



**Agenda Item No. 5**  
**February 2, 2011 Meeting**

**DATE:** January 24, 2011

**TO:** Children and Families Commission of Orange County

**FROM:** Michael M. Ruane, Executive Director

A handwritten signature in black ink, appearing to read "Michael M. Ruane".

**SUBJECT:** Funding Renewal for Pediatric Health Services Programs

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**SUMMARY:**

The current Pediatric Health Services (PHS) agreements will expire June 30, 2011. This represents the culmination of the Commission's ten-year investment in major initiatives directed at expanding the quality and access to pediatric health services for children prenatal through age five. In addition to the specific program improvements, the investments have resulted in major improvements to the system of care for young children and sustainable expansions in the availability of primary and specialty services. This agenda item provides an update on the Pediatric Health Service review and recommendations for funding.

**Background**

In 2001, the Commission launched a ten-year initiative to expand access and improve the quality of care for children in Orange County. The investment included \$7.5 million annually to improve the availability and quality of primary and specialty pediatric care through leveraging the resources, expertise, and presence of the two largest providers of pediatric care in Orange County, the Children's Hospital of Orange County (CHOC) and The Regents of the University of California [University of California, Irvine College of Medicine and Medical Center] (UCI). The investment has led to the creation and/or expansion of primary care centers in previously underserved communities such as Garden Grove, Costa Mesa, and Santa Ana as well the establishment of pediatric specialty centers for the treatment of asthma, metabolic disorders and a range of developmental delays including autism and Attention Deficit Hyperactivity Disorder (ADHD). The Commission's investment in expanded capacity will continue to have a sustainable impact on the system of pediatric care in Orange County.

**Description of Current Funded Services**

The Commission designed the Pediatric Health Services Initiative to increase access to pediatric primary and specialty care services. This has been accomplished through ten-year investments in the following collaborative programs:

- Asthma Program – Optimize the health of young children with asthma/chronic lung disease through parent and patient education, asthma screening, treatment, referrals and case management services.
- Early Developmental Programs – Provide the infrastructure for a developmental services pathway for young children including an easily accessible point of entry for

comprehensive evaluation and diagnosis for developmental concerns in children 0 to 5 (e.g. autism).

- Metabolic Program – Increase access and shorten waiting times to provide early diagnosis, and prompt and appropriate treatment for young children with metabolic disorders to minimize developmental disability and significant health consequences.
- Obstetric High Risk Primary Care – Expand access to comprehensive prenatal care in high risk communities and provide outreach services via mobile vans to homeless families with young children.
- Pediatric Primary Care – Enhance and expand network of primary care community clinics to increase access to comprehensive ambulatory pediatric care for young children, and referral to subspecialty programs as needs are identified.
- Specialty Services – Recognize the greater demand for pediatric specialty care services due to referrals from increased pediatric primary care services. Implement strategies to add clinics, expand hours, and recruit specialty providers to reduce appointment wait times in core areas established by the Pediatric Health Services Committee.

**Proposed Funding Plan**

The Commission has previously approved the funding assumption of up to \$6 million annually effective July 2011 in its Long Term Financial Plan. Funding allocations (Attachment 2) have been recommended based on funds available and recommendations developed through the Pediatric Health Services Review Process, as described below. Recommended funding includes:

<p><u>Base Funding</u> \$5.5 million per year for three year (\$16.50 million total base)</p>	<p>Support renewal of scaled down programs including meeting priority demands for Early Developmental Services and continuation of the existing Pediatric Specialty Loan Program contract.</p>
<p><u>Catalytic Investments</u> \$1.5 million set-aside over the next three year, may be one-time</p>	<p>Facilitate clinic transitions to a sustainable funding model and to Support investments to address community needs. May include: expansion of Federally Qualified Health Centers (FQHC) and sustainability strategies, electronic birth records/public health registries, one-time innovative projects</p>
<p>\$18 million</p>	<p>Total Pediatric Health Services 3-Year Funding</p>

**Pediatric Health Services Review Process**

The Pediatric Health Services Committee was formed by the Commission to ensure comprehensive pediatric health service planning, identify and respond to community needs, and provide fiscal oversight of the Commission’s investment in the pediatric health service programs. The Commission has delegated certain contract authorizations to the Committee

and the Committee periodically updates the Commission on the status of its activities and related funded programs.

At the September 2010 Pediatric Health Services Committee meeting, a review process was approved that included the analysis of relevant local data to identify the current needs related to improving the availability and quality of primary and specialty pediatric care. To this end, a community survey was conducted with a range of community health practitioners including school nurses to identify current pressing community pediatric health needs and barriers to access. A joint meeting of the Commission and the Pediatric Health Services Committee was held in December 2010 for the purpose of receiving input on the results of the community pediatric health needs assessment and for hearing presentations from related to program accomplishments. Based on data and input received, staff recommends future Pediatric Health Services funding of programs as outlined in the attached presentation, PHS Program Review and Funding Recommendations (Attachment 1).

Once recommended actions have been authorized by the Commission, staff will work through the Pediatric Health Services Committee to confirm contract scope, work plans, and budgets for the funded programs.

#### **Standard Form Agreement Update**

The Commission has agreements with non-profit organizations, public entities, school districts, and professional/consulting organizations that include a standard form, or boilerplate, that defines the requirements for contracting with the Commission. The Pediatric Health Services boilerplate was recently reviewed with recommendations to update to simplify the contracting language, and update the technical requirements to include revisions to the Commission's automated evaluation and contracts management system. The revised boilerplate language is easier to understand and administer by Commission contractors, it has been reviewed and approved by Commission Counsel and is recommended for Commission approval. A hard copy summary of the changes (Attachment 3) and the complete revised Pediatric Health Services Standard Form Agreement on CD (Attachment 4) are attached.

#### **Quality Assurance and Program Oversight**

It is the policy of the Commission to ensure that its portfolio of investments are high performing and targeted to achieve its strategic goals. To this end, a variety of processes are in place to ensure that quality programs continue to provide the anticipated value in improving outcomes for children. Resources committed to ensure the quality of Pediatric Health Services investments include:

- Pediatric Health Services Committee – Committee membership includes two physicians with significant expertise in community health and pediatric practice to ensure that local collaborative partnership and community linkages are maintained, and that emerging opportunities continue to be addressed.
- University of California, Los Angeles - Center for Children, Families and Communities – Provides guidance and review of the quality of pediatric health services including program efficiency and cost-effectiveness, particularly in a context of nationally recognized health and medical services models.

- Risk Assessment Program – An independent auditor contracted with the Commission provides a regular review to identify and mitigate any potential organizational and operational risk.

**STRATEGIC PLAN & FISCAL SUMMARY:**

The proposed action has been reviewed in relation to the Commission's Strategic Plan and is consistent with the Healthy Children goal, among others. Recommended annual funding of \$6 million is in the long-term financial plan and will be developed into the proposed FY 2011/12, 2012/13, and 2013/14 budgets to cover the term of the agreements.

**PRIOR COMMISSION ACTIONS:**

- December 2010 – Joint Meeting of the Pediatric Health Services Committee and Children and Families Commission to receive Pediatric Health Services program presentations and provide policy direction to staff
- September 2010 – Pediatric Health Services Committee approved process for the Pediatric Health Services review
- May 2003 – Commission authorized the creation of a formal Commission committee to oversee Commission's Pediatric Health Services investments

**RECOMMENDED ACTIONS:**

1. Receive and approve Pediatric Health Services Review and Funding Recommendations (Attachment 1)
2. Approve Updated Pediatric Health Services Standard Form Agreement (Attachments 3 and 4)
3. Adopt resolution (Attachment 6) authorizing the Executive Director or designee and Commission Counsel to prepare and negotiate Agreements consistent with the Pediatric Health Services Recommendations (Attachment 1) and program direction provided by the Pediatric Health Services Committee with the organizations and for the terms and in amounts not to exceed those specified on Pediatric Health Services Summary of Funding Allocations (Attachment 5).

**ATTACHMENTS:**

1. Pediatric Health Services Review and Funding Recommendations
2. Pediatric Health Services Summary of Recommended Funding
3. Summary of Updates Pediatric Health Services Boilerplate Provisions
4. Pediatric Health Services Standard Form Agreement on CD
5. Pediatric Health Services Summary of Funding Allocations
6. Resolution authorizing Pediatric Health Services contracts

**Contact:** Christina Altmayer

**Pediatric Health Services  
Program Review and  
Funding  
Recommendations**

**February 2, 2011**

**Commission Meeting**

# Background

- In 2001, the Commission launched a ten-year initiative to expand access and improve the quality of care for children in Orange County. Since then, the Commission has invested approximately \$75 million in these pediatric programs.
- The Commission has annually allocated \$7.5 million in funds to improve the availability and quality of primary and specialty pediatric care. Programs have resulted in:
  - Expansion of pediatric and high risk prenatal primary care centers in the under-served communities of Santa Ana, Costa Mesa, Garden Grove and Anaheim
  - Creation of specialty care services to address gaps in asthma, metabolic identification and treatment, and to reduce wait times for other specialty care services
  - Created an integrated center for a range of developmental services including autism, ADHD and other developmental needs
  - See appendix table of current program contract commitments
- In December 2010, the Commission receive presentations on the existing programs from program leads. Staff has continued to evaluate programs and develop funding recommendations.

# Pediatric Health Services (PHS) Program Review and Recommendations

- Staff has prepared new funding allocations for the next three year period assuming \$6 million in annual funding; including \$500,000 annually in catalytic investments.
- Of this total funding, two priority ongoing demands have been identified:
  - **Early Developmental Services**– Programs addressing autism and developmental delays are a high-priority community need. Commission survey and research data found that these services are among the highest demands for referrals.
  - **Pediatric Specialty Loan Program** –The Commission has a three-year contract through June 30, 2012. The Commission provides educational reimbursement funds for pediatric subspecialists that relocate or remain in Orange County. The funding provides incentive for pediatricians to serve children 0-5 in Orange County in high-demand/under-served pediatric subspecialties. Three pediatric specialists were engaged in August 2010. Applications are currently being accepted for the next round of awards.

# Pediatric Health Services (PHS) Program Review and Recommendations

- Total Funding:
  - \$5.5 million per year in base funding to support renewal
  - \$1.5 million total over the next three years for one-time catalytic investments; facilitate clinic transitions to a sustainable funding model and to support one-time investments to address community needs
- Funding Objectives
  - Sustain key investments in critical pediatric health needs, responsive to community priorities (e.g. developmental services, asthma).
  - Address the need for current and future pediatric provider network through training, recruitment, and development.
  - Reserve funding for catalytic projects and community needs (CAST Medical Director).
  - Build platform for long-term sustainability i.e. transition current clinic funding effective January 2012.

# PHS Proposed Funding Initiatives

## Three Primary Renewal Strategies

### Primary Care Services

**Target:** Ensure access to quality OB and pediatric care particularly in underserved communities (by geography, condition, i.e. homeless).

**Role of Prop 10 Funding:** Catalytic – leverage and expand existing FOHC network for pediatric services; one-time investments in OB services to mitigate future operating costs.

**Key Components of Funding:** Provide short-term funding to sustain services while transitioning to more permanent funding sources.

### Specialty Care Services

**Target:** Increase access to timely care through expanding availability of services in impacted pediatric sub-specialties and expanding availability of professionals and quality of care.

**Role of Prop 10 Funding:** Expand the cadre of qualified subspecialty providers in OC and address unfunded services in key community service areas:

- Asthma
- Metabolic

**Key Components of Funding:** Expand the system of care; address community priorities, address long-term sustainability.

### Early Developmental Services

**Target:** Provide developmental screening and referral services for all children in OC. Build a system of care to address developmental delays and promote school readiness.

