

1 AGREEMENT FOR PROVISION OF
 2 PHYSICIAN SERVICES
 3 FOR
 4 CORRECTIONAL HEALTH SERVICES PROGRAMS
 5 BETWEEN
 6 COUNTY OF ORANGE
 7 AND
 8 CORRECTIONAL MANAGED CARE MEDICAL CORPORATION
 9 JULY 1, 2013 THROUGH JUNE 30, ~~2014~~2015

10
 11 THIS AGREEMENT entered into this 21th day of May 2013, which date is enumerated for purposes
 12 of reference only, is by and between the COUNTY OF ORANGE (COUNTY), and CORRECTIONAL
 13 MANAGED CARE MEDICAL CORPORATION, a California for-profit corporation
 14 (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency
 15 (ADMINISTRATOR).

16
 17 **W I T N E S S E T H :**
 18

19 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Custody
 20 Physician Services described herein to the residents of Orange County; and
 21 WHEREAS, COUNTY has entered into a separate agreement with a hospital for provision of
 22 Hospital Services for Correctional Health Services Programs (Hospital); and
 23 WHEREAS, CONTRACTOR agrees to provide Custody Physician Services at Hospital; and
 24 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
 25 conditions hereinafter set forth:

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

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REFERENCED CONTRACT PROVISIONS

Term: Period One July 1, 2013 through June 30, 2014
Period Two July 1, 2014 through June 30, 2015

Maximum Obligation: Period One \$2,733,540
Period Two \$2,733,540

Basis for Reimbursement: Negotiated Amount

Payment Method: Negotiated Amount

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: Correctional Managed Care Medical Corporation
Attn: Director of Operations
4211 E. La Palma Avenue
Anaheim, CA 92807
Email: RhobertaP@cmcmc.com

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

1	AH. PRA	Public Record Act
2	AI. SIR	Self-Insured Retention
3	AJ. The HITECH Act	The Health Information Technology for Economic and Clinical Health Act,
4		Public Law 111-005
5	AK. USC	United States Code
6	AL. WIC	State of California Welfare and Institutions Code

7
8 **II. ALTERATION OF TERMS**

9 A. This Agreement, together with Exhibit A and B, attached hereto and incorporated herein, fully
10 expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject
11 matter of this Agreement.

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

16
17 **III. COMPLIANCE**

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

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

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

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

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

1 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
2 CONTRACTOR 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 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 HCA.
18 Notwithstanding the above, this term does not include part-time or per-diem employees, contractors,
19 subcontractors, agents, and other persons who are not reasonably expected to work more than one
20 hundred sixty (160) hours per year; except that any such individuals shall become Covered Individuals at
21 the point when they work more than one hundred sixty (160) hours during the calendar year.
22 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
23 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures.

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

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

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

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 federal
9 and state funded health care services by contract with COUNTY in the event that they are currently
10 sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If
11 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 screened.
16 Such individual or entity shall be immediately removed from participating in any activity associated
17 with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to
18 CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall
19 promptly return any overpayments within forty-five (45) business days after the overpayment is verified
20 by the 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 days
27 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 D. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

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

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

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

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

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

9
10 **IV. CONFIDENTIALITY**

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

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

21
22 **V. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

36 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
37 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of

1 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
2 change in fifty percent (50%) or more of Board of Directors of CONTRACTOR at one time shall be
3 deemed an assignment pursuant to this paragraph. Any attempted assignment or delegation in
4 derogation of this Subparagraph shall be void.

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

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

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

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

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

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

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

30 **VI. EMPLOYEE ELIGIBILITY VERIFICATION**

31 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations
32 regarding the employment of aliens and others and to ensure that employees, subcontractors, and
33 consultants performing work under this Agreement meet the citizenship or alien status requirement set
34 forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
35 subcontractors, and consultants performing work hereunder, all verification and other documentation of
36 employment eligibility status required by federal or state statutes and regulations including, but not
37 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently

1 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
2 covered employees, subcontractors, and consultants for the period prescribed by the law.

3 4 **VII. EXPENDITURE AND REVENUE REPORT**

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

9 B. CONTRACTOR may be required to submit periodic Expenditure Reports throughout the term
10 of this Agreement.

11 12 **VIII. FACILITIES, PAYMENTS AND SERVICES**

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

18 19 **IX. INDEMNIFICATION AND INSURANCE**

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

30 B. COUNTY agrees to indemnify, defend and hold CONTRACTOR, its officers, employees,
31 agents, directors, members, shareholders and/or affiliates harmless from any claims, demands, including
32 defense costs, or liability of any kind or nature, including but not limited to personal injury or property
33 damage, arising from or related to the services, products or other performance provided by COUNTY
34 pursuant to this Agreement. If judgment is entered against COUNTY and CONTRACTOR by a court of
35 competent jurisdiction because of the concurrent active negligence of CONTRACTOR, COUNTY and
36 CONTRACTOR agree that liability will be apportioned as determined by the court. Neither party shall
37 request a jury apportionment.

1 C. Each party agrees to provide the indemnifying party with written notification of any claim
 2 related to services provided by either party pursuant to this Agreement within thirty (30) calendar days
 3 of notice thereof, and in the event the indemnifying party is subsequently named party to the litigation,
 4 each party shall cooperate with the indemnifying party in its defense.

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

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

16 F. If CONTRATOR fails to maintain insurance acceptable to COUNTY for the full term of this
 17 Agreement, COUNTY may terminate this Agreement.

18 G. QUALIFIED INSURER

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

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

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

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

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1	Workers' Compensation	Statutory
2		
3	Employers' Liability Insurance	\$1,000,000 per occurrence
4		
5	Professional Liability Insurance	\$3,000,000 per claims made
6		or per occurrence
7		
8		
9	Sexual Misconduct Liability	\$1,000,000 per occurrence
10		

11 I. REQUIRED COVERAGE FORMS

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

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

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

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

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

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

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

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

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

35 O. The Commercial General Liability policy shall contain a severability of interests clause also
 36 known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).
 37

1 P. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
2 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
3 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately
4 protect COUNTY.

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

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

13 S. SUBMISSION OF INSURANCE DOCUMENTS

14 1. The COI and endorsements shall be provided to COUNTY as follows:
15 a. Prior to the start date of this Agreement.
16 b. No later than the expiration date for each policy.
17 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
18 changes to any of the insurance types as set forth in Subparagraph F. of this Agreement.

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

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

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

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

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

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

37 //

1 T. The procuring of such required policy or policies of insurance shall not be construed to limit
2 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
3 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.
4

5 **X. INSPECTIONS AND AUDITS**

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

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

20 C. AUDIT RESPONSE

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

26 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
27 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
28 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
29 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
30 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
31 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
32 reimbursement due COUNTY.

