

AGREEMENT FOR PROVISION OF

AMENDMENT NO. 1CONTRACT NO. MA-042-20010130FOR

OPTOMETRY SERVICES IN A CUSTODY SETTING

BETWEEN

COUNTY OF ORANGE

AND

NATIONAL EYE CARE, INC.

JULY 1, 2019 THROUGH JUNE 30, 20224

THIS ~~AGREEMENT~~ AMENDMENT (“Amendment No. 1”) to Contract No. MA-042-2001030 for Optometry Services in a Custody Setting is made and entered into ~~this on 1st day of July 2019~~ July 1, 2022 (~~effective date~~), (“Effective Date”) between National Eye Care, Inc. (“Contractor”), with a place of business at 5160 Kinloch Circle, Fayetteville, NY 13066, ~~is by and between~~ and the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), through its Health Care Agency, with a place of business at 405 W. 5th St., 600, Santa Ana, CA 92701. ~~and NATIONAL EYE CARE, INC. a professional corporation (CONTRACTOR).~~ CONTRACTOR ~~Contractor and County~~ may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Agreement shall be administered by the Director of the COUNTY’s Health Care Agency or an authorized designee (“ADMINISTRATOR”).

WITNESSETH:

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Optometry Services in a Custody Setting described herein to the residents of Orange County; and

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

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:

WHEREAS, the Parties executed Contract No. MA-042-20010130 for Optometry Services in a Custody Setting, effective July 1, 2019 through June 30, 2022, in an amount not to exceed \$547,200 (“Contract”); and

WHEREAS, the Parties now desire to enter into this Amendment No. 1 to renew the Contract for two years for County to continue receiving and Contractor to continue providing the services set forth in the Contract.

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

NOW THEREFORE, Contractor and County agree to amend the Contract as follows:

1. The Contract is renewed for a term of two (2) years, effective July 1, 2022 through June 30, 2024, in an amount not to exceed \$364,800 for this renewal term, for a revised cumulative total amount not to exceed \$912,000; on the amended terms and conditions.

CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
Title Page.....	1
Contents.....	2
Referenced Contract Provisions	4
I. Acronyms.....	7
II. Alteration of Terms.....	8
III. Assignment of Debts.....	8
IV. Compliance	8
V. Confidentiality.....	12
VI. Conflict of Interest.....	13
VII. Delegation, Assignment and Subcontracts	13
VIII. Dispute Resolution.....	15
IX. Employee Eligibility Verification.....	16
X. Expenditure Report.....	16
XI. Facilities, Payments and Services.....	16
XII. Indemnification and Insurance	17
XIII. Inspections and Audits	21
XIV. Licenses and Laws.....	22
XV. Literature, Advertisements, and Social Media	22
XVI. Maximum Obligation	23
XVII. Minimum Wage Laws.....	23
XVIII. Nondiscrimination	24
XIX. Notices.....	26
XX. Notification Of Public Events And Meetings	26
XXI. Records Management and Maintenance	27
XXII. Research and Publication.....	28
XXIII. Severability	29
XXIV. Special Provisions.....	29
XXV. Status of Contractor	30
XXVI. Term.....	30
XXVII. Termination.....	30
XXVIII. Third Party Beneficiary	32
XXIX. Waiver of Default or Breach.....	32
Signature Page.....	33

//

//

//

CONTENTS

1		
2	<u>EXHIBIT A</u>	<u>PAGE</u>
3	I. Definitions	1
4	II. Payments.....	2
5	III. Services	3
6	IV. Interruptions In Service	4
7	V. Reports	5
8	VI. Staffing	5
9		
10	<u>EXHIBIT B</u>	<u>PAGE</u>
11	I. Business Associate Contract.....	1
12	//	
13	//	
14	//	
15	//	
16	//	
17	//	
18	//	
19	//	
20	//	
21	//	
22	//	
23	//	
24	//	
25	//	
26	//	
27	//	
28	//	
29	//	
30	//	
31	//	
32	//	
33	//	
34	//	
35	//	
36	//	
37	//	