**Role of Prop 10 Funding:** Promote early identification and treatment of developmental delays including autism, ADHD and those related to premature birth.

**Key Components of Funding:** Ensure continued programs for early identification of developmental delays and treatment. Build the case for health insurer coverage of services. Build self-sustaining funding strategies.

Programs

Pediatric and OB Primary Care

Pediatric Loan Repayment Program, Asthma and Metabolic Programs

Help Me Grow, EDAC, CUIDAR, For OC Kids

*Additional catalytic investments to be identified*



# Proposed Funding Allocations

Program	FY 11/12	FY 12/13	FY 13/14	TOTAL	3 yr % of total
	<i>Dollars in Millions</i>				
<b>EARLY DEVELOPMENTAL PROGRAMS</b>	\$3.750	\$3.750	\$3.750	\$11.250	62.50%
For OC Kids, CUIDAR, Help Me Grow, EDAC					
<b>SPECIALTY SERVICES</b>	\$1.000	\$1.000	\$1.000	\$3.000	16.67%
Specialty Pediatric Loan					
Asthma Program					
Metabolic Program					
Community Support Services <sup>1</sup>					
<b>PRIMARY CARE</b>	\$1.250	\$0.750	\$0.250	\$2.250	12.50%
Includes Pediatric and OB High Risk Newborn Services					
<b>TOTAL BASE FUNDING</b>	<b>\$6.000</b>	<b>\$5.500</b>	<b>\$5.000</b>	<b>\$16.500</b>	
<b>CATALYTIC INVESTMENTS<sup>2</sup></b>				\$1.500	8.33%
<b>TOTAL PEDIATRIC HEALTH SERVICE FUNDING</b>				<b>\$18.000</b>	100.00%

<sup>1</sup> Community support services may include CAST Medical Director, provider training, and other services to physicians.

<sup>2</sup> Catalytic Investments are intended to be one-time funding to provide system-level changes to pediatric services. Examples:

- 1) Expansion of FQHC's / Sustainability Strategies
- 2) Electronic Birth Records / Public Health Registries
- 3) One-time Innovative Projects

# PHS Committee Oversight

- PHS Committee
  - Determine specific funding allocations within the parameters approved by the Commission
  - Final review and approval of specific work plans
  - Contract monitoring – Per Commission policy, Executive Director, with PHS direction, may adjust contacts up to 10%
  - Develop catalytic initiatives for Commission consideration – Working with the PHS Committee, staff will develop proposals for one-time funding for Commission review. Funding proposals will return to the Commission prior to any funding



# Quality Assurance and Program Oversight

- Resources committed to ensure the quality of Pediatric Health Services investments include:
  - Pediatric Health Services Committee – Committee membership includes two physicians with significant expertise in community health and pediatric practice.
  - University of California, Los Angeles, Center for Children, Families and Communities – Provides guidance and support on improving the quality of pediatric health services including efficiency and cost-effectiveness, particularly in a context of nationally recognized health and medical services models.
  - Risk Assessment Program – An independent auditor contracted with the Commission provides a regular review to identify and mitigate any potential organizational and operational risk.



# Program Implementation & Next Steps

- PHS Committee
  - Determine specific funding allocations within the parameters approved by the Commission
  - Final review and approval of specific work plans
- Future Program Review
  - Contract monitoring – Per Commission policy, Executive Director, with PHS direction, may adjust specific contacts up to 10%, within the total funding allocation.
  - Develop catalytic initiatives for Commission consideration – Working with the PHS Committee, staff will develop proposals for one-time funding for Commission review. Funding proposals will return to the Commission prior to any funding.



# Requested Actions

- Receive and approve Pediatric Health Services Review and Recommendations (Attachment 1)
- Approve Updated Pediatric Health Services Standard Form Agreement (Attachments 3 and 4)
- Adopt resolution (Attachment 6) authorizing the Executive Director to execute agreements (Attachment 5)

# Contract Summary

## FY 2008/09 – 2010/11

Contract Name	Max Obligation	Yr 1 Expended 08/09	Yr 2 Expended 09/10	Yr 3 Max Obligation 10/11
Asthma Chronic Lung (ACLD)	\$1,777,372	\$792,010	\$523,451	\$461,911
Neurodevelopmental (NDP)	\$12,186,815	\$4,343,427	\$3,751,385	\$4,092,003
Ambulatory Care	\$7,332,260	\$3,098,080	\$2,140,049	\$2,094,131
Metabolics	\$718,858	\$272,540	\$239,966	\$206,351
Program Management and Support	\$210,000	\$93,338	<i>Program discontinued</i>	
Pediatric Specialty	\$2,150,000	\$1,000,000	\$750,000	\$400,000
<b>GRAND TOTAL</b>	<b>\$24,375,305</b>	<b>\$9,599,396</b>	<b>\$7,404,851</b>	<b>\$7,254,396</b>

*Note: All existing agreements will expire June 30, 2011*

*Does not include contract with Health Professions Education Foundation for pediatric subspecialty physician recruitment program.*

Pediatric Health Services  
Summary of Recommended Funding  
Three Year Funding: July 2011 – June 2014

<b>EARLY DEVELOPMENTAL PROGRAMS</b>	<i>FY 11/12</i>	<i>FY 12/13</i>	<i>FY 13/14</i>	<b>TOTAL</b>
Early Developmental Programs	\$3.750	\$3.750	\$3.750	\$11.250
<b>SPECIALTY SERVICES</b>	\$1.000	\$1.000	\$1.000	\$3.000
Specialty Pediatric Loan \$.300 M				
Asthma Program \$.450 M				
Metabolic Program \$.200 M				
Community Support Services * \$.050 M				
<b>PRIMARY CARE</b>	\$1.250	\$0.750 (OB)	\$0.250 (OB)	\$2.250
<b>TOTAL BASE FUNDING</b>	<b>\$6.000</b>	<b>\$5.500</b>	<b>\$5.000</b>	<b>\$16.500</b>
<b>CATALYTIC INVESTMENTS **</b>	\$0.500	\$0.500	\$0.500	\$1.500
<b>TOTAL PEDIATRIC HEALTH SERVICE FUNDING</b>	<b>\$6.500</b>	<b>\$6.000</b>	<b>\$5.500</b>	<b>\$18.000</b>

\* Community support services may include CAST Medical Director, provider training, and other services to physicians.

\*\* Catalytic Investments – May Be One-Time:

- 1) Expansion of FQHC's/Sustainability Strategies
- 2) Electronic Birth Records/Public Health Registries
- 3) One-time Innovative Projects

## SUMMARY OF UPDATED PEDIATRIC HEALTH SERVICES BOILERPLATE PROVISIONS

<b><u>Simplified/Updated Reference:</u></b>	<b>Section Reference</b>
Edits to correct misspelled words and other grammatical errors and correct internal paragraph references	throughout document
Update “Grant Agreement” contracting designation to “Agreement”	throughout document
Update section number references due to changed/updated/added requirements	throughout document
Delete Table of Contents	N/A
Remove specific reference to a single database brand name (“OCERS”) and replace with non-specific “evaluation and contract management system”	throughout document
Remove specific reference to Commission’s current Application Service Provider as “Corporation for Standards and Outcomes” and replace with specific reference to “Mosaic, Inc.”	throughout document
Correct wording in “Confidentiality” paragraph to read “Confidentiality and Data Sharing Protocol”	section 12
<b><u>Added Requirement/Authority:</u></b>	
Requires annual review of Scope of Work, Work Plan, and Budget to ensure alignment with Commission’s strategic direction	section 2.1
Describes Administrator authority to make modifications to the scope of work, and certain fiscal/budget related sections of Agreements, without increasing the stated Maximum Payment Obligation and without altering the overall goals and basic purpose of the Agreement	section 2.2
“Counterparts” language permits scanned, faxed or electronic signatures as having the same force and effect as an original signature	section 25
Describes provision related to possible overpayment to include an offset permitted under subsequent renewal or other pending agreement	section 17.2
<b><u>Changed Requirements:</u></b>	
Update technical requirements provision for PCs and computer software	section 8.4
Update guidelines for use of Commission Name and Logo	section 9.12
Update requirement for reporting project progress	section 14.1
Update requirements related to Fiscal Audits in multi-year contracts	section 15.1.1
Update provision related to Executive Director authority to add funds in amount(s) not to exceed 10% (or as otherwise authorized by Commission) of Maximum Payment Obligation Update provision related to “Initial Payments” (formerly “Advance”) Permits, at Executive Director’s (Administrator) discretion, the payment of provisional payments to Contractors and requires subsequent reconciliation of provisional payment(s) made to actual cost Change “Payments” designation to read “Billing/Payment Interval” Describes guidelines and limitations for charging Fees to Program Participants Simplified language in “Matching Funds” provisions related to MediCal Administrative Activities and Targeted Case Management (MAA/TCM) eligible programs and change designation to “Leveraged Funds”	section 16 (throughout)

**AGREEMENT NO. \_\_\_\_\_**

**BY AND AMONG**

**CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**

**AND**

**(Contractor)**

**AND**

**(Contractor)**

**FOR THE PROVISION OF SERVICES**

**(PROJECT)**

**AGREEMENT NO. \_\_\_\_\_**

**BY AND AMONG**

**CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**

**AND**

**(Contractor)**

**AND**

**(Contractor)**

**FOR THE PROVISION OF SERVICES**

**(Project)**

This **AGREEMENT** (“Agreement”) entered into as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“Date of Agreement”) [which date is enumerated for purposes of reference only] is by and among the **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**, a public body and legal public entity (“COMMISSION”), \_\_\_\_ **(Contractor)** Each **CONTRACTOR** contracts with **COMMISSION** severally, except as provided in the next section hereof. **CONTRACTORS** are and shall at all times be deemed to be independent contractors, and each **CONTRACTOR** shall be wholly responsible for the manner in which it performs the Services required to be performed by such **CONTRACTOR** under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, principal and agent, joint venturers, or partners, between the **CONTRACTORS**. Except as provided in the next section hereof, neither **CONTRACTOR** shall in any event be responsible or liable for the acts, failure to act, whether intentional or negligent or otherwise, or for the breach of this Agreement, or any other agreement, of the other **CONTRACTOR**; provided that each is responsible for the undertaking and completion of the Project to the extent provided in this Agreement. “Project” means the aggregate of all Services (as defined in Section 8.4 of this Agreement) required to be performed by both **CONTRACTORS** under this Agreement. This Agreement shall be administered by the Executive Director of **COMMISSION** or his/her authorized designee (“**ADMINISTRATOR**”).

The terms of Sections 1 through 25 hereof set forth the provisions of the Agreement between **COMMISSION** and each of the two **CONTRACTORS**. References in Sections 1 through 25, inclusive, to **CONTRACTOR** shall be individual to each **CONTRACTOR**, each for itself. Neither **CONTRACTOR** shall be responsible for the performance of the other **CONTRACTOR** hereof nor shall either **CONTRACTOR** be eligible for payment of the other **CONTRACTOR**’s applicable portion of the Maximum Payment Obligation. Notwithstanding the foregoing, to the extent either **CONTRACTOR** does not fully perform the Services required to be performed by such **CONTRACTOR** under this Agreement, the other **CONTRACTOR** shall use its best efforts and shall

cooperate with the COMMISSION and ADMINISTRATOR to identify and implement reasonable alternative means to achieve full performance of such Services; provided, however, the COMMISSION may look to the CONTRACTOR which has not fully performed the Services required to be performed by such CONTRACTOR and seek any remedy available at law or equity to cause full performance of such Services by such CONTRACTOR. This Agreement shall not be construed to impose joint and several liability on the two CONTRACTORS, with the COMMISSION acknowledging each of the CONTRACTORS have separate performance obligations hereunder in the implementation and completion of the Project, and each will be paid a portion of the Maximum Agreement Obligation for completion of such performance obligations.