33 D. CONTRACTOR may employ a licensed certified public accountant, who may prepare and file
34 with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures
35 during the term of this Agreement.

36 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within
37 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,

1 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the
2 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

3
4 **XI. LICENSES AND LAWS**

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

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

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

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

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

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

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

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

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

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

36 D. CONTRACTOR attests that all CONTRACTOR physicians providing services under this
37 Agreement are and will continue to be as long as this Agreement remains in effect, the holders of

1 currently valid licenses to practice medicine in the State of California and are members in good standing
2 of the medical staff of CONTRACTOR's facility.

3
4 **XII. MAXIMUM OBLIGATION**

5 The Maximum Obligation of COUNTY for services provided in accordance with this Agreement as
6 specified in the Referenced Contract Provisions of this Agreement.

7
8 **XIII. NONDISCRIMINATION**

9 **A. EMPLOYMENT**

10 1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not
11 unlawfully discriminate against any employee or applicant for employment because of his/her ethnic
12 group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age (40 and
13 over), sexual orientation, medical condition, or physical or mental disability. Additionally, during the
14 term of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts
15 that subcontractors shall not unlawfully discriminate against any employee or applicant for employment
16 because of his/her ethnic group identification, race, religion, ancestry, color, creed, sex, marital status,
17 national origin, age (40 and over), sexual orientation, medical condition, or physical or mental disability.

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

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

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

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

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

1 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
 2 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
 3 on the basis of ethnic group identification, race, religion, ancestry, color, creed, sex, marital status,
 4 national origin, age (40 and over), sexual orientation, medical condition, or physical or mental disability
 5 in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 -
 6 §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975
 7 (42 USC §6101); and Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of
 8 Regulations,) as applicable, and all other pertinent rules and regulations promulgated pursuant thereto,
 9 and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or
 10 changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not
 11 limited to the following based on one or more of the factors identified above:

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

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

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

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

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

37 //

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

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

9
10 **XIV. NOTICES**

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

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

16 2. When faxed, transmission confirmed;

17 3. When sent by Email; or

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

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

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

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

30
31 **XV. NOTIFICATION OF DEATH**

32 A. Upon becoming aware of the death of any person served pursuant to this Agreement,
33 CONTRACTOR shall immediately notify ADMINISTRATOR.

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

37 //

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

6 2. WRITTEN NOTIFICATION

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

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

14 C. If there are any questions regarding the cause of death of any person served pursuant to this
15 Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related
16 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
17 Notification of Death Paragraph.

18
19 **XVI. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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

4
5 **XVII. RESEARCH AND PUBLICATION**

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

8
9 **XVIII. RIGHT TO WORK AND MINIMUM WAGE LAWS**

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

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

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

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

30
31 **XIX. SEVERABILITY**

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

37 //

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.
- 5. Reimbursement of CONTRACTOR’s members of the Board of Directors for expenses or services.
- 6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors 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 and terminate as specified in the Referenced
9 Contract Provisions of this Agreement, unless otherwise sooner terminated as provided in this
10 Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would
11 normally extend beyond this term, including but not limited to, obligations with respect to
12 confidentiality, indemnification, audits, reporting and accounting.

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

15
16 **XXIII. TERMINATION**

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

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

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

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

37 //

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
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 with
31 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 including,
8 but not limited to, any subcontractors or any clients provided services pursuant to this Agreement.
9

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

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

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

3
4 CORRECTIONAL MANAGED CARE MEDICAL CORPORATION

5
6
7 BY: _____ DATED: _____

8
9 TITLE: _____

10
11 BY: _____ DATED: _____

12
13 TITLE: _____

14
15
16
17 COUNTY OF ORANGE

18
19
20 BY: _____ DATED: _____

21 HEALTH CARE AGENCY

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

27
28 BY: _____ DATED: _____

29 DEPUTY

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

1 EXHIBIT A
2 TO AGREEMENT FOR PROVISION OF
3 PHYSICIAN SERVICES
4 FOR
5 CORECTIONAL HEALTH SERVICES PROGRAMS
6 JULY 1, 2013 THROUGH JUNE 30, ~~2014~~2015

8 **I. DEFINITIONS**

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

11 A. "Ancillary Services" means those support services other than room, board, and medical and
12 nursing services that are provided by CONTRACTOR to Custody Patients during the course of their
13 care and include such services as laboratory, pharmacy, and physical therapy services. They are
14 generally distinguished from a Clinic Service by the absence of a corresponding Physician or Specialty
15 Physician Service.

16 B. "CHS Pool" means funding, in addition to the Maximum Obligations as set forth in the
17 Referenced Contract Provisions of this Agreement, for services provided in accordance with Paragraph
18 IV of this Exhibit A to Agreement which shall be made available to CONTRACTOR by submitting
19 claims to the Intermediary in accordance with Paragraph II of Exhibit A to this Agreement.

20 C. "Clinic Services" means ambulatory care provided on an outpatient basis to Custody Patients
21 for diagnosis or treatment, usually by a specialty physician.

22 D. "CMS" means the Health Care Agency's Correctional Medical Services Program.

23 E. "CMH" means the Health Care Agency's Correctional Mental Health Program.

24 F. "CMS Medical Director" means the Health Care Agency's Correctional Medical Services
25 Medical Director.

26 G. "Contracting Hospital" means a hospital that has executed a Hospital Services for the
27 Correctional Health Services Programs Agreement with COUNTY, which hospital, at the execution of
28 the Agreement, is Western Medical Center – Anaheim.

29 H. "Contract Officers" means ADMINISTRATOR's and CONTRACTOR's designees, who shall
30 administer the Agreement for the respective parties.

31 I. "Correctional Health Services" or "CHS" means the Health Care Agency's Correctional Health
32 Services which is the division which encompasses and oversees the CMS, CMH and JHS Programs.

33 J. "County Health Care Professional" means physicians, nurses, health officers or other persons or
34 classes of persons designated by ADMINISTRATOR to perform the treatment authorization functions
35 specified in the Agreement.

36 K. "Custody Patient" means any of the following:
37 //

1 1. An Orange County Jail inmate referred to CONTRACTOR for treatment by any CHS
2 Program or Deputy.

3 2. A person brought to HOSPITAL for treatment by a Deputy who has already been booked
4 into the Orange County Jail.

5 3. A person brought to HOSPITAL's emergency department by a Deputy for medical
6 clearance prior to booking after being deferred from the COUNTY's Intake and Release Center.

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

10 5. Any requirement by the Agreement for the provision of services to Custody Patients shall
11 also be deemed to be a requirement to provide services to infants, only until discharge, born to any
12 person identified in Subparagraphs 1. through 4. above. Such infants shall be designated as "Newborns"
13 for the purposes of the Agreement.