REFERENCED CONTRACT PROVISIONS

Term: July 1, 2019 through June 30, 2024

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

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

Period Three means the period from July 1, 2021 through June 30, 2022

Period Four means the period from July 1, 2022 through June 30, 2023

Period Five means the period from July 1, 2023 through June 30, 2024

Maximum Obligation: \$547,200

Period One Maximum Obligation: \$182,400

Period Two Maximum Obligation: 182,400

Period Three Maximum Obligation: 182,400

Period Four Maximum Obligation: 182,400

Period Five Maximum Obligation: 182,400

TOTAL MAXIMUM OBLIGATION: ~~\$547,200~~ \$912,000

Basis for Reimbursement: Fee for Service

Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 02-116-3160

CONTRACTOR TAX ID Number: 46-3507924

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: National Eye Care, Inc.
5160 Kinloch Circle
Fayetteville, NY 13066

Dr. Tyler Maxon, President
tmaxon@nationaleyecare.com

This Amendment No. 1 modifies the Contract only as expressly set forth herein. Wherever there is a conflict in the terms or conditions between this Amendment No. 1 and the Contract, the terms and conditions of this Amendment No. 1 prevail. In all other respects, the terms and conditions of the Contract not specifically changed by this Amendment No. 1 remain in full force and effect.

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

I. ACRONYMS

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

1		
2		
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. CAP	Corrective Action Plan
13	J. COI	Certificate of Insurance
14	K. D/MC	Drug/Medi-Cal
15	L. DHCS	Department of Health Care Services
16	M. DPFS	Drug Program Fiscal Systems
17	N. DRS	Designated Record Set
18	O. ePHI	Electronic Protected Health Information
19	P. GAAP	Generally Accepted Accounting Principles
20	Q. HCA	Health Care Agency
21	R. HHS	Health and Human Services
22	S. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
23		Law 104-191
24	T. HSC	California Health and Safety Code
25	U. ISO	Insurance Services Office
26	V. MHP	Mental Health Plan
27	W. OCJS	Orange County Jail System
28	X. OCPD	Orange County Probation Department
29	Y. OCR	Office for Civil Rights
30	Z. OCSD	Orange County Sheriff's Department
31	AA. OIG	Office of Inspector General
32	AB. OMB	Office of Management and Budget
33	AC. OPM	Federal Office of Personnel Management
34	AD. PA DSS	Payment Application Data Security Standard
35	AE. PC	State of California Penal Code
36	AF. PCI DSS	Payment Card Industry Data Security Standard
37	AG. PHI	Protected Health Information

1	AH. PII	Personally Identifiable Information
2	AI. PRA	Public Record Act
3	AJ. SIR	Self-Insured Retention
4	AK. The HITECH Act	The Health Information Technology for Economic and Clinical Health Act, Public Law 111-005
5		
6	AL. USC	United States Code
7	AM. WIC	State of California Welfare and Institutions Code
8		

9 **II. ALTERATION OF TERMS**

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

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

17 **III. ASSIGNMENT OF DEBTS**

18 Unless this Agreement is followed without interruption by another Agreement between the parties
 19 hereto for the same services and substantially the same scope, at the termination of this Agreement,
 20 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
 21 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
 22 mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the
 23 address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of
 24 said persons, shall be immediately given to COUNTY.
 25

26 **IV. COMPLIANCE**

27 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for
 28 the purpose of ensuring adherence to all rules and regulations related to federal and state health care
 29 programs.
 30

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

34 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
 35 compliance program, code of conduct and any compliance related policies and procedures.
 36 CONTRACTOR's compliance program, code of conduct and any related policies and procedures shall
 37 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required

1 elements by ADMINISTRATOR's Compliance Officer as described in this Compliance Paragraph to
2 this Agreement. These elements include:

- 3 a. Designation of a Compliance Officer and/or compliance staff.
- 4 b. Written standards, policies and/or procedures.
- 5 c. Compliance related training and/or education program and proof of completion.
- 6 d. Communication methods for reporting concerns to the Compliance Officer.
- 7 e. Methodology for conducting internal monitoring and auditing.
- 8 f. Methodology for detecting and correcting offenses.
- 9 g. Methodology/Procedure for enforcing disciplinary standards.

10 3. If CONTRACTOR does not provide proof of its own compliance program to
11 ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR's Compliance
12 Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within
13 thirty (30) calendar days of execution of this Agreement a signed acknowledgement that
14 CONTRACTOR will internally comply with ADMINISTRATOR's Compliance Program and Code of
15 Conduct. CONTRACTOR shall have as many Covered Individuals it determines necessary complete
16 ADMINISTRATOR's annual compliance training to ensure proper compliance.