### RECITALS

**A. WHEREAS**, in order to facilitate the creation and implementation of an integrated, comprehensive, and collaborative system of information and services to enhance optimal early childhood development, the legislature adopted legislation set forth in the California Children and Families Act of 1998, Health and Safety Code Section 130100, *et seq.* (as amended, the “Act”) implementing the Children and Families First Initiative passed by the California electorate in November, 1998 and establishing the California Children and Families Commission and County Children and Families Commissions, including COMMISSION; and

**B. WHEREAS**, COMMISSION adopted its First Strategic Plan to define how funds authorized under the Act should best be used to meet the critical needs of Orange County’s children prenatal through five years of age as codified in the Act, which plan hereafter may be amended, updated and/or revised (“Strategic Plan”); and

**C. WHEREAS**, COMMISSION desires to contract with CONTRACTORS to provide Services promoting the purposes of the Act and the Strategic Plan on the terms and conditions set forth in this Agreement; and

**D. WHEREAS**, CONTRACTORS desire to provide Services in furtherance of the purposes of the Act and the Strategic Plan on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, based on the foregoing Recitals and on the text of this Agreement preceding such Recitals, which are substantive parts of this Agreement, and agreed mutual consideration, COMMISSION and CONTRACTORS agree as follows:

**1. TERM OF AGREEMENT.** The term of this Agreement shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, unless earlier terminated pursuant to the provisions of Section 22 of this Agreement. CONTRACTORS and ADMINISTRATOR may mutually agree in writing to extend the term of this Agreement, provided that COMMISSION’s Maximum Payment Obligation in this Agreement does not increase as a result.

**2. ALTERATION OF TERMS.** This Agreement, together with the Project Summary, Exhibit A; Work Plan, Exhibit A-1; and Project Budget, Exhibit B that are attached hereto and fully incorporated herein by this reference, express all understanding of the parties with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties, except as provided in this Section 2 and in Section 8.6. No amendment, addition to, or alteration of, the terms of this Agreement, whether written or oral, shall be valid unless such amendment is made in

writing and formally approved and executed by all parties, except as provided in this Section 2 and in Section 8.6.

**2.1** CONTRACTORS' work plans, budgets and scopes of services will be subject to an annual review to determine consistency with the COMMISSION's strategic direction. Changes to the work plan, budgets and scopes of services may be directed by ADMINISTRATOR to bring the Agreement scope into better alignment with the COMMISSION's evolving strategic direction. These changes may include, but are not limited to, reprioritization of the targeted service population, redirection of resources to provide more intensive services, and/or increased focus on sustainability strategies. If either or both CONTRACTOR is unable to redirect its program to be consistent with this direction, COMMISSION may reduce the relative funding provided in successive years of this agreement.

**2.2** Administrator Modification Authority. Notwithstanding anything to the contrary and provided any modifications do not alter the overall goals and basic purpose of the Agreement, and provided these modifications do not increase COMMISSION's Maximum Payment Obligation during the term of the Agreement, ADMINISTRATOR has the authority to, with the agreement of CONTRACTORS, make modification(s) to the activities, tasks, deliverables, and/or performance timeframes specified in the Project Summary as set forth in the Scope of Work in Exhibit A and/or the Work Plan, Exhibit A-1, to the funding allocation between and among the line items and/or the "Funds Due" period(s) budgeted in the Project Budget, Exhibit B, to the Payment interval, to the percentage of Initial Payment(s), and/or to the percentage of Retention Amount(s), and/or to the timing of the Retention Amount(s) withheld as described in this Agreement.

**3. STATUS OF CONTRACTORS.** CONTRACTORS are and shall at all times be deemed to be independent contractors and shall be wholly responsible for the manner in which it performs the Services required of it by the terms of this Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, principal and agent, joint venturers or partners between COMMISSION and CONTRACTORS or any of CONTRACTORS' agents or employees. CONTRACTORS knowingly, voluntarily, and expressly assumes exclusively the responsibility for the acts of its employees or agents as they relate to the Services to be provided during the course and scope of their employment, whether such employee(s) are funded by program moneys or otherwise related directly or indirectly to the performance of Services under this Agreement. Each CONTRACTOR, its agents and employees, shall not, in any respect whatsoever, be entitled to any rights and/or privileges of COMMISSION employees and shall not be considered in any manner to be COMMISSION employees. COMMISSION shall neither have nor exercise any control or direction over the methods by which a CONTRACTOR shall perform its obligations under this Agreement. COMMISSION shall not be responsible or liable for the acts or failure to act, whether intentional or negligent, of any employee, agent, or volunteer of either CONTRACTOR.

**3.1 COMMISSION Independent Entity.** Notwithstanding other provisions herein, such as insurance and indemnity provisions protecting the County of Orange, CONTRACTOR acknowledges that pursuant to Health and Safety Code Section 130140.1(a)(1) COMMISSION is a legal public entity separate from the County of Orange with independent powers and that in no event will CONTRACTOR look to the County of Orange for performance or indemnity hereunder, and CONTRACTOR expressly waives any rights it may have against the County of Orange in any way related to this Agreement. With respect to the foregoing CONTRACTOR agrees all rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

**Civil Code Section 1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release which if known by him must have materially affected his/her settlement with the debtor.**

**4. CONTRACTOR DELEGATION AND ASSIGNMENT.** CONTRACTOR shall not delegate its duties nor assign its rights hereunder, either in whole or in part, without the prior written consent of ADMINISTRATOR. Any such request must be in writing with a full explanation for such request. Any consent granted by ADMINISTRATOR may be conditioned upon and subject to certain actions by CONTRACTOR as determined by ADMINISTRATOR. Without limiting the foregoing, the parties agree this Agreement may be assigned or delegated to the Children’s Health Collaborative described in Section 8.7 of this Agreement for purposes of financial administration or otherwise, upon the written agreement of (CONTRACTOR), (CONTRACTOR) and the ADMINISTRATOR. Any attempted assignment or delegation in derogation of this section shall be deemed void.

**5. SUBCONTRACTS.**

**5.1 Subcontracts Approval.** Except to the extent expressly provided for under Exhibit A, or as approved by ADMINISTRATOR, CONTRACTOR shall not enter into a subcontract (“Subcontract”) for the provision of services or performance of tasks included within the scope of the Services required by this Agreement without the prior written consent of ADMINISTRATOR; provided, COMMISSION acknowledges (CONTRACTOR) will in the ordinary course of its business provide services hereunder in part through subcontracting arrangements with medical/clinical personnel and/or medical practice groups, and such arrangements shall not require prior approval of ADMINISTRATOR, provided such arrangements comply with the requirements for Subcontracts hereunder. If ADMINISTRATOR consents in writing for CONTRACTOR to enter into a Subcontract, in no event shall the Subcontract alter in any way any legal responsibility or performance obligation of CONTRACTOR to COMMISSION to perform or cause performance of the Services required hereunder. ADMINISTRATOR may, but is not obligated to, require that CONTRACTOR submit a true copy of any permitted Subcontract. All records related to each Subcontract are subject to examination and audit by ADMINISTRATOR or his/her designee, for a period of the later of (i) three (3) years after the date of final disbursement under this Agreement, or (ii) until any pending audit is completed.

**5.2 Minimum Subcontract Terms.** Each permitted Subcontract and the terms and provisions thereof shall be independently negotiated between CONTRACTOR and its selected subcontractor or consultant (“Subcontractor”); provided however, each Subcontract shall include provisions that meet or exceed the following requirements: (i) any specific requirements set forth in Exhibit A; (ii) clear and complete description of the scope of work to be performed by the Subcontractor and the relation of such work to the Services required hereunder; (iii) identification of the personnel by classification, and, if available by name, who will work or provide services to CONTRACTOR under the Subcontract, including a description of the minimum qualifications, education, experience, and any required licensing for each classification of personnel, number of hours described in relation to full time equivalent (e.g., 1.0 FTE or 0.5 FTE); (iv) a compensation schedule, including hourly rates or fees for each classification of personnel and a maximum payment obligation under the Subcontract, which total amount shall in no event exceed and shall be limited to amounts set forth in Exhibit B; (v) insurance and indemnification comparable to the requirements and provisions set forth herein for CONTRACTOR to provide to COMMISSION, which insurance

shall protect CONTRACTOR and COMMISSION, and the County of Orange from any liabilities and claims which arise out of the Subcontract and performance of Subcontractor thereunder; (vi) term of Subcontract, which term shall not exceed the term of this Agreement; (vii) obligation to maintain and retain accurate and complete client and financial records for a minimum of three years related to work and services provided under the Subcontract, and (viii) remedies and termination provisions which may be availed by CONTRACTOR in the event Subcontractor fails to perform under the Subcontract.

## **6. INDEMNIFICATION.**

**6.1 (Contractr) Indemnification of COMMISSION.** (Contractor) agrees to and shall indemnify, defend, hold harmless COMMISSION, and its officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of COMMISSION, including defense costs (“Claims”), whether resulting from court action or otherwise, resulting from, related in any manner to, or arising out of the intentional, malicious, negligent, or other acts, inactions, errors or omissions of (Contractor), its officers, employees, agents, and/or subcontractors in the performance of this Agreement.

**6.1.1** With regard to the foregoing indemnity clause, COMMISSION acknowledges (Contractor) is a constitutional corporation of the State of California and as such does not, and will not, assume responsibility for payment of Claims to the extent a court of competent jurisdiction determines that UCI was not responsible for all or a part of the Claim(s), i.e., liability did not result from intentional, malicious, negligent, or other acts, inactions, errors or omissions of --- (Contractor), its officers, employees, agents, and/or subcontractors in the performance of this Agreement, but were the result of the negligent or intentional act or omission of COMMISSION or its officers or employees. (Contractor) agrees the foregoing does not limit or affect its obligation to accept tender of defense and indemnification for a Claim from the COMMISSION or ADMINISTRATOR. Provided however, if COMMISSION or its officers or employees are found liable for all or a part of such Claim by a court of competent jurisdiction due to negligent or intentional act or omission of COMMISSION or its officers or employees, then COMMISSION shall be responsible to pay the part of Claim it is determined responsible for and (Contractor) may recover such costs of defense directly attributable to such part of Claim. If a settlement is made prior to a court’s determination of liability, then (Contractor) reserves the right to arbitrate the matter of liability to determine any allocation of fees and expenses which may be the responsibility of COMMISSION due to its negligence. Such arbitration will be conducted by a mutually agreeable arbitrator using the services of JAMS. If a mutually agreeable arbitrator cannot be agreed upon then each side shall pick an arbitrator to mutually appoint the services of a third impartial arbitrator to decide the case.

**6.1.2** Without limiting (Contractor) indemnification, it is agreed that (Contractor) shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance covering its operations and performance under this Agreement in the form and amounts set forth in Section 7 herein, which insurance obligations shall apply independently of the indemnification provided hereunder.

**6.1.3** No member, officer, committee member, or employee of COMMISSION shall be personally liable to (Contractor), or any successor in interest, in the event of any default or

breach by COMMISSION or for any amount that may become due to (Contractor) or to its successor, or for breach of any obligation of the terms of this Agreement.

**6.2 CONTRACTOR Indemnification of COMMISSION.** (Contractor) agrees to and shall indemnify, defend, hold harmless COMMISSION, and its officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of COMMISSION, including defense costs (“Claims”), whether resulting from court action or otherwise, resulting from, or arising out of the intentional, malicious, negligent, or other acts, inactions, errors or omissions of CONTRACTOR), its officers, employees, agents, and/or subcontractors in the performance of this Agreement.