14 6. Custody Patients shall exclude those held solely pursuant to Section 5150 of the Welfare
15 and Institutions Code.

16 7. It is understood by the parties that Custody Patients excludes those persons, who, at the
17 time of service, are housed or subsequently booked into a city jail.

18 L. "Deputy" means a sworn officer of the Orange County Sheriff's Department.

19 M. "Emergency" means the sudden and unexpected onset of a symptom, illness, or injury which, in
20 the judgment of a physician, requires immediate diagnosis and/or treatment in order to alleviate or
21 attempt to prevent severe pain, permanent disability, serious medical complications or loss of life.

22 N. "Fiscal Intermediary" or "Intermediary" means an independent company that has a contract with
23 COUNTY to maintain a custody database of all services provided to Custody Patients and to receive and
24 adjudicate claims submitted by CONTRACTOR or other third party Medical Services providers on
25 behalf of the COUNTY, which at the execution of the Agreement is Advanced Medical Management,
26 Inc.

27 O. "Fiscal Year" means the period from July 1 through the following June 30.

28 P. "Hospital Services" means all means all Medical Services provided by Contracting Hospital
29 excluding Physician Services.

30 Q. "Inpatient" means a Custody Patient admitted to Contracting Hospital for the purpose of
31 receiving Medical Services, with the expectation of remaining hospitalized at least overnight.

32 R. "JHS" means the Health Care Agency's Juvenile Health Services Program.

33 S. "Medi-Cal Program" means that program of medical assistance established by the Medi-Cal Act
34 as contained in Chapter 7, Part 3, Division 9 of the Welfare and Institutions Code (commencing with
35 Section 14000) including applicable regulations promulgated under and pursuant to said law, as now in
36 existence or as hereafter amended or changed.

37 //

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

6 U. “Outpatient Services” means any Clinic Services or Ancillary Services provided to Custody
7 Patients which do not require an admission into HOSPITAL’s facility.

8 V. “Pharmacy Services” means the dispensing by CONTRACTOR and/or HOSPITAL staff of any
9 medications prescribed by persons providing Medical Services at HOSPITAL’s facility.

10 W. “Physician Services” means all Medical Services provided by CONTRACTOR to Custody
11 Patients within the Contracting Hospital, and other facilities as specified herein, including those
12 Physician Services provided by Contracting Hospital’s “hospital-based” physicians.

13 X. “Physician Services – Jail” means those services provided by physicians and specialty
14 physicians, through a separate Agreement with COUNTY, to Custody Patients within the COUNTY’s
15 jail facilities, which at the execution of the Agreement shall be provided by American Correctional
16 Services.

17 Y. “TAR” means Treatment Authorization Request.

18 Z. “Unit” means a secure separate patient care area, which is dedicated for the treatment of Type II
19 Maximum Security Outpatient and Inpatient Custody Patients referred by COUNTY.

20 AA. “Vendor” means a provider of services which are outside of CONTRACTOR’s normal scope of
21 services offered in accordance with Paragraph III of this Exhibit A to the Agreement, but are deemed
22 medically necessary for a Custody Patient.

23
24 **II. PAYMENTS AND BILLINGS**

25 A. As compensation for Medical Services provided in accordance with Paragraph III of this
26 Exhibit A to the Agreement, COUNTY shall reimburse CONTRACTOR \$227,795 per month, in
27 arrears; provided, however, that the total of all such monthly payments shall not exceed the COUNTY’s
28 Total Maximum Obligation, as specified in the Referenced Contract Provision section of the Agreement.

29 1. The monthly payment shall be calculated as one-twelfth (1/12th) of the maximum
30 obligation adjusted in accordance with Paragraph XI.A.3 of the Agreement.

31 2. The Maximum Obligation, as specified in the Referenced Contract Provisions section of the
32 Agreement, is calculated as follows, which calculations may be modified by mutual written agreement
33 between CONTRACTOR and ADMINISTRATOR in accordance with Paragraph A.4. below:

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

1	a. Management Fees	\$ 688,988
2	Medical Director Fees	36,000
3	Negotiated Amount Services (H-OP Clinic)	1,492,000
4	Emergency Services	<u>160,000</u>
5	Subtotal:	\$ 2,376,988
6	Profit – limited to 15%	<u>356,552</u>
7	Total:	\$ 2,733,540

8
9 b. The Negotiated Amount Services were calculated based on the following specialties
10 and negotiated amounts, which amounts may be modified by mutual written agreement between
11 CONTRACTOR and ADMINISTRATOR in accordance with Paragraph A.4. below:

<u>Specialty</u>	<u>Negotiated Amounts</u>
13 Anesthesiology	\$86,000
14 Cardiology	\$48,000
15 Dermatology	\$24,000
16 Endocrinology	\$20,000
17 ENT	\$48,000
18 Gastroenterology	\$45,000
19 General Surgery	\$160,000
20 Hematology/Oncology	\$40,000
21 Infectious Disease	\$24,000
22 Internal Medicine	\$260,000
23 Nephrology	\$30,000
24 Neurology	\$25,000
25 Obstetrics / Gyn	\$75,000
26 Ophthalmology	\$60,000
27 Oral Surgery	\$38,000
28 Orthopedics	\$225,000
29 Pathology	\$20,000
30 Podiatry	\$15,000
31 Psychiatry	\$50,000
32 Pulmonology	\$48,000
33 Radiology	\$115,000
34 Urology	<u>\$36,000</u>
35 Sub Total	\$1,492,000
36 Less Risk Pool	<u>(\$75,000)</u>
37 TOTAL FLAT RATE	\$1,417,000

1 3. The amount specified for Emergency Services may be adjusted based on actual utilization
2 of these services. If the identified funds for Emergency Services are not used in their entirety, the
3 difference between the actual amount utilized and the specified amount shall be returned to COUNTY or
4 Intermediary, as may be directed by ADMINISTRATOR. If actual cost of Emergency Services exceed
5 amount of the identified funds for Emergency Services, ADMINISTRATOR shall authorize additional
6 funding from the CHS Pool for said Emergency Services only.

7 4. The amounts specified for each specialty above may be adjusted through one or more of the
8 following actions provided, however, that any adjustments to Subparagraph A.3.a do not exceed the
9 COUNTY's Total Maximum Obligation, as specified in the Referenced Contract Provisions section of
10 the Agreement.

11 a. CONTRACTOR and ADMINISTRATOR shall review on or about December 1 and
12 May 1, the actual utilization of specialty services provided above, for both Inpatient and Outpatient
13 Services. The amounts specified for each specialty in Subparagraph A.3.b above shall be adjusted to
14 reflect the actual trends and utilization associated with each specialty. Each adjustment shall not be
15 retroactive.