17 4. If CONTRACTOR elects to have its own compliance program, code of conduct and any
18 Compliance related policies and procedures reviewed by ADMINISTRATOR, then CONTRACTOR
19 shall submit a copy of its compliance program, code of conduct and all relevant policies and procedures
20 to ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
21 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
22 reasonable time, which shall not exceed forty-five (45) calendar days, and determine if contractor's
23 proposed compliance program and code of conduct contain all required elements to the
24 ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
25 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
26 CONTRACTOR shall revise its compliance program and code of conduct to meet
27 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
28 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

29 5. Upon written confirmation from ADMINISTRATOR's compliance officer that the
30 CONTRACTOR's compliance program, code of conduct and any compliance related policies and
31 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals
32 relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct,
33 related policies and procedures and contact information for the ADMINISTRATOR's Compliance
34 Program.

35 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
36 retained to provide services related to this Agreement semi-annually to ensure that they are not
37 designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against

1 the General Services Administration's Excluded Parties List System or System for Award Management,
2 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
3 the California Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration's
4 Death Master File, and/or any other list or system as identified by ADMINISTRATOR.

5 1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees,
6 interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items
7 or services or who perform billing or coding functions on behalf of ADMINISTRATOR.
8 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
9 ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or
10 CONTRACTOR's own compliance program, code of conduct and related policies and procedures if
11 CONTRACTOR has elected to use its own).

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

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

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

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

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

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

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

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

8 C. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General
9 Compliance Training available to Covered Individuals.

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

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

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

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

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

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

25 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
26 Individuals relative to this Agreement. This includes compliance with federal and state healthcare
27 program regulations and procedures or instructions otherwise communicated by regulatory agencies;
28 including the Centers for Medicare and Medicaid Services or their agents.

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

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

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

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

1 E. MEDI-CAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

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

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

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

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

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

18 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and
19 participate in the quality improvement activities developed in the implementation of the Quality
20 Management Program.

21 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural
22 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural
23 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
24 §1810.410.subds.(c)-(d)).

25 F. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a
26 breach of the Agreement on the part of CONTRACTOR and grounds for COUNTY to terminate the
27 Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR shall have thirty
28 (30) calendar days from the date of the written notice of default to cure any defaults grounded on this
29 Compliance Paragraph prior to ADMINISTRATOR's right to terminate this Agreement on the basis of
30 such default.

31
32 **V. CONFIDENTIALITY**

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

36 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
37 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and

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

6 7 **VI. CONFLICT OF INTEREST**

8 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that
 9 could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall
 10 apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of
 11 goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be
 12 limited to establishing rules and procedures preventing its employees, agents, and subcontractors from
 13 providing or offering gifts, entertainment, payments, loans or other considerations which could be
 14 deemed to influence or appear to influence COUNTY staff or elected officers in the performance of
 15 their duties.

16 17 **VII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

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

23 B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's
 24 business prior to completion of this Agreement, and COUNTY agrees to an assignment of the
 25 Agreement, the new owners shall be required under the terms of sale or other instruments of transfer to
 26 assume CONTRACTOR's duties and obligations contained in this Agreement and complete them to the
 27 satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in
 28 part, without the prior written consent of COUNTY.

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

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

1 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
2 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
3 delegation in derogation of this subparagraph shall be void.

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

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

13 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
14 CONTRACTOR shall provide written notification within thirty (30) calendar days to
15 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
16 governing body of CONTRACTOR at one time.

17 6. COUNTY reserves the right to immediately terminate the Agreement in the event
18 COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise
19 unacceptable to COUNTY for the provision of services under the Agreement.

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

25 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the
26 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor
27 subsequently fails to meet the requirements of this Agreement or any provisions that
28 ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported
29 by CONTRACTOR.

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

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

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

1 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's
 2 status with respect to name changes that do not require an assignment of the Agreement.
 3 CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party
 4 to any litigation against COUNTY, or a party to litigation that may reasonably affect the
 5 CONTRACTOR's performance under the Contract, as well as any potential conflicts of interest between
 6 CONTRACTOR and County that may arise prior to or during the period of Agreement performance.
 7 While CONTRACTOR will be required to provide this information without prompting from COUNTY
 8 any time there is a change in CONTRACTOR's name, conflict of interest or litigation status,
 9 CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever
 10 requested by COUNTY.