**6.2.1** With regard to the foregoing indemnity clause, COMMISSION acknowledges that CONTRACTOR does not, and will not, assume responsibility for payment of Claims to the extent a court of competent jurisdiction determines that CONTRACTOR was not responsible for all or a part of the Claim(s), i.e., liability did not result from intentional, malicious, negligent, or other acts, inactions, errors or omissions of CONTRACTOR, its officers, employees, agents, and/or subcontractors in the performance of this Agreement. CONTRACTOR agrees the foregoing does not limit or affect its obligation to accept tender of defense and indemnification for a Claim from the COMMISSION or ADMINISTRATOR. Provided however, if COMMISSION or its officers, employees or agents are found liable for all or a part of such Claim by a court of competent jurisdiction due to negligent or intentional act or omission of COMMISSION or its officers or employees, then COMMISSION shall be responsible to pay the part of Claim it is determined responsible for and CONTRACTOR may recover costs of defense directly attributable to such part of Claim.

**6.2.2** Without limiting (Contractor’s) indemnification, it is agreed that (Contractor) shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance covering its operations and performance under this Agreement in the form and amounts set forth in Section 7 herein, which insurance obligations shall apply independently of the indemnification provided hereunder.

**6.2.3** No member, officer, committee member, or employee of COMMISSION shall be personally liable to(Contractor)---, or any successor in interest, in the event of any default or breach by COMMISSION or for any amount that may become due to (Contractor) or to its successor, or for breach of any obligation of the terms of this Agreement.

**6.3 COMMISSION Indemnification of CONTRACTORS.** COMMISSION agrees to indemnify and hold harmless CONTRACTORS from all liability, claims, losses and demands, including defense costs, whether resulting from court action or otherwise, arising out of the intentional or grossly negligent acts or omissions of COMMISSION, its officers, agents, and/or employees in the performance of this Agreement.

**6.3.1** COMMISSION warrants it is self-insured or maintains policies of insurance placed with reputable insurance companies licensed to do business in the State of California which insures the perils of bodily injury, medical, professional liability and property damage.

**6.4 Notice of Claim; Tender of Indemnification.** Each party agrees to provide the indemnifying party with written notification of any claim within thirty (30) days of notice thereof, to

allow the indemnifying party control over the defense and settlement of the claim, and to cooperate with the indemnifying party in its defense.

**6.5 Defense of Claim.** COMMISSION and CONTRACTORS, at their sole discretion and expense, may employ legal counsel and participate in the defense of any actions.

**6.6 Cooperation with Claims.** Each party to this Agreement shall cooperate with each of the other parties to this Agreement in the defense of any action brought for conduct resulting under this Agreement and shall make available to said party any and all records in their respective possessions or control reasonably required by a party for use in contesting or defending liability.

**7. INSURANCE.** Without limiting CONTRACTOR’S liability for indemnification of COMMISSION as set forth in Section 6, CONTRACTOR warrants that it will maintain, in effect, during the term of this Agreement, the following minimum coverages.

Coverage	Minimum Limits	
	Per Occurrence	Annual Aggregate
Worker’s Compensation	Statutory	Statutory
Employer’s Liability	\$1,000,000	\$1,000,000
Comprehensive General Liability	\$1,000,000	\$2,000,000
Comprehensive Auto Liability (covering owned, non-owned, and hired)	\$1,000,000	\$1,000,000

It is mutually agreed that CONTRACTOR may be self-insured with respect to the minimum required insurance under this Agreement and that ADMINISTRATOR may in his reasonable discretion request evidence of the required coverage.

**7.1 Termination of Insurance:** If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.

**7.2 Subcontractor Insurance:** Should any of the work under this Agreement be sublet, CONTRACTOR shall require each of its subcontractors of any tier to provide the coverages mentioned in Section 6 herein, or CONTRACTOR may insure subcontractors under its own policies.

**7.3 Noncompliance with Insurance:** COMMISSION reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements outlined herein.

**7.4 Duration of Insurance:** CONTRACTOR will retain all coverage, insurance (and bonds) for the duration of this Agreement and for any extended period agreed upon within this Agreement.

**7.5 Additional Insured Endorsement (Contractor) :** Insurance afforded by (Contractor) insurance policy(ies) shall also apply to COMMISSION and the County of Orange, and the members of COMMISSION and the Board of Supervisors of the County of Orange, and the officers, agents, and employees of COMMISSION and the County of Orange, individually and collectively, as additional insureds.

**7.6 Primary Insurance Endorsement (Contractor):** Insurance afforded by the (Contractor) additional insured endorsement shall apply as primary insurance, and other insurance maintained by COMMISSION or the County of Orange, or their officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy(ies).

## **8. RESPONSIBILITIES OF CONTRACTOR.**

**8.1 Conditions to COMMISSION's Obligation to Proceed under Agreement.** COMMISSION's obligations to proceed with performance under this Agreement and the payment of each installment payment hereunder are expressly conditioned upon the satisfaction by CONTRACTORS of the following conditions precedent. Such Conditions ("Conditions") are solely for the benefit of COMMISSION and shall be fulfilled by each CONTRACTOR (or waived by ADMINISTRATOR in his/her sole discretion in Exhibit A). CONTRACTOR may satisfy (and submit evidence of such satisfaction to ADMINISTRATOR) one or more of such Conditions at any time prior or subsequent to the Date of Agreement, so that at the time of the first payment, each CONTRACTOR shall have provided satisfactory evidence of compliance with each of such Conditions.

**8.1.1 Evidence of CONTRACTOR Approval of Agreement.** CONTRACTOR shall submit evidence of the approval of this Agreement by resolution of CONTRACTOR's governing board or other evidence of approval satisfactory to ADMINISTRATOR. In this regard, (CONTRACTOR) represents that pursuant to (CONTRACTOR) Policies & Procedures, Delegations of Authority, IDA 236, (Designee) , COO an authorized delegatee to accept and/or execute this Agreement on behalf of (CONTRACTOR).

**8.1.2 Corporate Documents of (Contractor).** If requested by ADMINISTRATOR in writing, true copies of (CONTRACTOR)'s current articles of incorporation, bylaws, or other organizational documents, evidence of active entity status and good standing from appropriate State officials, and if applicable, certification of current Internal Revenue Code (IRC) Section 501(c)(3) tax exempt status.

**8.1.3 Insurance.** All provisions and submittal of endorsements or other evidence of insurance required hereunder shall be in place and approved by ADMINISTRATOR or his/her Risk Management designee.

**8.1.4 Licenses and Permits.** Each CONTRACTOR shall have applied for and obtained all necessary licenses and permits required to perform and complete the Services hereunder as required by applicable laws and regulations of the United States, State of California, County of Orange, any local jurisdiction, or other appropriate governmental agencies.

**8.1.5 Approved Work Plan** as described in Section 8.5.

**8.1.6 Other Conditions.** CONTRACTORS have complied with such other Conditions listed in Exhibit A, if any.

**8.2 No Supplanting Government Funds.** CONTRACTORS shall not supplant government funds intended for the purposes of this Agreement with any COMMISSION funds made available under this Agreement. CONTRACTORS shall not claim payment from COMMISSION for, or apply sums received from COMMISSION with respect to that portion of its obligations that have been paid by another source of revenue. As a material provision of this Agreement and substantive criterion in COMMISSION's selection of CONTRACTORS for the Services provided hereunder and in furtherance of the express directives of the Act, CONTRACTORS are required to ensure that in the performance of this Agreement all Services provided under this Agreement shall be expended and used to supplement, not supplant, existing levels of service.

**8.3 Scope of Work.** CONTRACTOR shall provide the Services as defined below, shall use its best efforts to achieve the outcomes described in Exhibit A-1 and shall provide the Services within the funding limitations applicable to such CONTRACTOR as set forth in Exhibit B all of which exhibits are attached hereto and incorporated herein by this reference. "Services" means, for each respective CONTRACTOR, consistent with the Project description attached as Exhibit A, (i) the services of those personnel who are required to be compensated by such CONTRACTOR pursuant to the Budget attached as Exhibit B, and (ii) timely payment of all costs, expenses, expenditures, and other items required under the terms of such Budget to be paid by such CONTRACTOR (but excluding any services or payments required under the terms of such Budget to be provided by the other CONTRACTOR).

**8.4 Technical Requirements for PCs and Software Used by CONTRACTOR for all Recordkeeping and Reporting for the Services and Agreement.** CONTRACTOR agrees to obtain and maintain all computer hardware and software necessary to meet the requirements of Section 19 in its entirety with respect to the evaluation and contract management system. CONTRACTOR is required to contact COMMISSION's database carrier prior to the commencement of work pursuant to this Agreement to ensure that CONTRACTOR's computer hardware and software is capable of meeting CONTRACTOR's evaluation and contract management system obligations. In the event that CONTRACTOR's existing equipment does not meet the necessary standards, CONTRACTOR is required to obtain all requisite hardware and software to ensure its compliance with Section 19 of this Agreement.

**8.5 Staffing Obligations for Services.** COMMISSION and CONTRACTOR agree that the scope of work, the level and description of services, and the classification, number, and qualifications of personnel and staff necessary to provide the Services required hereunder to be provided by CONTRACTOR in furtherance of the Strategic Plan and the Act are set forth in the attached Exhibit A and the Implementing Plan(s) (as the term is hereinafter defined) approved by ADMINISTRATOR and implemented by CONTRACTOR hereunder. CONTRACTOR agrees to provide the scope, level, and type of Services and the staffing, facilities, equipment and supplies as necessary to provide the Services described in Exhibit A and the Implementing Plan(s). CONTRACTOR shall operate continuously throughout the term of this Agreement in conformity with the terms and conditions of Exhibit A and this Agreement.

**8.5.1 Staffing Conference(s).** Upon the request of ADMINISTRATOR, CONTRACTOR agrees to send appropriate staff to attend orientation session(s) and/or progress meeting(s) arranged and/or given by COMMISSION and/or ADMINISTRATOR. Such requested meeting shall occur at a time and place mutually agreeable between the parties.

**8.5.2 Personnel Disclosure.** If requested by the ADMINISTRATOR, CONTRACTOR shall make available to ADMINISTRATOR a current list of all personnel providing Services hereunder, including personnel of any permitted Subcontractor. Changes to the list shall be immediately provided to ADMINISTRATOR. CONTRACTOR shall prepare and maintain up-to-date personnel records and information about its employees and, if requested by ADMINISTRATOR and to the extent permitted by applicable laws, make available to the ADMINISTRATOR the following information/records:

(a) A list of all employees assigned to, performing under, and/or providing Services under this Agreement, including personnel of any permitted Subcontractor, and such list shall include each of the following:

(i) All full time staff positions and all part-time staff positions by title, including volunteer positions whose direct Services are required to provide the Services described herein.

(ii) The qualifications and experience, including professional degree(s) and required licensing, if applicable, required for each position.

(iii) The language skill(s), if applicable, for all personnel, such as bi-lingual, sign language, Braille, or other communication skills.

(b) CONTRACTOR shall immediately notify ADMINISTRATOR concerning the arrest and/or subsequent conviction, for other than minor traffic offenses, of any paid employee and/or volunteer staff providing Services hereunder when such information becomes known to CONTRACTOR.