16 b. At ADMINISTRATOR's sole discretion, Outpatient Services as specified in Paragraph
17 III.C.3 below may be provided within COUNTY's jail facilities by its Physician Services-In Jail
18 provider or CONTRACTOR.

19 c. Evaluate the frequency of requests for specialty Outpatient Services specified in
20 Subparagraph B.1 below. If CONTRACTOR and ADMINISTRATOR mutually agree that any of these
21 services are being provided at a frequency that justifies regular availability of these specialties,
22 CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to transfer specialty
23 categories from Subparagraph A.3.c to Subparagraph B.1 and/or from Subparagraph B.1 to
24 Subparagraph A.3.c if Custody Patient trends indicate.

25 5. Risk Retention Pool - Both parties acknowledge that in consideration of unanticipated
26 expenses or increased utilization of services under the negotiated amount now and in the future,
27 CONTRACTOR shall establish a Risk Retention Pool (Pool) to help mitigate such costs.

28 a. The Pool shall be equal to an annual amount not to exceed seventy-five thousand
29 dollars (\$75,000) for the term of the Agreement, and shall be funded on a monthly basis from the
30 amount indicated in sub-paragraph A of this Section II above.

31 b. CONTRACTOR and ADMINITRATOR shall reconcile the Pool on an annual basis. It
32 is agreed to by both parties that funds in this Pool shall be excluded from the annual reconciliation
33 process to determine the actual percentage of profit achieved by CONTRACTOR.

34 c. CONTRACTOR agrees that should the Pool be caused to be one hundred percent
35 (100%) depleted, all additional costs associated with said cause shall be the sole responsibility of
36 CONTRACTOR and COUNTY shall have no obligation to advance funds or replenish the Pool until
37 such as time as required by the Agreement.

d. Should the Pool have funds remaining at the conclusion of the Agreement, and after a final reconciliation has been completed and agreed upon by both parties, the remaining funds shall be split between the COUNTY and CONTRACTOR on a seventy percent (70%) to CONTRACTOR and thirty percent (30%) to COUNTY. Any identified funds due COUNTY shall be returned to COUNTY by CONTRACTOR within thirty (30) days of final reconciliation unless otherwise directed by ADMINISTRATOR.

B. As compensation for Medical Services provided in accordance with Paragraph IV of this Exhibit A to the Agreement, reimbursement shall be from the CHS Pool through claims submitted to the Intermediary.

1. For the Specialty Physician Services specified below, the rates specified are the maximum allowable rates based on the Area 26 Medicare Resource Based Relative Value Scale (RBRVS), unless otherwise approved in advance and in writing by ADMINISTRATOR:

<u>Service</u>	<u>Maximum Rate</u>
Cardiothoracic Surgery	120%
Neurosurgery	120%
Ophthalmology Retinal	160%
Plastic Surgery	Pass Through
Pediatrics	125%
Vascular Surgery	120%

2. For Other Vendor Services secured by CONTRACTOR on behalf of Custody Patients, including specialties not specified above, pediatric specialties as appropriate, and Physician Services provided at other hospitals as requested and approved by ADMINISTRATOR, CONTRACTOR shall make every effort to assist ADMINISTRATOR and Contracting Hospital in securing the required services. Rates for these Other Vendor Services shall be negotiated by CONTRACTOR, which rates shall be approved, in writing, by ADMINISTRATOR.

3. CONTRACTOR shall make every effort to negotiate reasonable reimbursement rates with all Vendors.

4. CONTRACTOR shall submit to ADMINISTRATOR for approval by July 1, an updated listing and proposed rate schedule for the above identified Other Vendor Services. CONTRACTOR shall provide an update of this schedule to ADMINISTRATOR each time an established Vendor rate for a service is due for review/negotiation.

C. ADMINISTRATOR and CONTRACTOR shall agree on one of following reimbursement processes for Other Vendor Services specified on CONTRACTOR's schedule in Subparagraph C.1 above. For Vendor Services not on CONTRACTOR's schedule, CONTRACTOR shall propose the reimbursement process at the same time the negotiated rate(s) with Vendor is submitted to

1 ADMINISTRATOR for approval. At ADMINISTRATOR's sole discretion, any designated
2 reimbursement process may be modified upon written notification to CONTRACTOR and Vendor.

3 1. CONTRACTOR may request Vendors submit invoices directly to the Fiscal Intermediary
4 for processing and payment.

5 2. CONTRACTOR may reimburse Vendor directly and submit an invoice to the Fiscal
6 Intermediary to recover payment equal to Vendor's invoiced cost.

7 3. At ADMINISTRATOR's sole discretion, ADMINISTRATOR may direct the Fiscal
8 Intermediary to advance an initial amount, as determined by ADMINISTRATOR, to CONTRACTOR
9 for the purpose of reimbursing Vendors. This advance shall be referred to as the "Reimbursement
10 Account" and CONTRACTOR shall maintain an accounting of Vendors paid with these funds in
11 accordance with the Report Paragraph of this Exhibit A to the Agreement and shall submit said
12 accounting to ADMINISTRATOR and Fiscal Intermediary with any request for additional funds to
13 replenish the Reimbursement Account.

14 a. CONTRACTOR shall submit a monthly reconciliation of the Reimbursement Account
15 to Administrator. CONTRACTOR shall require it Vendors to submit claims to CONTRACTOR within
16 ninety (90) days, or less, of the date services were provided. If CONTRACTOR'S Vendors do not
17 submit or correct claims information as required by the Agreement, the costs of Vendor's services shall
18 not be claimable by CONTRACTOR and which shall be reflected in the monthly reconciliation.

19 b. No later than May 15th, CONTRACTOR and ADMINISTRATOR shall agree on the
20 amount required to reimburse claims received by CONTRACTOR from Vendors through September 30.
21 If additional funds are needed, CONTRACTOR may submit an invoice to Intermediary.

22 c. After September 30, any funds remaining in the Reimbursement Account shall be
23 either: paid to COUNTY, paid to Intermediary, deposited into the Reimbursement Account, or applied
24 by COUNTY as payment on any obligation by COUNTY to CONTRACTOR.

25 D. For reimbursement of services provided in accordance with Paragraph III of this Exhibit A to
26 the Agreement, CONTRACTOR shall submit its invoices to ADMINISTRATOR. CONTRACTOR's
27 invoice shall be on a form approved or supplied by ADMINISTRATOR and provide such information as
28 is required by ADMINISTRATOR. Invoices received after the due date may not be paid within the
29 same month. Payments to CONTRACTOR should be released by COUNTY no later than twenty one
30 (21) days after receipt of the correctly completed invoice form.

