Period.

28 3. Following the initial payment for each Period, COUNTY shall pay CONTRACTOR, upon
29 receipt of an appropriate invoice a monthly amount of \$400,000 beginning August 1st of each Period.
30 CONTRACTOR’s invoice shall be on a form approved or supplied by ADMINISTRATOR and provide
31 such information as is required by ADMINISTRATOR. Invoices are due by the tenth (10th) working
32 day of each month, and payments to CONTRACTOR should be released by COUNTY no later than
33 twenty-one (21) days after receipt of the correctly completed invoice form. Invoices received from
34 CONTRACTOR after the tenth (10th) working day of the month may not be paid within the same
35 month. Payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21)
36 days after receipt of the correctly completed billing form; provided, however that the aggregate of all
37 payments for physician claims shall not exceed all deposits to and appropriations for the Physicians’

1 Allocation for each Period, less administrative costs described in subparagraph V.B. above; and
2 provided further, the balance of the Account does not exceed \$2,000,000 unless otherwise authorized by
3 ADMINISTRATOR in accordance with subparagraph C.5 below.

4 4. Upon determination by CONTRACTOR that the Account requires additional funds for
5 reimbursement of claims authorized in accordance with the Agreement, CONTRACTOR shall submit a
6 supplemental invoice to COUNTY, together with any documentation that may be required by
7 ADMINISTRATOR.

8 5. Except as otherwise provided herein, the Account shall not exceed a maximum of two
9 million dollars (\$2,000,000), unless otherwise approved by ADMINISTRATOR at its sole discretion,
10 and shall be managed so as to maximize the interest earned upon Funds in the Account.

11 6. If CONTRACTOR determines that the fees to maintain an interest-bearing Account is more
12 than projected interest to be earned, CONTRACTOR shall recommend to ADMINISTRATOR that such
13 funds be maintained in a non-interest-bearing Account. Approval of the recommendation shall be at the
14 sole discretion of ADMINISTRATOR.

15 7. All billings to COUNTY shall be supported, at CONTRACTOR's facility, by source
16 documentation including, but not limited to, provider claims, ledgers, journals, bank statements,
17 canceled checks, and records of services paid. In support of the monthly billing, CONTRACTOR shall
18 submit a Claims Processed Report on a form, or in an electronic format, approved or provided by
19 ADMINISTRATOR.

20 a. For Emergency Services and/or Care provided within the first twenty-four (24)-hours
21 of the hospital visit, reimbursement of Claims shall be through use of TSR Funds.

22 b. For Emergency Services and/or Care provided after twenty-four (24) hours, but not
23 more than the immediately following two (2) calendar days after the date services are first provided,
24 reimbursement of Claims shall be through use of all other Funds in accordance with all applicable laws
25 and regulations governing their use.

26 c. Notwithstanding the preceding subparagraph b, if it is necessary to transfer a patient to
27 a second facility providing a higher level of care for the treatment of the emergency condition,
28 reimbursement of these Claims for the calendar day of transfer and on the immediately following two
29 (2) calendar days shall be through use of all other Funds in accordance with all applicable laws and
30 regulations governing their use.

31 d. If TSR Funds are exhausted, or ADMINISTRATOR agrees to an exception, then all
32 other funds may be used to reimburse Claims for Emergency Services and/or Care provided within the
33 first twenty-four (24)-hours of the hospital visit.

34 8. Monthly, CONTRACTOR shall forward ADMINISTRATOR an electronic copy of the
35 latest bank statement(s) and reconciliation with respect to all monies disbursed pursuant to the
36 Agreement.

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1 9. In the event CONTRACTOR anticipates an expenditure, pursuant to the Agreement in
2 excess of the Account maximum specified above, CONTRACTOR may request, in writing, an
3 appropriate advance from COUNTY. Upon approval by ADMINISTRATOR, COUNTY shall disburse
4 to CONTRACTOR the requested Funds. CONTRACTOR shall disburse advanced Funds to Physicians
5 for claims submitted and processed. Such disbursement shall be made immediately upon receipt of the
6 advance, unless otherwise approved, in writing, by COUNTY.

7 10. CONTRACTOR shall collect and deposit refunds and any third party payments related to
8 any Emergency Service and/or Care rendered by a Physician in a separate interest-bearing Recovery
9 Account. At Final Payout, Funds in the Recovery Account shall be paid to Physicians in the same
10 manner as are other Funds in the Account as directed by ADMINISTRATOR.

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1 EXHIBIT B
2 TO AGREEMENT FOR PROVISION OF
3 FISCAL INTERMEDIARY SERVICES
4 FOR THE EMERGENCY MEDICAL SERVICES FUND PROGRAM WITH
5 ADVANCED MEDICAL MANAGEMENT, INC.
6 JULY 1, 2016 THROUGH SEPTEMBER 30, 2019
7

8 **I. BUSINESS ASSOCIATE CONTRACT**

9 A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

31 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
32 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to a
33 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
34 terms of this Business Associate Contract and the applicable standards, implementation specifications,
35 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
36 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
37 pursuant to the Agreement.

1 B. DEFINITIONS

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

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

8 a. Breach excludes:

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

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

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

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

24 i. The nature and extent of the PHI involved, including the types of identifiers and the
25 likelihood of re-identification;

26 ii. The unauthorized person who used the PHI or to whom the disclosure was made;

27 iii. Whether the PHI was actually acquired or viewed; and

28 iv. The extent to which the risk to the PHI has been mitigated.

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

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

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

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

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1 7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in
 2 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
 3 with 45 CFR § 164.502(g).

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

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

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

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

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

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

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

22 15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in
 23 45 CFR § 160.103.

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

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

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

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

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

36 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
 37 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to

1 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
2 other than as provided for by this Business Associate Contract.

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

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

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

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

16 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
17 written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by
18 COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524.

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

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

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

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

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

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

7 D. SECURITY RULE

8 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
9 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR
10 § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
12 CONTRACTOR shall follow generally accepted system security principles and the requirements of the
13 HIPAA Security Rule pertaining to the security of electronic PHI.

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

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

21 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

31 2. CONTRACTOR shall provide the notification of the Breach immediately to the County
32 Privacy Officer.

33 a. CONTRACTOR'S notification may be oral, but shall be followed by written
34 notification within 24 hours 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. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
17 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
18 COUNTY.

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

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

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

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

36 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
37 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs

1 in addressing the Breach and consequences thereof, including costs of investigation, notification,
2 remediation, documentation or other costs associated with addressing the Breach.

3 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

13 i. The Disclosure is required by law; or

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

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

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

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

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

28 G. OBLIGATIONS OF COUNTY

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

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

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

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

3 H. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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