**8.5.3 CONTRACTOR To Maintain Complete Records re Personnel.**

CONTRACTOR shall maintain complete and accurate records relating to all personnel, including employees and volunteers performing Services hereunder. Such record keeping shall include evidence CONTRACTOR has conducted adequate pre-employment screening, such as information CONTRACTOR has conducted or caused to be conducted on each employee a pre-employment/hiring background check and CONTRACTOR has taken all reasonable steps to assure all employees assigned to perform Services under this Agreement are suitable to perform the work and do not pose a reasonably foreseeable risk of harm to children or other persons receiving or participating in the Services. CONTRACTOR acknowledges it has a duty to disclose to COMMISSION and ADMINISTRATOR information within its knowledge that may pose a reasonably foreseeable risk of harm to children. Nothing in the foregoing shall obligate CONTRACTOR to disclose to COMMISSION or ADMINISTRATOR confidential personnel information about employees except and to the extent disclosure is permitted by applicable laws or authorized by judicial or administrative order. Further, nothing in the foregoing shall affect or modify the provisions of this Agreement affirming the independent status of CONTRACTOR.

**8.6 Implementing Plans.** As directed by ADMINISTRATOR during the term of this Agreement each CONTRACTOR will be required to prepare and submit to ADMINISTRATOR certain planning and implementing documents regarding the Services hereunder toward achieving the outcomes set forth in Exhibit A-1. Such planning and implementing documents may include, but not be limited to, service plan(s), and/or business plan(s), and shall include work plan(s) (“Implementing Plan”), each of which may clarify and/or further describe and define the Services required hereunder and date(s) required for performance of certain tasks which comprise the Services. As each Implementing Plan is prepared by a CONTRACTOR and submitted to, reviewed by, and approved by ADMINISTRATOR, it shall become and be deemed to be an attachment to and fully incorporated

as a part of this Agreement and deemed to be an amendment to this Agreement. CONTRACTORS shall perform and meet the tasks and requirements set forth in each Implementing Plan as a performance obligation of this Agreement. Implementing Plans prepared hereunder shall be prepared and submitted jointly by both (CONTRACTOR) and (CONTRACTOR) on behalf of CONTRACTORS.

Each Implementing Plan may identify specific items of expense ("Committed Costs"), which CONTRACTOR determines are necessary for it (or an approved Subcontractor) to make, which involve financial commitments for a fixed period of time, and which COMMISSION agrees to fund notwithstanding termination by COMMISSION without cause under Section 22.1.1. Examples of items of expenses which COMMISSION will consider for treatment as Committed Costs include employment agreements for key personnel and space/equipment requirements which are not reasonably obtainable on an "at-will" or short-term basis. All Committed Costs shall be clearly identified in the Work Plan as Committed Costs for purposes of this Agreement. The amount and nature of such Committed Costs (including the not-to-exceed maximum amount payable) shall be identified with specificity in the approved Work Plan, and any contracts related to such Committed Costs shall be appended to the Work Plan. No item of expense shall be treated as a Committed Cost hereunder unless it identifies a not-to-exceed amount which shall be treated as a Committed Cost, and the sum of all Committed Costs for any Work Plan may not exceed the total available budgeted amount (not previously expended) hereunder for such item. Items of Committed Costs which are deemed approved for purposes of this Agreement are set forth in Exhibit B hereto.

**8.7 Assignment and Transfer to Collaborative Entity.** Each of (Contractor) and (Contractor) and the COMMISSION agree that in the event (Contractor) and (Contractor) create a new nonprofit entity ("Children's Health Collaborative") for the purpose of promoting the health and wellness of children in Orange County ages prenatal through age 5, and their families, in a manner consistent with the Act on a basis meeting the requirements of the COMMISSION determined in its sole discretion for financial oversight and input, each of the parties will cause the administrative (as opposed to programmatic) responsibility of (Contractor) and (Contractor) to herein be assigned and transferred to the Children's Health Collaborative pursuant to an assignment agreement to be negotiated in good faith among the parties.

## **9. GENERAL TERMS AND CONDITIONS.**

**9.1 Compliance with the Law.** CONTRACTORS shall provide all Services rendered hereunder in accordance with all applicable federal and state laws, statutes and regulations and local ordinances and resolutions. CONTRACTORS shall comply with the Act, and all laws, rules or regulations applicable to the Services provided hereunder, as any may now exist or be hereafter changed or added.

**9.2 Familiarity with Work.** By executing this Agreement and prior to accepting any individual work order assigned by ADMINISTRATOR, each CONTRACTOR warrants and shall be satisfied that (a) it has thoroughly investigated and considered the scope of Services and work to be performed, (b) it has carefully considered how the work should be performed, and (c) it fully understands the facilities, difficulties, and restrictions, attending performance, of the work under this Agreement. Should either CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the work or as represented by COMMISSION or ADMINISTRATOR, it shall immediately inform COMMISSION of such fact and shall not proceed except at CONTRACTORS' risk until written instructions are received from ADMINISTRATOR.

**9.3 Care of Work.** CONTRACTORS shall adopt reasonable methods during the term of this Agreement to furnish continuous protection to the work, work product, records, and the equipment, materials, papers and other components thereof to prevent losses or damages, and shall be responsible for all losses or damages, to persons or property (including real property, personal property, both tangible and intangible) until acceptance of the work by COMMISSION, except such losses or damages as may be caused by COMMISSION's own negligence. The performance of Services by CONTRACTOR shall not relieve a CONTRACTOR from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to COMMISSION, when such inaccuracies are due to the negligence, action, or inaction of such CONTRACTOR.

**9.4 Remedies Not Exclusive.** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any others provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by any party to any other remedies provided by law.

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

**9.6 California Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any default, dispute, interpretation, declaration of rights, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and CONTRACTOR covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**9.7 Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. One party's consent or approval of any act by any party requiring the other party's consent or approval shall not be deemed to waive or render unnecessary such party's consent to or approval of any subsequent act of the party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**9.8 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

**9.9 Covenant Against Discrimination.** In the performance of this Agreement, CONTRACTORS shall not engage in, nor permit its agents to engage in discrimination in employment of persons or provision of services or assistance, nor exclude any person from participation in, nor deny any person the benefits of, nor or subject any person to discrimination under any program or activity funded in whole or in part with COMMISSION funds on the grounds

of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender or sexual orientation, except as permitted by applicable provisions of Federal and State law. CONTRACTORS shall comply with Title II of the Americans With Disabilities Act, (42 USC §12101, *et. seq.*) as it relates to public accommodations.

**9.10 Legal Action.** In addition to any other rights or remedies, any party may take legal action, at law or at equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

**9.11 Attorneys' Fees.** If any party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

**9.12 Use of Commission Name and Logo.** Funded and partnering organizations are encouraged, but not required, to use the Commission's name and logo on all materials, promotional information and products that relate to Commission-funded program(s). CONTRACTOR shall comply with COMMISSION's guidelines related to the use of COMMISSION's name and logo as stated in its Policies and Procedures Guide.

**9.13 Time of Essence.** Time is of the essence in the performance of this Agreement.

**9.14 No Broker or Finders Fee.** CONTRACTORS warrant neither CONTRACTOR has paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**9.15 No Use of Funds for Lobbying.** CONTRACTORS shall not expend any COMMISSION funds for the purpose of influencing or attempting to influence an officer, member, or employee of COMMISSION, a member of the Orange County Board of Supervisors, any County of Orange officer, or employee, any member or employee of the State Commission, any member of the State legislature, or member of Congress, or any other officer or employee thereof, in connection with the awarding of any contract, the making of any grant, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment, or modification of any contract, grant, loan, or cooperative agreement.

**9.16 Constitutional Use Of Funds.** As an express condition to this Agreement, CONTRACTORS, agree that the funds provided by the COMMISSION to CONTRACTORS hereunder shall not be used to promote any religion, religious creed or cult, denomination, sectarian organization or religious belief or to fund any proselytizing activities. The parties agree the foregoing covenant is intended to and shall be construed for the limited purpose of assuring compliance with respect to the use of COMMISSION funds by CONTRACTORS with applicable constitutional limitations respecting the establishment of religion as set forth in the establishment clause under the First Amendment of the United States Constitution and applicable provisions of California Constitution, and is not in any manner intended to restrict other activities of CONTRACTORS.

**9.17 Child Abuse Reporting.** Each CONTRACTOR shall establish a procedure to ensure that all employees, volunteers, consultants or agents performing Services under this Agreement, report child abuse or neglect to a child protective agency as defined in Penal Code Section 11165.9 to the extent required by applicable law. Each CONTRACTOR shall require each employee, volunteer,

consultant, subcontractor, and agent who provides Services to or for such CONTRACTOR in implementation of the Services described in Exhibit A and funded by this Agreement (to the extent such person(s) are legally subject to such requirements), to sign a statement acknowledging such reporting requirements and to comply with the provisions of such code requirements to the extent required by applicable law.

**9.18 CONTRACTOR Cooperation with Other COMMISSION Service Providers.**

A goal of the COMMISSION and its Strategic Plan is to develop an integrated quality service system to ensure access to a quality child and family support services delivery system for Orange County children from the prenatal stage to age 5. To this end, CONTRACTORS agree to cooperate with the COMMISSION and ADMINISTRATOR to achieve the objectives of the Strategic Plan and support COMMISSION by participating in cooperative arrangements to serve children aged 0 to 5 with other services funded through the COMMISSION.

**9.19 Political Activity.** CONTRACTORS agree the funds provided herein shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

**9.20 Child Care Provider Notification; Admission Procedures and Parental and Authorized Representative's Rights.** To the extent required by applicable laws and regulations CONTRACTOR shall establish and carry out the requirements of California Code of Regulations (CCR) Title 22 relating to child care providers and provision of licensed child care, day care, or other early care and education. In particular and to the extent applicable, CONTRACTOR shall comply with CCR Title 22, Section 101218.1 to ensure all parents and authorized representatives of minor children, in particular children ages 0-5 receiving Services under this Agreement, are notified regarding any employee, volunteer, consultant, or agent of CONTRACTOR with a criminal record exemption. In accordance with applicable laws and regulations CONTRACTOR shall (i) post a current copy of the California Department of Social Services (CDSS) Parents' Rights Poster in a prominent location; (ii) provide all parents and authorized representatives current copies of all CDSS notification forms and retain all parent signature or acknowledgement portions of those forms in the child's file; (iii) provide parents and authorized representatives on request the name of any adult associated with CONTRACTOR (including any employee, volunteer, consultant or agent of CONTRACTOR) who has been granted a criminal record exemption and that person's relationship to CONTRACTOR. To the extent required by applicable laws and regulations, CONTRACTOR shall document parent and authorized representative requests regarding criminal exemption and retain such documentation, jointly signed by an authorized representative of CONTRACTOR and the parent or authorized representative, in the child's file.

**10. REPRESENTATIONS AND COVENANTS OF CONTRACTOR.** CONTRACTORS make the following representations and covenants to the COMMISSION and each such representation and covenant is deemed to be an ongoing representation and covenant. Each CONTRACTOR shall advise ADMINISTRATOR in writing if there is any change pertaining to any matters set forth or referenced in the following items 10.1 through 10.6, inclusive.

**10.1 No Conflict.** To the best of CONTRACTORS' knowledge, CONTRACTORS' execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which CONTRACTOR is a party or by which it/they is/are bound.

**10.1.1** CONTRACTORS agrees no officer, employee, agent or assignee of COMMISSION having direct or indirect control of any monies allocated by COMMISSION, inclusive of the subject funds, shall serve as an officer or director of either CONTRACTOR without the express written acknowledgement of COMMISSION.

**10.1.2** Further, any conflict or potential conflict of interest of any officer or director of CONTRACTORS shall be fully disclosed prior to the execution of this Agreement and shall be attached to and become a part hereof.

**10.2 No Bankruptcy.** Neither CONTRACTOR is the subject of any current or threatened bankruptcy.

**10.3 No Pending Legal Proceedings.** Neither CONTRACTOR is the subject of a current or threatened litigation that would or may materially affect either CONTRACTOR's performance under this Agreement.