11 **VIII. DISPUTE RESOLUTION**

12
 13 A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the
 14 dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a
 15 reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be
 16 brought to the attention of the COUNTY Purchasing Agency by way of the following process:

17 1. CONTRACTOR shall submit to the COUNTY Purchasing Agency a written demand for a
 18 final decision regarding the disposition of any dispute between the Parties arising under, related to, or
 19 involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final
 20 decision.

21 2. CONTRACTOR's written demand shall be fully supported by factual information, and, if
 22 such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the
 23 demand a written statement signed by an authorized representative indicating that the demand is made in
 24 good faith, that the supporting data are accurate and complete, and that the amount requested accurately
 25 reflects the Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

26 B. Pending the final resolution of any dispute arising under, related to, or involving this
 27 Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via
 28 this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR's failure
 29 to proceed diligently shall be considered a material breach of this Agreement.

30 C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and
 31 shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a
 32 decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed
 33 a final decision adverse to CONTRACTOR's contentions.

34 D. This Agreement has been negotiated and executed in the State of California and shall be
 35 governed by and construed under the laws of the State of California. In the event of any legal action to
 36 enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent
 37 jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit

1 to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the
 2 Parties specifically agree to waive any and all rights to request that an action be transferred for
 3 adjudication to another county.

4 5 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

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

15 16 **X. EXPENDITURE REPORT**

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

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

23 24 **XI. FACILITIES, PAYMENTS AND SERVICES**

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

30 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
 31 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Total Maximum
 32 Obligation for the appropriate Period as well as the Total Maximum Obligation. The reduction to the
 33 Maximum Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an
 34 amount proportionate to the number of days in which CONTRACTOR was determined to be unable to
 35 provide services, staffing, facilities or supplies.

36 //

37 //

XII. INDEMNIFICATION AND INSURANCE

1
2 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
3 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
4 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board
5 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,
6 including but not limited to personal injury or property damage, arising from or related to the services,
7 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
8 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
9 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
10 COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall
11 request a jury apportionment.

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

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

28 D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand
29 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of
30 CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved,
31 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this
32 Agreement, agrees to all of the following:

33 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
34 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
35 subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole
36 cost and expense with counsel approved by Board of Supervisors against same; and
37 //

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

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

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

8 F. QUALIFIED INSURER

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

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

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

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

31 H. REQUIRED COVERAGE FORMS

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

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

36 I. REQUIRED ENDORSEMENTS

37 //

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

3 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least
4 as broad naming the County of Orange, its elected and appointed officials, officers, agents and
5 employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY
6 WRITTEN AGREEMENT.

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

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

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

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

20 M. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss
21 Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the
22 Certificate of Insurance.

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

28 O. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network
29 Security & Privacy Liability are "Claims -Made" policies, CONTRACTOR shall agree to maintain
30 coverage for two (2) years following the completion of the Agreement.

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

33 Q. Insurance certificates should be forwarded to the agency/department address listed on the
34 solicitation.

35 R. If the Contractor fails to provide the insurance certificates and endorsements within seven (7)
36 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be
37 made to the next qualified vendor.

1 S. 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
 4 adequately protect COUNTY.

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

10 U. 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 V. 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 requirements as set forth in the Coverage Subparagraph above.

19 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
 20 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
 23 have 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 COIs
 36 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

37 //

XIII. INSPECTIONS AND AUDITS

1
2 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
3 of the State of California, the Secretary of the United States Department of Health and Human Services,
4 the Comptroller General of the United States, or any other of their authorized representatives, shall have
5 access to any books, documents, and records, including but not limited to, financial statements, general
6 ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly
7 pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an
8 audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth
9 in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all
10 reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the
11 premises in which they are provided.

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

16 C. AUDIT RESPONSE

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

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

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

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

36 //

37 //

1 **XIV. LICENSES AND LAWS**

2 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
3 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
4 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
5 required by the laws, regulations and requirements of the United States, the State of California,
6 COUNTY, and all other applicable governmental agencies.

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

8 1. CONTRACTOR certifies it is in full compliance with all applicable federal and State
9 reporting requirements regarding its employees and with all lawfully served Wage and Earnings
10 Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the
11 term of the Agreement with the County of Orange. Failure to comply shall constitute a material breach
12 of the Agreement and failure to cure such breach within sixty (60) calendar days of notice from the
13 COUNTY shall constitute grounds for termination of the Agreement.