31 E. For reimbursement of services provided in accordance with Paragraph IV of this Exhibit A to
32 the Agreement, CONTRACTOR and/or Vendor invoices shall be submitted to Intermediary no later than
33 ninety (90) days following the date of service and shall provide such information as is required by
34 ADMINISTRATOR.

35 F. THIRD-PARTY REVENUE – As of the execution of the Agreement, the parties understand
36 there is pending federal legislation which would provide for the ability for CONTRACTOR to bill
37 //

1 Medi-Cal and/or Medicare for services provided to Custody Patients in accordance with the Agreement.

2 If this legislation is enacted, upon the effective date:

3 1. ADMINISTRATOR shall make every reasonable effort to provide CONTRACTOR the
4 Custody Patient information necessary to bill such third parties.

5 2. CONTRACTOR shall make every reasonable effort to obtain all available third-party
6 reimbursement for which persons served hereunder may be eligible. Charges to insurance carriers shall
7 be on the basis of CONTRACTOR's usual and customary charges.

8 3. For services provided in accordance with Paragraph III, ADMINISTRATOR shall deduct
9 from CONTRACTOR's invoice, amounts equal to the revenue collected as reported in Subparagraph 5
10 below.

11 4. For services provided in accordance with Paragraph IV of this Exhibit A to the Agreement,
12 CONTRACTOR shall also advise its Vendors of any and all third-party funding available for any
13 Custody Patient and shall require its Vendors to bill for such reimbursement prior to seeking
14 reimbursement from CONTRACTOR and/or COUNTY. If third-party funding is available for a
15 Custody Patient, COUNTY shall instruct Intermediary to only reimburse CONTRACTOR and/or
16 Vendor for those claims for services to said Custody Patients if CONTRACTOR and/or Vendor have
17 received a denial of payment from the third-party payor.

18 5. CONTRACTOR shall maintain internal financial controls which adequately ensure proper
19 billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the
20 identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall
21 provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are
22 billed, collected, transferred to a collection agency or deemed by CONTRACTOR to be uncollectible.

23 G. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
24 with any provision of the Agreement.

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

28
29 **III. PHYSICIAN SERVICES**

30 A. Unless otherwise specified herein, the cost of all Physician Services provided in accordance
31 with this Paragraph III shall be deemed included in COUNTY's Maximum Obligation to
32 CONTRACTOR.

33 B. COUNTY's Agreement with Contracting Hospital for provision of the Unit. The capacity of
34 the Unit is as follows:

35 1. Licensed acute hospital Inpatient Services for up to eleven (11) Custody Patients in four (4)
36 rooms, and

37 //

1 2. Licensed Outpatient examination and treatment services in two (2) other rooms, and which
2 shall be capable of being used as an isolation room for one (1) Custody Patient who requires Inpatient
3 Services.

4 C. CONTRACTOR shall provide all authorized Physician Services required by Custody Patients at
5 Contracting Hospital who are both on and off the Unit. Services to Custody Patients shall be available
6 and provided in the same manner as to CONTRACTOR's other patients. Physician Services to be
7 provided by CONTRACTOR shall include, but not be limited to the following:

8 1. Inpatient Services – On the Unit

9 a. The level of Inpatient Services that shall be provided on the Unit includes, but is not
10 limited to Inpatient Non-Critical Care, Obstetric, I.V., and Rehabilitation Services.

11 b. The parties agree that Contracting Hospital is modifying the Unit to accommodate
12 Telemetry Services for up to four (4) Custody Patients.

13 c. CONTRACTOR shall accept transfers of Custody Patients who have been hospitalized
14 at another facility for emergency purposes when the medical condition of the patient allows for transfer
15 to Contracting Hospital.

16 d. Custody Patients may be admitted to the Unit directly from Contracting Hospital's
17 emergency department.

18 e. If a person brought into Contracting Hospital's emergency department is admitted and
19 then becomes a Custody Patient after the admission, Contracting Hospital shall transfer such persons to
20 the Unit as soon as medically appropriate and CONTRACTOR shall coordinate the transfer of care from
21 the treating physician to CONTRACTOR, if appropriate.

22 f. Unit Census - The parties agree than at any time should the census on the Unit reach
23 eight (8) or more Custody Patients, Utilization Review (UR) personnel for both COUNTY and
24 Contracting Hospital shall evaluate each Custody Patient's medical necessity to remain on the Unit
25 based on InterQual acute care criteria, and determine of any patient(s) no longer meet said requirements
26 for acute care level services. CONTRACTOR shall use its best efforts to assist COUNTY in
27 discharging any patient(s) from within the Unit to a lower level of based on the availability of such
28 services either within the Jail system or at another facility providing the required service(s).

29 2. Off Unit Inpatient Services – COUNTY will make every effort to ensure that Custody
30 Patients requiring Physician Services as specified herein remain on the Unit. However, the parties agree
31 that certain services may be medically necessary to provide in other areas of the Contracting Hospital
32 (Off Unit) either due to the Custody Patient's medical condition, or due to the census and/or census mix
33 on the Unit. CONTRACTOR shall provide all Off Unit Physician Services, including, but not limited
34 to, the following:

35 a. Any Custody Patient that should be otherwise be on the Unit, but are Off Unit due to
36 census count and/or census mix.

37 //

1) These services shall include accepted transfers of Custody Patients who have been hospitalized at another facility for emergency purposes when the medical condition of the patient allows for transfer to the Contracting Hospital.

2) Persons admitted Off Unit through the emergency department who become Custody Patients following their admission.

3) Custody Patients requiring admission to another area of Contracting Hospital after surgery, such as the Intensive Care Unit.

b. The parties agree the following Inpatient Services cannot be accommodated on the Unit due to level of medical care required:

1) Inpatient Newborn - Any requirement of this Agreement for the provision of Physician services to Custody Patients shall also be deemed to be a requirement to provide services to any infants, born to any Custody Patient, only until discharge of said infant. CONTRACTOR shall bill appropriate third-party payors for these Bed Days, therefore, COUNTY shall not provide reimbursement for Inpatient Newborn Bed Days.

2) DOU/Telemetry, pending completion of the Contracting Hospital's modifications to accommodate Custody Patients on the Unit.

3) ICU/CCU and Post Partum Obstetrics

4) 23 Hour Stay in the emergency department

3. Outpatient Services – On the Unit

a. CONTRACTOR shall provide the following Outpatient clinics, with specialty Physicians, within the Contracting Hospital. "PRN" means the clinic should be provided within seventy-two (72) hours of request by COUNTY, unless precluded by Sheriff's transportation issues. In accordance with Subparagraph II.A.4, such clinics may be provided in COUNTY's jail facilities at sole discretion of ADMINISTRATOR.