**10.4 Application Veracity.** All provisions of and information provided in CONTRACTORS' applications for funding submitted to COMMISSION including exhibits are true and correct in all material respects.

**10.5 No Pending Investigation.** Neither CONTRACTOR is aware it is the subject of any current or threatened criminal or civil action investigation by any public agency, including without limitation a police agency or prosecuting authority, related to the provision of Services hereunder.

**10.6 Licenses and Standards; Compliance with Laws.** Each CONTRACTOR has all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, any local jurisdiction in which it may do business and/or provide Services, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of this Agreement. Further, Each CONTRACTOR warrants that its employees, agents, and contractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to non-discrimination, sexual harassment, and ethical behavior.

**10.6.1 Failure to Obtain or Maintain Licenses.** Each CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any appeal, any such permits, licenses, approvals, certificates, waivers and exemptions. Said inability shall be cause for termination of this Agreement by COMMISSION or ADMINISTRATOR.

## **11. FORM OF BUSINESS ORGANIZATION AND REAL PROPERTY DISCLOSURE.**

**11.1 Form of Business Organization.** Upon the request of ADMINISTRATOR to--- (Contractor)---, ---(Contractor)--- shall prepare and submit, within thirty (30) days thereafter, an affidavit executed by persons satisfactory to ADMINISTRATOR containing, but not limited to the following information:

**11.1.1** Confirmation of the form of (Contractor) business organization, e.g., general or limited partnership, non-profit corporation, corporation, limited liability company.

**11.1.2** A detailed statement indicating the relationship of (Contractor), by way of ownership or otherwise, to any parent organization or individual.

**11.1.3** A detailed statement indicating the relationship of (Contractor) to any subsidiary business organization or to any individual that may be providing service, supplies, material or equipment to CONTRACTOR or in any manner does business with (Contractor) under this Agreement.

**11.1.4** A detailed statement indicating the relationship of (Contractor) to any subsidiary business organization or to any individual that also is a grantee of COMMISSION funds and/or may be providing services, supplies, material or equipment to COMMISSION through an agreement comparable to this Agreement.

**11.2 Change in Form of Business Organization.** If during the term of this Agreement, the form of (Contractor) business organization changes, or the beneficial ownership of (Contractor) changes, or (Contractor) relationship to other businesses dealing with (Contractor) under this Agreement changes, (Contractor) shall promptly notify ADMINISTRATOR, in writing, detailing such changes. A substantial change in the form of business organization may, at ADMINISTRATOR's and/or COMMISSION's sole discretion, be treated as an attempted assignment of rights or delegation of duties of this Agreement.

**11.3 Real Property Disclosure.** In the event that CONTRACTOR has an ownership interest in real property where Services are to be provided under this Agreement and an allowance for depreciation is a permitted element of compensation for Services pursuant to the Exhibits hereto, CONTRACTOR shall only be entitled to the proportionate share of depreciation of the improvements at the rate of no more than 4% each year plus the proportionate share of real property taxes and maintenance. CONTRACTOR may be required to submit the following information in addition to a copy of the lease, license or rental agreement, as well as any other information requested, within ten (10) days from the date of the request by ADMINISTRATOR, some or all of the following:

**11.3.1** The location by street address and city of any such real property.

**11.3.2** The fair market value of any such real property as such value is reflected on the most recently issued County Tax Collector's tax bill, if any.

**11.3.3** A detailed description of all existing and pending agreements, with respect to the use or occupancy of any such real property. Such description shall include, but not be limited to:

- (a) The term of any rental agreement, lease or sublease;
- (b) The amount of monetary consideration to be paid to the lessor, sublessor or licensor over the term of the rental agreement, lease, or sublease;
- (c) The type and dollar value of any other consideration to be paid to the lessor, sublessor or licensor;
- (d) The full names and addresses of all parties to any agreement concerning the real property and a listing of liens (if any) thereof, together with a listing by full names and addresses of all officers, directors and stockholders of any private corporation and a similar listing of all general and limited partners of any partnership which is a party.

**11.3.4** A listing by full names of all of either CONTRACTOR's officers, directors and/or partners, members of its administrative and advisory boards, staff and consultants, who have

any family relationship by marriage or blood with a party to any agreement concerning the subject real property or who have any present or future financial interest in such person's business, whether the entity concerned is a corporation or partnership. Such listing shall also include the full names of all of such CONTRACTOR's officers, directors, partners and those holding a financial interest in the subject property. Included are members of its advisory boards, members of its staff and consultants, who have any family relationship by marriage or blood, to an officer, director, or stockholder of the corporation or to any partner of the partnership. In preparing the latter listing, such CONTRACTOR shall also indicate the names of the officers, directors, stockholders, or partner(s), as appropriate, and the family relationship that exists between such person(s) and such CONTRACTOR's representatives listed.

**11.3.5** True and correct copies of all agreements with respect to any such real property shall be appended to the affidavit described above and made a part thereof.

**11.3.6** If, during the term of this Agreement, there is a change in the agreement(s) with respect to real property where persons receive Services, such CONTRACTOR shall promptly notify ADMINISTRATOR, in writing, describing such changes.

**12. CONFIDENTIALITY.** CONTRACTOR and COMMISSION shall maintain the confidentiality of all records, including any hard copies, and/or electronic or computer based data, and/or audio and/or video recordings, in accordance with all applicable state and federal codes and regulations relating to privacy and confidentiality, and with the COMMISSION's adopted Confidentiality and Data Sharing Protocol relating to privacy and confidentiality, as each now exists or may hereafter be amended.

### **12.1 Contractor Obligation**

**12.1.1** All records and information concerning any and all persons referred to CONTRACTOR by COMMISSION or COMMISSION's designee shall be considered and kept confidential by CONTRACTOR, CONTRACTOR's staff, agents, employees and volunteers.

**12.1.2** CONTRACTOR shall require its employees, agents and volunteers to sign an acknowledgement or other certification which certifies that they will keep the identities and any information with respect to any and all service recipients of CONTRACTOR related to services authorized under this Agreement confidential except as may be required to provide Services under this Agreement to comply with any reporting and auditing requirements specified in this Agreement, and any other information required by COMMISSION in the administration of this Agreement, and as otherwise permitted by law.

**12.1.3** CONTRACTOR agrees that any and all approved subcontracts entered into shall be subject to the confidentiality requirements of this Agreement.

**12.1.4** CONTRACTOR shall inform all of its employees, agents, subcontractors, volunteers and partners of this provision that any person knowingly and intentionally violating the provisions of federal, state or local confidentiality laws may be guilty of a crime and/or subject to civil action.

**12.2 Commission Obligation.** COMMISSION shall maintain the confidentiality of patient or service recipient records made available pursuant to this Agreement in accordance with all provisions of the law, and regulations promulgated thereunder relating to privacy and confidentiality,

and the customary standards and practices of government third-party payors. CONTRACTOR acknowledges such confidentiality may be limited by public records and freedom of information laws.

**12.3 Authorized Data Sharing.** The provisions of Sections 12.1.1 and 12.1.2, 12.1.3, and 12.1.4 are not applicable to authorized data sharing pursuant to COMMISSION-funded projects and/or as permitted by law.

**13. INTERPRETATION OF CONTRACT REQUIREMENTS.** If any party or the parties together identify a term or provision under this Agreement which is subject to interpretation or requires clarification or additional direction, such interpretation issue shall be identified in writing by any party and submitted to the other parties, whereupon representative(s) of (Contractor) and (Contractor) and ADMINISTRATOR shall meet to resolve such interpretation issue to the mutual satisfaction of the parties. At the election of (Contractor) or (Contractor), as the case may be, if the issue does not involve the material rights of such party, such party may waive in writing its right to participate in such meeting(s). In this regard, ADMINISTRATOR is hereby vested with the right to issue interpretation(s) and waiver(s) and modification(s) to the terms and provisions of this Agreement so long as such interpretation(s) and waiver(s) and modification(s) does/do not substantively or materially amend or modify this Agreement. If such interpretation issue is not or cannot be disposed of within a reasonable period of time between the applicable CONTRACTOR's representative(s) and ADMINISTRATOR, or other staff designee, such matter may be brought to the attention of COMMISSION, as elected by the ADMINISTRATOR. If consensus cannot be reached through this application, any party may assert its other rights and remedies within this Agreement or within a court of competent jurisdiction. The provisions of this Section 13 shall apply to issues arising between (Contractor) and (Contractor) with equal force, as applicable to issues between COMMISSION and CONTRACTOR. COMMISSION and CONTRACTOR agree that, in the event of an interpretation issue, they will continue without delay to carry out all their responsibilities under this Agreement that are not affected by such issue.

#### **14. REPORTING REQUIREMENTS.**

**14.1 Reports.** Separate from any separate reports specified in the Project Summary, Exhibit A, or the Work Plan, Exhibit A-1, CONTRACTOR shall prepare and submit to ADMINISTRATOR -reports concerning the performance of the Services required by this Agreement and any other reports as ADMINISTRATOR may reasonably require.

**14.2 Final Report.** CONTRACTORS shall complete and submit to ADMINISTRATOR a final report within sixty (60) days after the termination of this Agreement, which shall narratively summarize the outcomes and Services provided by each CONTRACTOR during the term of this Agreement and evidence up to date compliance and input to COMMISSION'S EVALUATION AND CONTRACT MANAGEMENT SYSTEM to the extent required by Section 19. CONTRACTOR and ADMINISTRATOR may mutually agree in writing to modify the date upon which the final report must be submitted.

**14.3 Ancillary Reporting Requirement Related to Enforcement of Child Support Obligations.**

**14.3.1 County Requirements.** In order to comply with child support enforcement requirements of the County of Orange, (CONTRACTOR) agrees to furnish to ADMINISTRATOR within thirty (30) days of the award of this Agreement:

(a) in the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;

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

(c) a certification that (CONTRACTOR) has fully complied with all applicable Federal and State reporting requirements regarding its employees; and

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

**14.3.2 Failure to Comply Breach.** The failure of (CONTRACTOR) to timely submit the data or certifications required by subsections (a), (b), (c), or (d), or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement, and failure to cure such breach within sixty (60) calendar days of notice from the County of Orange (or the COMMISSION) shall constitute grounds for termination of this Agreement.

**14.3.3 Use of Data Solely for Government Enforcement of Child Support Orders.** It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

**15. AUDITS.** Each CONTRACTOR shall prepare and maintain adequate records of its Services provided in sufficient detail to permit an evaluation of Services and an audit of records as hereinafter described.

**15.1 Fiscal Audit of Contract.** Each CONTRACTOR shall employ an independent, licensed Certified Public Accountant (“CPA”) who shall prepare and file with ADMINISTRATOR a “Fiscal Audit” of this Agreement that shall include a review of the invoices submitted and paid for the reasonable cost of Services under this Agreement and a sampling (test) of the supporting documentation.

**15.1.1 Multi-Year Funding.** For multi-year funding agreements there shall be a Fiscal Audit completed for each year, and each annual Fiscal Audit shall become due sixty (60) days after the anniversary of the Date of Agreement, with the final Fiscal Audit due sixty (60) days from the end of the term of the Agreement or earlier date of termination of this Agreement. CONTRACTOR and ADMINISTRATOR may mutually agree via email to extend the date by which each Fiscal Audit is due.

**15.1.2 Retention Amount.** Upon successful completion of each Fiscal Audit, ADMINISTRATOR shall release the applicable Retention Amount.