14 2. 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,
19 the 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 3. It is expressly understood that this data will be transmitted to governmental agencies
22 charged with the establishment and enforcement of child support orders, or as permitted by federal
23 and/or state statute.

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

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

30 **XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

31 A. Any written information or literature, including educational or promotional materials,
32 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related
33 to this Agreement must be approved at least thirty (30) days in advance and in writing by
34 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written
35 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,
36 and electronic media such as the Internet.
37

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

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

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

16 **XVI. MAXIMUM OBLIGATION**

17 The Total Maximum Obligation of COUNTY for services provided in accordance with this
 18 Agreement, and the separate Maximum Obligations for each period under this Agreement, are as
 19 specified in the Referenced Contract Provisions of this Agreement.

21 **XVII. MINIMUM WAGE LAWS**

22 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
 23 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
 24 federal or California Minimum Wage to all its Covered Individuals (as defined within the "Compliance"
 25 paragraph of this Agreement) that directly or indirectly provide services pursuant to this Agreement, in
 26 any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals
 27 providing services pursuant to this Agreement be paid no less than the greater of the federal or
 28 California Minimum Wage.

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

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

36 //

37 //

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

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

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

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

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

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

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

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender

1 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
 2 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
 3 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
 4 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
 5 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
 6 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
 7 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
 8 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
 9 or more of the factors identified above:

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

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

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

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

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

36 E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall
 37 intimidate, coerce or take adverse action against any person for the purpose of interfering with rights

1 | secured by federal or state laws, or because such person has filed a complaint, certified, assisted or
 2 | otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to
 3 | enforce rights secured by federal or state law.

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

8 | **XIX. NOTICES**

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

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

15 | 2. When faxed, transmission confirmed;

16 | 3. When sent by Email; or

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

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

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

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

30 | **XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

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

XXI. RECORDS MANAGEMENT AND MAINTENANCE

1
2 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
3 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
4 accordance with this Agreement and all applicable requirements.

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

8 2. CONTRACTOR shall keep and maintain records of each service rendered to each MSN
9 Patient, the identity of the MSN Patient to whom the service was rendered, the date the service was
10 rendered, and such additional information as ADMINISTRATOR or DHCS may require.

11 3. CONTRACTOR shall maintain books, records, documents, accounting procedures and
12 practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature
13 claimed to have been incurred in the performance of this Agreement and in accordance with Medicare
14 principles of reimbursement and GAAP.

15 4. CONTRACTOR shall ensure the maintenance of medical records required by §70747
16 through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical
17 necessity of the service, and the quality of care provided. Records shall be maintained in accordance
18 with §51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.

19 B. CONTRACTOR shall implement and maintain administrative, technical and physical
20 safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of
21 PHI in violation of the HIPAA, federal and state regulations. CONTRACTOR shall mitigate to the
22 extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal
23 or state regulations and/or COUNTY policies.

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

27 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years/ten (10)
28 years from the termination of the contract, unless a longer period is required due to legal proceedings
29 such as litigations and/or settlement of claims.

30 E. CONTRACTOR shall retain all client and/or patient medical records for seven (7)/ten (10)
31 years following discharge of the participant, client and/or patient.

32 F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,
33 billings, and revenues available at one (1) location within the limits of the County of Orange. If
34 CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide
35 written approval to CONTRACTOR to maintain records in a single location, identified by
36 CONTRACTOR.

37 //

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

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

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

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

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

16 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit
 17 or site visit.

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

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

22 J. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and
 23 security of PII and/or PHI. CONTRACTOR shall, upon discovery of a Breach of privacy and/or
 24 security of PII and/or PHI by CONTRACTOR, notify federal and/or state authorities as required by law
 25 or regulation, and copy ADMINISTRATOR on such notifications.

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

29 L. CONTRACTOR shall retain all client and/or patient medical records for ten (10) years
 30 following discharge of the client and/or patient, with the exception of non-emancipated minors for
 31 whom records must be kept until such minors have reached the age of twenty-five (25) years.