CLINIC

Orthopedics	2 times per week
Plastic Surgery	PRN
Neurology	2 times per month
General Surgery	2 times per month
ENT	1 time per week
Oral Surgery	2 times per month
Internal Medicine	PRN
Pulmonary Medicine	PRN
Cardiology	PRN
Obstetrics/Gynecology	PRN
Ophthalmology	1 time per month

1	Dermatology	PRN
2	Nephrology	PRN
3	Urology	PRN
4	Endocrinology	PRN

5
6 b. ADMINISTRATOR and CONTRACTOR may mutually agree, in writing, to adjust the
7 number of clinics to be provided per week or per month based on patient utilization trends to more
8 effectively and efficiently utilize CONTRACTOR's physicians, Contracting Hospital's facility and
9 Contracting Hospital's services.

10 c. CONTRACTOR acknowledges the transportation and security challenges associated
11 with scheduling Custody Patients for Outpatient Services. CONTRACTOR shall require its physicians
12 to make every effort to accommodate COUNTY's request for clinic times.

13 1) CONTRACTOR shall require its physicians to arrive at scheduled Clinic times. If
14 Custody Patients have not appeared for the Outpatient Visit, CONTRACTOR's physicians shall
15 coordinate with either Contracting Hospital's or ADMINISTRATOR's Utilization Review Nurse as to
16 status of the Custody Patients. For Custody Patients that are expected to arrive within thirty (30)
17 minutes, CONTRACTOR's physicians shall be required to wait until they arrive to provide the
18 requested care.

19 2) If Custody Patients have been scheduled for Outpatient Services and are transported
20 to Contracting Hospital, and CONTRACTOR's physician either does not arrive or leaves prior to
21 waiting thirty (30) minutes for Custody Patients to arrive, ADMINISTRATOR shall deduct \$125 per
22 patient requiring a rescheduled Outpatient Visit as a result of CONTRACTOR's physician failure to
23 provide services.

24 d. CONTRACTOR shall receive prior written approval before providing any non-
25 emergency elective medical procedures to Custody Patients referred by COUNTY, unless explicitly
26 authorized by the CMS Medical Director or designee, which authorization shall be followed with
27 appropriate documentation. CONTRACTOR, Contracting Hospital and the CMS Medical Director shall
28 maintain written protocols for the provision of outpatient medical procedures.

29 4. Other Off Unit Outpatient Services - CONTRACTOR shall provide the Physician Services
30 related to the following Off Unit Outpatient Services to Custody Patients:

31 a. Emergency Department Services provided at the Contracting Hospital, including all
32 Physician Services provided by the physician on duty in the emergency room and any consulting
33 Physician Services.

34 b. Pre-Booking Medical Clearance Visits including all Physician Services provided by the
35 physician on duty in the emergency room and any consulting Physician Services; provided, however,
36 that these services are limited to only those patients presenting in Contracting Hospital's emergency
37 department meeting all of the following criteria:

- 1) Accompanied by a Deputy; and
 - 2) Taken first to the COUNTY's Intake and Release Center and required by ADMINISTRATOR's staff to seek medical clearance before booking; and
 - 3) Are subsequently booked into the Orange County Jail System.
- c. Radiology Visit Services the physician component, performed in the HOSPITAL
 - d. ED/Radiology Visit Services including services stipulated for Emergency Room Visits and Radiology Visits, which may be provided during an Emergency Room
 - e. Outpatient Surgery

D. County Health Care Professionals may contact CONTRACTOR's Physicians by telephone for the purposes of consultation and case coordination.

E. CONTRACTOR shall ensure that its physicians obtain staffing privileges at Contracting Hospital and maintain such privileges in accordance with Subparagraph IX.C. of this Agreement.

F. CONTRACTOR shall recruit, screen, qualify, orient, provide, manage, compensate, and evaluate all physicians required to provide any Physician Services which may be requested and authorized pursuant to the Agreement.

1. CONTRACTOR's physicians or designees shall write legibly in Custody Patient charts and input information as may be requested by ADMINISTRATOR into the CMS automated medical record system. The completed input form shall be reviewed and approved by CONTRACTOR's physician, and a copy shall accompany the Custody Patient back to the Jail. It is understood by both parties that said recommendations shall not be implemented or relied upon until and unless approved by the CMS Medical Director or designee.

2. CONTRACTOR's physicians shall discharge patients on a timely basis, avoiding unnecessary late night, weekend and holiday discharges.

3. CONTRACTOR shall provide COUNTY with the name, specialty, board status, professional license number, DEA number, and office phone number of each physician providing services hereunder. In addition, upon three (3) working days notice, CONTRACTOR shall make available for review, each physician's application to CONTRACTOR, the physician's contract, inclusive of reimbursement terms, professional license, medical malpractice coverage, and DEA certificate.

G. CONTRACTOR shall coordinate with the HOSPITAL to provide those medical reports required by COUNTY for Custody Patients provided services pursuant to the Agreement. At a minimum, CONTRACTOR shall provide a physician's discharge summary for all Outpatient and Inpatient services provided hereunder. The summary shall include, but not be limited to, the patient complaint(s), diagnosis, basis for and nature of treatment provided, physician orders, patient condition on discharge, and recommended follow-up treatment. The summary shall be submitted to the CMS Medical Director the same day as the date of discharge.

1. Upon request by a County Health Care Professional or the Contract Officer, CONTRACTOR shall report the status of the condition of any Inpatient.

1 2. For Custody Patients, as defined in Subparagraph I.H.4. to this Exhibit A to the Agreement,
2 CONTRACTOR shall coordinate with Contracting Hospital provide such medical reports to the
3 COUNTY staff who have accompanied the Custody Patient to Contracting Hospital, immediately after
4 services are rendered, and prior to the Custody Patient returning to COUNTY's juvenile detention
5 facility or CONTRACTOR shall fax said medical reports to the designated County Health Care
6 Professional as soon as it is available.

7 H. CONTRACTOR shall designate a person or persons to coordinate all services related to the
8 Agreement with COUNTY staff.

9 I. Contracting Hospital shall provide staff located within the Unit whose duties include, but are
10 not limited to, the following:

11 1. Custody Patient appointment and admission scheduling and cancellations.

12 2. Receiving and routing of treatment authorizations. As of the execution of the Agreement,
13 Treatment Authorizations are currently provided in a manual paper format. CONTRACTOR agrees to
14 collaborate with ADMINISTRATOR in the implementation of an electronic Treatment Authorization
15 system for better coordination and monitoring of service utilization. CONTRACTOR also agrees to
16 collaborate with ADMINISTRATOR to streamline and automate any and all processes as they related to
17 scheduling Custody Patients for services at Contracting Hospital or elsewhere as appropriate.