**15.1.3 Scope of CPA Opinion for Fiscal Audit.** CONTRACTOR shall require the CPA who completes each Fiscal Audit to provide an unqualified professional written opinion that states whether the invoices for payment submitted by CONTRACTOR under this Agreement were for actual and reasonably necessary costs and expenses to pay for work performed or goods

purchased pursuant to the terms and conditions of this Agreement and that the indirect cost rate applied to staffing for invoices submitted and paid, if any, is in accordance with the requirements of Section 16.12. CONTRACTOR shall ensure that corrective action is taken with respect to audit exceptions, if any, for lack of internal controls or adequate procedures noted in the Fiscal Audit within six (6) months after issuance of the applicable Fiscal Audit report

**15.2 Retention Amounts Withheld Pending Timely and Successful Completion of Fiscal Audit.** Pursuant to Section 16.7 herein, the Retention Amounts (defined therein) shall be withheld pending timely and successful completion of the Fiscal Audits described in this Section 15.

**15.3 Other Auditing Authority.** COMMISSION and ADMINISTRATOR and their authorized representatives, and the State Commission and any of its authorized representatives, shall have access to any books, documents, papers and records, including medical records, of CONTRACTOR which any of them may determine to be pertinent to this Agreement for the purpose of financial monitoring or any audit conducted by an independent CPA related to the CONTRACTOR and its performance under this Agreement. Further, all the above mentioned persons have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed to the extent that access to such premises is not restricted for medical or safety reasons under reasonable standards.

**15.4 Availability of Records for Auditing Purposes.** In the event that CONTRACTOR's corporate headquarters and its financial records are located outside the borders of Orange County, California, then CONTRACTOR shall make available its books and financial records within the borders of Orange County within ten (10) days after receipt of written demand by ADMINISTRATOR for any audit purposes under this Agreement. All CONTRACTOR's books of accounts and records related and applicable to any costs of Services, client fees, charges, billings and revenues received directly or indirectly related to the Services shall be made available at one (1) location within the limits of the County of Orange. All records specified in this Section 15.4 and maintained pursuant to the terms of this Agreement shall be made available, after appropriate advance notice and during the party's normal business hours, to designated representatives of the Auditor General of the State of California, the State of California Children and Families Commission, an entity independent of the State of California, the COMMISSION, an entity independent from the County of Orange, and any other entities as required by State statute or court order. In the event CONTRACTOR does not make available its books and financial records for the Services within the borders of Orange County for the Fiscal Audit, CONTRACTOR agrees to pay all necessary and reasonable expenses incurred by COMMISSION, or ADMINISTRATOR, or their designee necessary to obtain CONTRACTOR's books and financial records.

**15.5 Monitoring.** COMMISSION, ADMINISTRATOR, and the State Commission and/or their representatives are authorized to conduct on-site monitoring at their discretion during reasonable times, including the option of unannounced on-site monitoring as elected in Exhibit A. Monitoring activities may also include, but are not limited to, questioning employees and participants for the subject Services and entering any premises or any site in which any of the Services funded hereunder are conducted or in which any of the records of CONTRACTOR are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in Federal or State law.

## **16. COMPENSATION**

**16.1 Total Maximum Payment Obligation.** The “Maximum Payment Obligation,” total and cumulative, of COMMISSION to CONTRACTORS under this Agreement shall be \_\_\_\_\_ or the actual reasonable cost incurred and paid for performance of the Services, whichever is *less*.

**16.1.1** The Maximum Payment Obligation of COMMISSION total and cumulative, of COMMISSION to CONTRACTORS for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_ as described below:

(a) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

(b) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

**16.1.2** The Maximum Payment Obligation of COMMISSION total and cumulative, of COMMISSION to CONTRACTORS for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_ as described below:

(a) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

(b) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

**16.1.3** The Maximum Payment Obligation of COMMISSION total and cumulative, of COMMISSION to CONTRACTORS for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_ as described below:

(a) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

(b) The Maximum Payment Obligation of COMMISSION of COMMISSION to (CONTRACTOR) for the services to be provided for the period Date through Date shall be \$\_\_\_\_\_.

**16.2 Initial Payment.** ADMINISTRATOR may, in his/her sole discretion, make an initial payment to either CONTRACTOR in an amount(s) not to exceed twelve and a half percent (12.5%) [for a 2 year agreement, change to 25% for 1 year contract, etc] of COMMISSION’s Maximum Payment Obligation upon receipt of a written request(s) by CONTRACTOR. Request(s) shall be accompanied by the justification as ADMINISTRATOR may require. The initial payment is intended to cover initial costs that are estimated to have been incurred or are expected to be incurred in the performance of Services by such CONTRACTOR. ADMINISTRATOR may, in his/her sole discretion, deduct the initial payment(s) from any one or more subsequent payments owed to such CONTRACTOR during the term of this Agreement. If, at the end of the term of this Agreement,

there is any balance of the initial payment not deducted from subsequent payment requests, such CONTRACTOR shall owe and shall immediately refund said monies to COMMISSION.

**16.3 Provisional Payment.** At ADMINISTRATOR's sole discretion, either CONTRACTOR may submit an invoice prior to the beginning of the mutually agreed upon billing period to perform the Services required by this Agreement, and COMMISSION shall pay such CONTRACTOR's provisional payment invoice within a reasonable period of time estimated to be thirty (30) days after receipt of a correctly completed invoice. Such CONTRACTOR shall submit to ADMINISTRATOR a reconciliation of actual costs incurred during the billing period covered by the provisional payment no later than ninety (90) days after the provisional payment invoice is submitted or within thirty (30) days of the end date of this Agreement, whichever is earlier. Any overpayment resulting from a Provisional Payment(s) and subsequent reconciliation of actual cost incurred for the period shall be deducted from subsequent invoices submitted by such CONTRACTOR or repaid by such CONTRACTOR to COMMISSION in accordance with the provisions of Section 17 below.

**16.4 Billing/Payment Interval.** COMMISSION shall pay either CONTRACTOR installment payments monthly or quarterly in arrears, at ADMINISTRATOR's sole discretion, for actual reasonable costs incurred and paid by such CONTRACTOR to perform the Services required by this Agreement in accordance with the amounts and categories specified in the Project Budget, Exhibit B, for the Services; provided, however, that payments for each line item shall not exceed the amount specified, and provided however, ADMINISTRATOR may approve adjustments of the amount set forth within each line item, so long as the total of all amounts within all line items, as adjusted, shall not exceed COMMISSION's Maximum Payment Obligation. Notwithstanding the monthly or quarterly installment payment(s) and exclusive of the initial payment and/or the provisional payment (if any), an amount equal to ten percent (10%) of each monthly or quarterly installment invoice shall be withheld by COMMISSION through ADMINISTRATOR as the Retention Amount (defined in Section 16.7 below) pending the timely and successful completion of each Fiscal Audit as more fully described in Section 15. The total of all installment payments and provisional payments shall not exceed COMMISSION's Maximum Payment Obligation.

**16.5 Payments.** \_\_\_\_\_ (\_\_\_\_) shall serve as the fiduciary, authorized to claim and disperse funds for and on behalf of CONTRACTORS. COMMISSION shall pay \_\_\_\_\_ installment payments quarterly in arrears, for actual reasonable costs incurred and paid by each CONTRACTOR to perform the Services required by this Agreement in accordance with the amounts and categories specified in Exhibit B; provided, however, that payments for each line item shall not exceed the amount specified; provided however, ADMINISTRATOR may approve adjustments of the amount set forth within each line item, so long as the total of all amounts within all line items, as adjusted, shall not exceed COMMISSION's Maximum Payment Obligation for Year One, Year Two and Year 3. Notwithstanding the quarterly installment payments an amount equal to ten percent (10%) of the Maximum Payment Obligation shall be withheld by COMMISSION through ADMINISTRATOR as the Retention Amount (defined in Section 16.7 below) pending the timely and successful completion of the Fiscal Audit as more fully described in Sections 15 and 16.7 hereinafter.

**16.6 Invoices.** CONTRACTORS shall submit invoices quarterly upon a form approved or supplied by ADMINISTRATOR. Unless waived by ADMINISTRATOR in his sole and absolute discretion, each invoice shall be submitted jointly by ---(Contractor)--- and. ---(Contractor)--- COMMISSION shall be under no obligation to pay invoices not submitted on a joint basis. The invoices for the first quarter of the term of this Agreement is due upon execution of this Agreement

and thereafter on the first day of each quarter of each year of the term (i.e., October, January, April, and July) and concurrent with CONTRACTORS' submittal and/or compliance with the applicable quarterly reporting obligations set forth in Sections 14 and 19.

**16.6.1** Unless waived as described in Section 16.4 of this Agreement, each quarterly invoice shall be submitted with the quarterly invoice of the other party, and with an express written certification by each CONTRACTOR representing and affirming to COMMISSION the following: (1) such CONTRACTOR has and maintains accurate records evidencing the requested quarterly payment, including without limitation the following: (a) original invoice(s), (b) original and/or true copies of source documents including, *inter alia*, statement of work performed, itemized on a monthly basis, general ledgers, supporting journals, time sheets, invoices, canceled checks (if received) or bank statements, receipts, and receiving records, and (c) originals and/or true copies of other receipts, agreement(s), or other documentation supporting and evidencing how the funds have been expended during the applicable quarter; provided however, for the first quarterly payment the ADMINISTRATOR in his sole discretion may consider and approve an invoice from a CONTRACTOR that includes reimbursement of such CONTRACTOR expenses incurred prior to the Date of Agreement, as more fully set forth in Exhibit B; and (2) the Services provided during the preceding quarter (or other period for which payment is requested) have not and do not supplant existing services but in fact enhance or establish new services to Orange County children aged 0 to 5.

**16.6.2** CONTRACTORS shall maintain, at each CONTRACTOR's facility, source documentation for all invoices including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

**16.6.3** COMMISSION shall exercise reasonable efforts to cause the quarterly payments to be released within a reasonable time period from submittal of a complete invoice and current compliance with quarterly reporting obligations of Sections 14 and 19, approximately thirty (30) days after receipt thereof.

**16.6.4** (CONTRACTOR) and (CONTRACTOR) shall jointly identify to COMMISSION an individual to act as fiscal agent (which may be an employee of (Contractor) (Contractor) or the Children's Health Collaborative identified in Section 8.7) to act as fiscal agent with respect to this Agreement. The duties of the fiscal agent shall include project and cost management, coordinating the joint invoicing of the COMMISSION hereunder and insuring and monitoring compliance with the work program hereunder. The initial fiscal agent hereunder shall be \_\_\_\_\_.

**16.7 Retention Amount.** Each CONTRACTOR expressly acknowledges and agrees that an amount equal to ten percent (10%) of the Maximum Program Obligation ("Retention Amount") for each CONTRACTOR and for each period as described in Section 16.1 of this Agreement, shall be withheld by COMMISSION through ADMINISTRATOR pending the timely and successful completion and performance of the final Fiscal Audit for the Services herein and this Agreement as required by and as described in Section 15 herein.

**16.8 Final Invoice/Settlement.** With the exception of the Retention Amount payment which may occur after the following date, any and all final invoices must be received by ADMINISTRATOR no later than one hundred eighty (180) calendar days after the end of the term of this Agreement or 180 calendar days from the date of the earlier termination thereof). Invoices

received after this date and time shall not be processed for payment or reimbursed. CONTRACTORS and ADMINISTRATOR may mutually agree in writing to modify the date upon which the final invoice must be received.