32 **XXII. RESEARCH AND PUBLICATION**

33 CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out
 34 of, or developed, as a result of this Agreement for the purpose of personal or professional research, or
 35 for publication.
 36

37 //

1 **XXIII. SEVERABILITY**

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

7
8 **XXIV. SPECIAL PROVISIONS**

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

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

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

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

37 //

- 1 1. The loss by CONTRACTOR of legal capacity.
- 2 2. Cessation of services.
- 3 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
- 4 another entity without the prior written consent of COUNTY.
- 5 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
- 6 required pursuant to this Agreement.
- 7 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
- 8 this Agreement.
- 9 6. The continued incapacity of any physician or licensed person to perform duties required
- 10 pursuant to this Agreement.
- 11 7. Unethical conduct or malpractice by any physician or licensed person providing services
- 12 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
- 13 removes such physician or licensed person from serving persons treated or assisted pursuant to this
- 14 Agreement.

15 E. CONTINGENT FUNDING

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

25 F. In the event this Agreement is suspended or terminated prior to the completion of the term as

26 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole

27 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced

28 term of the Agreement.

29 G. In the event this Agreement is terminated by either Party pursuant to Subparagraphs B., C., or

30 D. above, CONTRACTOR shall do the following:

- 31 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
- 32 is consistent with recognized standards of quality care and prudent business practice.
- 33 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
- 34 performance during the remaining contract term.
- 35 3. Until the date of termination, continue to provide the same level of service required by this
- 36 Agreement.

37 //

1 4. If Clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
2 upon request, all Client information and records deemed necessary by ADMINISTRATOR to effect an
3 orderly transfer.

4 5. Assist ADMINISTRATOR in effecting the transfer of Clients in a manner consistent with
5 Client's best interests.

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

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

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

16 9. Provide written notice of termination of services to each Client being served under this
17 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
18 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars
19 day period.

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

22
23 **XXVIII. THIRD PARTY BENEFICIARY**

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

27
28 **XXIX. WAIVER OF DEFAULT OR BREACH**

29 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
30 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
31 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
32 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
33 Agreement.

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

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

3 IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1. If Contractor is a
4 corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the
5 Chairman of the Board, the President, or any Vice President; 2) the second signature must be that of the
6 Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the
7 alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or
8 by-laws demonstrating the legal authority of the signature to bind the company.

9
10 NATIONAL EYE CARE, INC.

11
12 BY: _____ DATED: _____

13
14 TITLE: _____

15
16
17 BY: _____ DATED: _____

18
19 TITLE: _____

20
21
22
23
24
25 COUNTY OF ORANGE

26
27
28 BY: _____ DATED: _____

29 HEALTH CARE AGENCY

30
31
32 APPROVED AS TO FORM
33 OFFICE OF THE COUNTY COUNSEL
34 ORANGE COUNTY, CALIFORNIA

35
36 BY: _____ DATED: _____

37 DEPUTY

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

If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer 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.

EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 OPTOMETRY SERVICES IN A CUSTODY SETTING
 BETWEEN
 COUNTY OF ORANGE
 AND
 NATIONAL EYE CARE, INC.
 JULY 1, 2019 THROUGH JUNE 30, 2022

I. DEFINITIONS

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

A. “Alien” means a person who has immigrated to the United States.

B. “Clinic” means a set block of time, at a frequency mutually agreed to by CONTRACTOR and ADMINISTRATOR, during which Optometry Services will be provided to Custody Patients and/or Detainees for diagnosis, treatment, and/or referral.

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

D. “Correctional Health Services” or “CHS” means the Health Care Agency’s Correctional Health Services Division, which is the division that encompasses and oversees the CHS and JHS Programs.

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

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

2. A person brought to CONTRACTOR for treatment by an Orange County Deputy who has already been booked into the Orange County Jail.

3. A person brought to CONTRACTOR’S emergency department by an Orange County Deputy for medical clearance prior to booking after being deferred directly from the COUNTY’S Intake and Release Center.

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

5. Any requirement by this Agreement for the provision of services to Custody Patients shall also be deemed to be a requirement to provide services to infants, only until discharge, born to any person identified in subparagraphs 1. through 4. above. Such infants shall be designated as “Newborns” for the purposes of this Agreement.

6. It is understood by the parties that Custody Patients excludes those persons, who, at the time of service, are escorted by local/city law enforcement (non-county custody personnel), housed or subsequently booked into a city jail.