18 3. Establishing, providing, inputting, and maintaining medical records, including components
19 in the CMS automated medical record as may be required by ADMINISTRATOR; provided, however,
20 that Contracting Hospital shall not be obligated by this Agreement to input Physician Service data
21 requested or required by ADMINISTRATOR, including discharge planning, into the CMS Automated
22 Records. ADMINISTRATOR may provide appropriate access to CONTRACTOR's physicians and/or
23 CONTRACTOR's designee for the purpose of entering such data.

24 4. Receiving and forwarding telephonic, computerized, and written communications between
25 hospital and CONTRACTOR staff, and COUNTY personnel, including ADMINISTRATOR's on-site
26 Utilization Review Nurse, Deputies, and ADMINISTRATOR's other off-site medical and administrative
27 staff.

28 5. Providing clinical and clerical support for CONTRACTOR's physicians performing
29 outpatient treatment and examinations during scheduled outpatient clinic hours. A registration clerk
30 shall be assigned to the Unit during the hours that Clinics are operating.

31 6. Requesting tests and procedures ordered by CONTRACTOR's physicians, and routing of
32 test results to appropriate medical staff.

33
34 **IV. OTHER VENDOR SERVICES**

35 A. Unless otherwise specified herein, the cost of all following Physician Services provided in
36 accordance with this Paragraph IV shall not be deemed to be included in COUNTY's Maximum
37 //

1 Obligation to CONTRACTOR and shall be reimbursed on a per services basis in accordance with
2 Subparagraph II.B. of this Exhibit A to the Agreement.

3 B. CONTRACTOR acknowledges that some Custody Patients admitted to the Unit may also have a
4 concurrent mental illness. ADMINISTRATOR expects that necessary psychiatric care shall be provided by the
5 CMH Medical Director or designee. CONTRACTOR shall only be responsible for the medical services
6 required or requested for the Custody Patient unless specifically requested and authorized by
7 ADMINISTRATOR to also provide psychiatric services. COUNTY shall reimburse CONTRACTOR or
8 CONTRACTOR's Vendor for Psychiatric services in accordance with Subparagraph II.E. of the Exhibit A to the
9 Agreement.

10 C. Specialty Physician Services as specified in Paragraph II.B.1, as it may be modified by mutual
11 written agreement between CONTRACTOR and ADMINISTRATOR.

12 D. All Physician Services provided to Custody Patients at Western Medical Center- Santa Ana,
13 including Emergency Department Services; provided, however, that this shall not apply to any pre-
14 booking medical clearance visits presenting in the emergency department of Western Medical Center –
15 Santa Ana.

16 E. Other Vendor Services

17 1. It is expected that most Physician Services required by Custody Patients shall be provided directly
18 by CONTRACTOR. In the event that CONTRACTOR is unable to provide a requested specialty service,
19 CONTRACTOR shall arrange for Physician Services to be provided by appropriate Vendors, with
20 ADMINISTRATOR's prior approval. COUNTY shall reimburse the Vendors in accordance with
21 Subparagraph II.C of this Exhibit A to the Agreement.

22 2. It is expected by the parties that most Physician Services required by Custody Patients, as
23 defined in Subparagraph I.H.4 of this Exhibit A to the Agreement, will not require a pediatric specialty.
24 In the event CONTRACTOR is unable to provide a requested specialty pediatric service,
25 CONTRACTOR shall arrange for Physician Services to be provided by appropriate Vendors, with
26 ADMINISTRATOR's prior approval. COUNTY shall reimburse the Vendors in accordance with
27 Subparagraph II.C of this Exhibit A.

28
29 **V. UTILIZATION REVIEW/QUALITY ASSURANCE**

30 A. CONTRACTOR, the CMS Medical Director and/or CMS Assistant Medical Director, and a
31 representative of Contracting Hospital shall develop written Utilization Review (UR) and Quality
32 Assurance (QA) procedures which are specific to Custody Patients, both on and off the Unit, and which
33 recognized the challenges of discharging a Custody Patient to a correctional environment vs. home or
34 lower level of care as may be the case for patients not in custody. Such programs shall meet the
35 requirements of all appropriate Federal and State laws and regulations, including standards of the Joint
36 Commission on the Accreditation of Healthcare Organizations, and such other guidelines as may be

37 //

1 developed by CONTRACTOR with the CMS Medical Director. These written UR and QA procedures
2 shall be reviewed annually and updated as needed and appropriate.

3 B. CONTRACTOR shall participate in Contracting Hospital’s Inpatient UR program and QA
4 program for the review of all services provided pursuant to the Agreement.

5 1. Contracting Hospital’s and ADMINISTRATOR’s Utilization Review (UR) staff shall meet
6 weekly and shall evaluate the following:

7 a. Each Custody Patient’s medical necessity to remain on the Unit based on InterQual
8 acute care criteria to determine if any patient(s) no longer meet said requirements for acute care level
9 services.

10 b. A weekly summary report shall be submitted to the following: Contract Officers, CMS
11 Medical Director, CMS Assistant Medical Director, CHS Director of Nursing, Contracting Hospital’s
12 Chief Nursing Officer, CONTRACTOR’s Medical Director, IHS Division Manager, the MIHS Deputy
13 Agency Director, and the Fiscal Intermediary.

14 c. COUNTY shall use its best efforts to discharge any patient(s) from within the Unit to a
15 lower level of based on the availability of such services either within the Jail system or at another facility
16 providing the required service(s).

17 2. The weekly outpatient clinic schedule and services including, but not limited to, a review of
18 appointments kept; appointments missed, including reasons; requested follow-up visits are consistent
19 with diagnosis/services, and trends in Clinic and Outpatient Visit volume.

20 a. A monthly summary statistical report shall be submitted to the following: Contract
21 Officers, CMS Medical Director, CMS Assistant Medical Director, CHS Director of Nursing,
22 Contracting Hospital’s Chief Nursing Officer, CONTRACTOR’s Medical Director, CHS Division
23 Manager, CMS Administrative Manager, the MIHS Deputy Agency Director, and the COUNTY’s
24 Assistant Sheriff of Custody Operations.

25 b. The monthly summary statistical report shall include, when appropriate,
26 recommendations regarding reducing missed clinic appointments and analysis regarding volume trends
27 for Clinic and Outpatient Visits.

28 3. CONTRACTOR’s representative shall be available to meet on a regular basis with the
29 ADMINISTRATOR’s UR Nurse, CMS Medical Director, Contracting Hospital’s UR Director, and
30 other representative’s of ADMINISTRATOR and/or Contracting hospital as appropriate. Such persons,
31 acting for the respective parties, shall have the authority to resolve UR, QA, or other issues related to the
32 treatment of Custody Patients.

33 C. During the term of the Agreement, representatives of CONTRACTOR and
34 ADMINISTRATOR, which shall include the Contract Officers, shall meet at least quarterly to discuss
35 CONTRACTOR’S and COUNTY’S administrative and programmatic progress and performance.

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VI. DATA REPORTING REQUIREMENTS

1
2 A. CONTRACTOR shall submit to COUNTY’s Fiscal Intermediary, via electronic data interface
3 and within ninety (90) days of the date of service all utilization data for Custody Patients receiving
4 Medical Services in accordance with Paragraph III of this Exhibit A to the Agreement, consistent with
5 the data structure and requirements in accordance with direction provided by ADMINISTRATOR. The
6 parties agree that this data is essential to monitoring the services provided by CONTRACTOR on behalf
7 of COUNTY.

8 1. Intermediary shall perform an initial audit of claims data submitted by CONTRACTOR,
9 including, but not limited to: confirming custody verification, ensuring there are no duplicate claims,
10 verifying use of valid diagnosis and procedure codes.

11 2. Data from claims passing the audit process shall be included in an CHS Custody Database.

12 3. A report of claims that do not pass the audit process shall be submitted to
13 ADMINISTRATOR and CONTRACTOR for review/correction by CONTRACTOR. CONTRACTOR
14 shall have thirty (30) days to provide such corrections so that the data may be appended to the CHS
15 Custody Database.

16 4. COUNTY shall not be responsible for consideration of any data not submitted or corrected
17 by CONTRACTOR in accordance with the Agreement.

18 B. For services provided in accordance with Paragraph IV of this Exhibit A to the Agreement,
19 CONTRACTOR shall ensure that regardless of the choice(s) of reimbursement mechanism(s) for
20 Vendors as detailed in Subparagraph I.I.C., CONTRACTOR shall ensure that either CONTRACTOR
21 submits data consistent with that specified in Subparagraph A above or require that Vendor submit the
22 claims and data consistent with that specified in Subparagraph A above to COUNTY’s Intermediary.
23 CONTRACTOR shall require, when possible, for Vendors claiming to the Intermediary directly to
24 submit their claims and data electronically. Claims and claims data not received within ninety (90) days
25 of the date of service are not guaranteed to be paid by the Intermediary.

26 C. Data reporting requirements set forth in this Agreement may be modified by mutual written
27 agreement of the parties’ designated Contract Officers.

28
29 **VII. INTERRUPTIONS IN SERVICE**

30 A. CONTRACTOR may be excused from providing services hereunder, or such portions thereof as
31 CONTRACTOR is incapable of performing, if it is prevented from providing or arranging for the
32 provision of services by reason of war, fire, insurrection, labor matters, riots, the elements, earthquakes,
33 other acts of God, or other grave cause.

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

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

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

8
9 **VIII. RECORDS**

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

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

16 2. CONTRACTOR shall maintain books, records, documents, and other evidence, accounting
17 procedures, and practices sufficient to reflect properly all direct and indirect cost of whatever nature
18 claimed to have been incurred in the performance of the Agreement and in accordance with Medicare
19 principles of reimbursement and generally accepted accounting principles.

20 3. CONTRACTOR shall ensure the maintenance of medical records required by
21 Sections 70747 through and including 70751 of the California Code of Regulations, as they exist now or
22 may hereafter be amended, and other records related to the services rendered, the medical necessity of
23 the service, and the quality of the care provided. Records shall be maintained in accordance with
24 Section 51476 of Title 22 of the California Code of Regulations, as it exists now or may hereafter be
25 amended.

26 B. Records Retention

27 1. All financial records connected with the performance of the Agreement shall be retained by
28 the parties, at a location in the County of Orange unless otherwise approved in advance and in writing by
29 ADMINISTRATOR, for a period of seven (7) years after termination of the Agreement.

30 2. All patient records connected with the performance of the Agreement shall be retained by
31 the parties, at a location in the County of Orange unless otherwise approved in advance and in writing by
32 ADMINISTRATOR, for a period of seven (7) years after termination of the Agreement.

33 3. Records which relate to litigation or settlement of claims arising out of the performance of
34 this Agreement, or costs and expenses of this Agreement as to which exception has been taken by
35 COUNTY or State or Federal governments, shall be retained by CONTRACTOR until disposition of
36 such appeals, litigation, claims or exceptions is completed.

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1 C. Report Distribution

2 1. Upon CONTRACTOR's request, COUNTY may provide or cause the Fiscal Intermediary
3 to provide, a complete copy of any data and reports prepared by the Fiscal Intermediary in accordance
4 with the Agreement between COUNTY and the Fiscal Intermediary for services relating to the
5 Correctional Health Services Program.

6 2. CONTRACTOR shall not be entitled to any patient identifying information under this
7 Subparagraph. Said patient identifying information shall mean for purposes of the Agreement, services
8 provided to any Custody Patient at COUNTY's jail facilities or any other health care facility other than
9 Contracting Hospital and Western Medical Center – Santa Ana if services were provided by
10 CONTRACTOR's physician(s). Nothing in this Subparagraph shall affect the ability of
11 CONTRACTOR to examine records it submits to the Fiscal Intermediary or COUNTY.

12 D. CONTRACTOR shall provide those medical reports required by COUNTY for Custody
13 Patients provided services pursuant to the Agreement. Upon request, CONTRACTOR shall report the
14 status to COUNTY of the condition of any Custody Patient receiving Inpatient Services.

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

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1 EXHIBIT B
2 TO AGREEMENT FOR PROVISION OF
3 PHYSICIAN SERVICES
4 FOR
5 CORRECTIONAL HEALTH SERVICES PROGRAMS
6 JULY 1, 2013 THROUGH JUNE 30, ~~2014~~2015
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, and
16 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 1) 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 2) 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 3) 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 1) The nature and extent of the PHI involved, including the types of identifiers and the
25 likelihood of re-identification;

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

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

28 4) 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.1.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 at 714-834-3154.

33 3. CONTRACTOR'S notification may be oral, but shall be followed by written notification
34 within 24 hours of the oral notification.

35 4. 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 period
4 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 5. 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 6. 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 7. 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 8. 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 9. 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 requests
34 for further information, or follow-up information after report to COUNTY, when such request is made
35 by COUNTY.

36 10. CONTRACTOR shall bear all expense or other costs associated with the Breach and shall
37 reimburse COUNTY for all expenses COUNTY incurs in addressing the Breach and consequences

1 thereof, including costs of investigation, notification, remediation, documentation or other costs
2 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 1) The Disclosure is required by law; or

14 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is
15 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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