1 F. "Deputy" means a sworn officer of the Orange County Sheriff's Department.

2 G. "ICE" means Immigration and Customs Enforcement.

3 H. "Detainee" means an Alien who has not become a citizen or legal resident and is being detained
4 by ICE.

5 I. "JHS" means the Health Care Agency's Juvenile Health Services Program.

6 J. "Optometrist" means any person who holds a current State of California License to practice
7 Optometry, of which said license shall be free of any Medical Board disciplinary actions/sanctions, and
8 at a minimum holds a Current Basic Cardiac Life Support (BCLS) Certificate, and has verifiable proof
9 of clinical optometry experience.

10 K. "Optometry Services" means the complete vision care provided by an Optometrist and done in
11 accordance with all applicable State of California laws and regulations governing optometry services to
12 include, but not be limited to; eye exam, retinal exams for diabetes, glaucoma screening, and
13 eyeglass/contact lens fitting and dispensing.

14 **II. PAYMENTS**

15
16 A. For reimbursement of Optometry Services provided in accordance with Paragraph III of this
17 Exhibit A to the Agreement, CONTRACTOR shall submit its invoices to ADMINISTRATOR.
18 CONTRACTOR's invoice shall be on a form approved or supplied by ADMINISTRATOR and provide
19 such information as is required by ADMINISTRATOR. Payments to CONTRACTOR should be
20 released by COUNTY no later than thirty (30) days after receipt of the correctly completed invoice
21 form.

22 B. COUNTY shall reimburse CONTRACTOR monthly in arrears as fee for service at the
23 following rates:

24	<u>Service Description</u>	<u>Rate</u>	
25	Clinic	\$1,150.00	per clinic
26	Eyeglasses (single vision)	\$30.00	per pair
27	Eyeglasses (bifocal)	\$35.00	per pair
28	Polycarbonate	\$10.00	additional per pair
29			

30
31 Provided, however, the total of such payments does not exceed COUNTY's Maximum Obligation and,
32 provided further, CONTRACTOR's costs are reimbursable pursuant to COUNTY, state, and federal
33 regulations.

34 C. CONTRACTOR shall maintain internal financial controls which adequately ensure proper
35 billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the
36 identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall
37 //

1 provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are
2 billed, collected, transferred to a collection agency or deemed by CONTRACTOR to be uncollectible.

3 D. All billings to COUNTY shall be supported, at CONTRACTOR's facility, by source
4 documentation including, but not limited to, ledgers, books, vouchers, payrolls, schedules for allocating
5 costs, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and
6 records of services provided.

7 E. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
8 with any provision of the Agreement.

9 F. COUNTY shall not reimburse CONTRACTOR for Optometry Services provided beyond the
10 expiration and/or termination of the Agreement, except as may otherwise be provided under the
11 Agreement, or specifically agreed upon in a subsequent Agreement.

12 **III. SERVICES**

13 A. Unless otherwise specified herein, the cost of all Optometry Services provided in accordance
14 with this Paragraph III shall be deemed included in COUNTY's Maximum Obligation to
15 CONTRACTOR.
16

17 B. OPTOMETRY:

18 1. CONTRACTOR shall provide Optometry Services to Custody Patients and/or Detainees at
19 the following locations:

- 20 a. Central Men's Jail – located at 550 North Flower Street, Santa Ana, California;
- 21 b. Women's Jail – located at 550 North Flower Street, Santa Ana, CA;
- 22 c. Intake Release Center – located at 550 North Flower Street, Santa Ana, CA;
- 23 d. Theo Lacy – located at 501 The City Drive South, Orange, CA;
- 24 e. James A. Musick Facility – located at 13502 Musick Road, Irvine, CA;
- 25 f. Juvenile Hall – located at 331 The City Drive South, Orange, CA; and
- 26 g. Other CHS facilities, as directed by ADMINISTRATOR

27 2. CONTRACTOR shall provide an Optometrist(s), in sufficient amount necessary to provide
28 the services specified herein, either directly or through subcontract as approved in advance by
29 ADMINISTRATOR.

30 3. CONTRACTOR shall be responsible for providing all necessary supplies and equipment to
31 provide the Optometry Services described herein. CONTRACTOR shall ensure that all equipment is in
32 proper working order and is properly maintained. CONTRACTOR shall not leave or store any
33 equipment at any COUNTY facility. Equipment shall be promptly removed upon the completion of
34 each Clinic.

35 C. CLINIC SERVICES

36 1. CONTRACTOR shall provide Clinics at the facilities identified in subparagraph III.B.1. of
37 this Exhibit A, above.

1 a. CONTRACTOR shall provide a minimum of five (5) Clinics per month, at a day and
2 time which may be adjusted as necessary, as mutually agreed to by both parties.

3 b. Clinics shall be provided at least eight (8) hours per day, unless otherwise approved by
4 ADMINISTRATOR. COUNTY shall determine actual hours of service to be provided at least one (1)
5 month in advance. It is expected that CONTRACTOR shall provide a minimum of twenty (20) exams
6 during each clinic.

7 c. In the event COUNTY determines a need for additional Clinics, CONTRACTOR and
8 ADMINISTRATOR may mutually agree to increase the frequency of Clinics; provided, however, the
9 cost of such Clinics does not exceed COUNTY's Maximum Obligation.

10 2. Clinic services must include, but are not limited to:

11 a. Performing eye exams to determine need for prescription eyeglasses;

12 b. Performing eye exams for prescription contact lenses;

13 c. Performing annual retinal examinations for diabetic inmates;

14 d. Performing screening exams for glaucoma;

15 e. Providing Security Approved, accurate eyeglasses based on CONTRACTOR's
16 prescriptions; and

17 f. Referral of inmates and detainees for ophthalmology care when indicated.

18 3. When an eye exam determines eyeglasses are warranted, CONTRACTOR shall provide
19 eyeglass within two (2) weeks of the exam.

20
21 **IV. INTERRUPTION OF SERVICES**

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

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

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

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

35 //

36 //

37 //

V. REPORTS

A. Program Reports to be provided by CONTRACTOR to ADMINISTRATOR shall include, but not be limited to, monthly programmatic progress reports, which shall be submitted to ADMINISTRATOR no later than twenty (20) days following the end of the month being reported and shall include but not be limited to CONTRACTOR's and subcontractors' efforts in the following areas:

- 1. Number of Clinics held and the number of exams provided.
- 2. Challenges identified in providing the services as requested herein and suggested strategies for dealing with those challenges.

B. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial and/or programmatic reports as requested by ADMINISTRATOR concerning CONTRACTOR's activities as they relate to the Agreement. ADMINISTRATOR will be specific as to the nature of the information requested, provide examples to CONTRACTOR as necessary, and allow thirty (30) days for CONTRACTOR to respond. CONTRACTOR agrees that requests for certain reports may be submitted on-going on a monthly basis.

VI. STAFFING

A. CONTRACTOR shall provide, at minimum, one (1) California Board licensed optometrist to provide Optometry Services as described in Paragraph III of this Exhibit A to the Agreement.

B. In addition to the above, CONTRACTOR shall maintain a designated backup Optometrist, to ensure provision of Optometry Services in the event of illness, vacation, or other absence of CONTRACTOR.

C. All CONTRACTOR staff or subcontractors working within any of the facilities identified in Paragraph III.B.1 of this Exhibit A to the Agreement shall be required to complete and pass the Orange County Sheriff's Department mandatory background investigation, and maintain appropriate clearance throughout the term of the Agreement. Additionally, CONTRACTOR shall ensure that all CONTRACTOR's staff and subcontractors providing Optometry Services pursuant to the Agreement cooperate with COUNTY and its agents in maintaining security at the COUNTY facilities.

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

EXHIBIT B
 TO AGREEMENT FOR PROVISION OF
 OPTOMETRY SERVICES IN A CUSTODY SETTING
 BETWEEN
 COUNTY OF ORANGE
 AND
 NATIONAL EYE CARE, INC.
 JULY 1, 2019 THROUGH JUNE 30, 2022

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

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

3 B. DEFINITIONS

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

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

10 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
37 a time and manner to be determined by COUNTY, that information collected in accordance with the

1 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
2 Disclosures of PHI in accordance with 45 CFR § 164.528.

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

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

9 D. SECURITY RULE

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

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

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

23 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

33 2. CONTRACTOR shall provide the notification of the Breach immediately to the County
34 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
35 notification within 24 hours of the oral notification.

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

37 //

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

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

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

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

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

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

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

18 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
19 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
20 COUNTY.

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

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

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

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

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

5 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

15 1) The Disclosure is required by law; or

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

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

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

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

28 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
 29 required by law.

30 G. OBLIGATIONS OF COUNTY

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

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

37 //

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

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

6 H. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

26 3. The obligations of this Business Associate Contract shall survive the termination of the
27 Agreement.

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