**16.9 Source of Funding Limited to COMMISSION Funding.** CONTRACTORS knowingly and expressly acknowledge and agree that the sole source of funding provided and to be provided pursuant to this Agreement is and shall only be from monies allocated, received, and available to COMMISSION from the surcharges, taxes, and revenues collected and allocated to COMMISSION through the provisions of the Act. To the extent, if at all, any or all provisions of the Act are found invalid, stayed, tolled, or are modified by litigation, subsequent initiative, or legislation, and the funding provided for under this Agreement is affected, then COMMISSION is and shall be relieved of obligations under this Agreement, or this Agreement shall be modified and/or amended to conform to the changes, if any, to the Act, as elected by COMMISSION. If COMMISSION is not allocated and/or does not receive adequate funding for its performance under this Agreement, then COMMISSION shall be relieved of obligations under this Agreement, or this Agreement shall be amended to conform to the changes, if any, in funding allocations or changes, if any, to the Act, as elected by COMMISSION.

**16.10 Leveraging Funds.** For program sustainability, CONTRACTOR shall make all reasonable efforts to secure State of California and/or Federal funds including, but not limited to certain State of California programs known to both parties as MediCal Administrative Activities (MAA) and/or Targeted Case Management (TCM) where COMMISSION funds may be properly identified and used as a required eligible funding source to draw down such other funds. CONTRACTOR agrees that funds from this Agreement shall be used to perform MAA and/or TCM claimable activities and that State and/or Federal funds received as the direct result of its leveraging efforts shall be used for sustainability of and be reinvested in CONTRACTOR'S COMMISSION funded programs. In order to receive MAA or TCM funds, CONTRACTOR shall sign and maintain an agreement for the provision of MAA or TCM Services with the County of Orange Health Care Agency (County) and comply with all County contracting requirements. CONTRACTOR shall not use COMMISSION funds identified as a match for another funding source for the purposes of drawing down MAA or TCM funds.

**16.11 Indirect Cost Rate.** CONTRACTOR shall apportion any indirect costs attributable to this Agreement determined by the Maximum Payment Obligation of this Agreement as the percentage of CONTRACTOR'S total revenue received during its previous fiscal year. Notwithstanding anything to the contrary, CONTRACTOR'S indirect cost rate shall not exceed ten percent (10%).

#### **16.12 Program Fees**

**16.12.1** The parties agree that the following guidelines apply in the event fees of any amount are charged by CONTRACTOR to COMMISSION's target population of Orange County's children 0-5 and their families (program participants) for any service(s) provided under this Agreement.

**16.12.2** CONTRACTOR shall not charge fees to COMMISSION's program participants prior to obtaining ADMINISTRATOR's acknowledgement in writing.

**16.12.3** CONTRACTOR shall advise each COMMISSION program participant that fees may be charged and shall notify the program participant of any such fees prior to rendering services.

**16.12.4** CONTRACTOR shall advise each COMMISSION program participant that all fees will be waived if the participant indicates an inability to pay and CONTRACTOR shall waive all fees if the program participant is unable to pay.

**16.12.5** CONTRACTOR shall not deny services to any COMMISSION program participant for any reason, including program participant's inability to pay for services.

**16.12.6** A full accounting of all fees charged and collected shall be documented by CONTRACTOR and shall be provided to ADMINISTRATOR upon request. At no time is CONTRACTOR permitted to collect fees for any purpose other than to continually provide services identified in this Agreement.

**16.12.7** All fees collected shall be fully accounted for and included in CONTRACTOR's Fiscal Audit as described in Section 15.1 of this Agreement.

**17. OVERPAYMENTS.** Any payment(s) made by COMMISSION to either CONTRACTOR in excess of that to which such CONTRACTOR is entitled under this Agreement shall be immediately due to COMMISSION and repaid by such CONTRACTOR. In this regard, such CONTRACTOR shall make repayment on any overpayment within thirty (30) days after the date COMMISSION requests such repayment. CONTRACTORS agree to pay all fees and costs, including attorneys fees, incurred by COMMISSION necessary to enforce the provisions set forth in this section.

**17.1 Offset Permitted.** In the event an overpayment has been made or exists, ADMINISTRATOR may reconcile and offset the amount of the overpayment against the next installment payment due or against the final invoice amount due and to be paid, as elected in the sole discretion of ADMINISTRATOR. In the event the overpayment exceeds the final payment, such amount is immediately due and payable and such CONTRACTOR shall pay COMMISSION any such sum within five (5) days of notice from ADMINISTRATOR. Nothing herein contained shall be construed as limiting the remedies of COMMISSION in the event that an overpayment has been made.

**17.2 Offset Permitted under Subsequent Renewal or Other Pending Agreement.** COMMISSION's Strategic Plan is implemented through funding of various initiatives and certain contractors/funding recipients are and have been awarded multiple or renewed funding for services related and/or comparable to the Services provided under this Agreement. CONTRACTOR agrees that if this Agreement is either (i) a renewal agreement related to prior funding to CONTRACTOR for services comparable to the Services, or (ii) CONTRACTOR has one or more other contracts pending with COMMISSION with term or terms concurrent in whole or in part with this Agreement, then in the event an overpayment has been made or exists under this Agreement ADMINISTRATOR may reconcile and offset the amount of the overpayment against monies payable under the renewal agreement or other agreement pending with COMMISSION.

## **18. RECORDS.**

**18.1 Maintain Complete Books and Records.** Each CONTRACTOR shall keep such books and records as shall be necessary relating to the Services performed hereunder and required by this Agreement so as to enable ADMINISTRATOR to evaluate the cost and the performance of such

Services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles (GAAP). ADMINISTRATOR, COMMISSION, and their staff, general legal counsel, and other COMMISSION consultants (as approved by ADMINISTRATOR) shall have full and free access to all books and records of each CONTRACTOR, pertinent to this Agreement, at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

**18.1.1** CONTRACTORS shall prepare and maintain accurate and complete financial records of its business operations and in particular all records related to or arising out of provision of Services under this Agreement. Financial records shall be retained by CONTRACTORS for a minimum of three (3) years from the date of payment on the final invoice submitted by CONTRACTORS to ADMINISTRATOR under this Agreement or three (3) years after all pending audits are completed, whichever is later.

**18.2 Separation of Accounts.** All funds received by CONTRACTOR from COMMISSION pursuant to this Agreement shall be maintained in an account in a federally insured banking or savings and loan institution with record keeping of such accounts maintained pursuant to reasonable and prudent business practices. CONTRACTOR is not required to maintain separate depository accounts for funds; provided however, CONTRACTOR must be able to account for receipt, obligation and expenditure of all COMMISSION funds.

**18.3 Form of Records.** CONTRACTORS may retain records in any reasonable and customary format and/or form as mutually determined between each CONTRACTOR and ADMINISTRATOR. The following forms of records are acceptable and preapproved between the parties:

- (a) original hard copies;
- (b) information may be saved/retained electronically in a readily retrievable basis through a Microsoft Word™ 97 or comparable or compatible format in accordance and consistent with standard business practices, customs, and records retention procedures of businesses in Orange County, California;
- (c) financial data and other spreadsheet information may be saved/retained electronically in a readily retrievable basis through a Microsoft Excel™ or comparable or compatible format in accordance and consistent with standard business practices, customs, and records retention procedures of businesses in Orange County, California; or
- (d) microfilm or microfiche.

**18.4 Release of Records.** The records of Services, data, surveys, drawings, specifications, reports, records, documents, evaluation reports and other materials prepared by CONTRACTOR in the performance of Services under this Agreement shall not be released publicly without the prior written approval of ADMINISTRATOR or as required by law. CONTRACTORS shall not disclose to any other private entity or person any information regarding the activities of COMMISSION, except as required by law or as authorized by ADMINISTRATOR. Further, COMMISSION and CONTRACTORS acknowledge and agree that the nature of the Services performed by each CONTRACTOR hereunder are subject to specific statutory requirements of the Act. The parties agree to fully comply with such applicable laws and regulations.

**18.5 Ownership of Records.** Specialized methodology, formulae, software programs of CONTRACTOR and other intellectual processes which have been specifically designed and developed by CONTRACTOR and which were not funded by or assisted in the development of by

COMMISSION or its agents shall be deemed proprietary in nature and shall be and remain the proprietary property of CONTRACTOR. Any deliverables created and delivered by CONTRACTOR to the COMMISSION in the performance of the Services hereunder, including reports, records, documents and other materials funded by COMMISSION hereunder shall be and remain the property of COMMISSION and shall be delivered to ADMINISTRATOR upon the termination of this Agreement or upon the earlier written request of ADMINISTRATOR. All other documents, information, software, and intellectual property and records, including without limitation, the originals of all drawings, specifications, reports, records, data, surveys, documents and other materials, whether in hard copy or electronic form (the "CONTRACTOR Materials") shall be and remain the property of CONTRACTOR, provided COMMISSION shall have access to and rights to use such CONTRACTOR Materials as provided in this Section 18 and Section 20. CONTRACTOR shall have no claim for further grants, additional employment or employees, or additional compensation of whatever kind or nature as a result of the exercise by COMMISSION of its full rights of ownership (to the limited extent provided herein) of such documents and materials hereunder. CONTRACTOR may retain copies of such documents and materials for its own use. CONTRACTOR shall have a non-exclusive, no-cost, perpetual license /right to use contracted deliverables in furtherance of CONTRACTOR's mission. CONTRACTOR shall, and shall cause all permitted subcontractors, if any, to, assign to COMMISSION any documents or materials prepared by them which are to be owned by COMMISSION hereunder, and CONTRACTOR shall, and shall cause all such permitted subcontractors to, indemnify COMMISSION for all damages suffered as a result of the unauthorized use of such documents or materials by any such subcontractor. COMMISSION agrees that, if necessary, it will undertake reasonable and appropriate steps to maintain the proprietary nature of CONTRACTOR's proprietary property, except as may be required by applicable laws.

**18.6 Inspection and Access to Records.** ADMINISTRATOR and any authorized COMMISSION representatives, shall have access to each CONTRACTOR's records for the purpose of monitoring the Services provided under this Agreement. CONTRACTORS shall make available its records within the borders of Orange County within ten (10) days after receipt of written demand by ADMINISTRATOR. In the event a CONTRACTOR does not make available its records within the borders of Orange County, such CONTRACTOR agrees to pay all necessary and reasonable direct and indirect expenses incurred by COMMISSION or COMMISSION's designee(s) necessary to obtain such CONTRACTOR's records.

**19. CONTRACTORS OBLIGATION TO PROVIDE DATA FOR COMMISSION'S EVALUATION AND CONTRACTS MANAGEMENT SYSTEM.** CONTRACTORS acknowledges and agrees the Services funded by COMMISSION through this Agreement are part of a larger Strategic Plan which has as its primary focus and objective to ensure the overall physical, social, emotional, and intellectual health of children from the prenatal stage through age five. CONTRACTORS acknowledge that COMMISSION has retained the services of a qualified information technology contractor to create, operate, and maintain an evaluation and contracts management system relating to the programs and services provided by each and all of COMMISSION's funding recipients/service providers in order to gather and analyze data and create a reporting and outcomes system about all COMMISSION activities, programs and services provided by and through COMMISSION to the target population of prenatal through age five children in Orange County.

**19.1 Evaluation and Contracts Management System.** COMMISSION projects and all services funded by COMMISSION, including the Services under this Agreement, will collectively track service data related to client outcomes about Orange County children from prenatal through age five in furtherance of the goals and objectives of COMMISSION’s Strategic Plan adopted pursuant to the Act. The process by which data is gathered and shared shall be through COMMISSION’s internet-based evaluation and contract management system. At the Date of Agreement, COMMISSION’s designated contractor/consultant for its evaluation and contract management system is Mosaic Network, Inc. (Mosaic). Pursuant to an agreement between Mosaic and COMMISSION, Mosaic acts as an Application Service Provider (“ASP”) on behalf of COMMISSION and its contractors including CONTRACTOR, with respect to all work-related data (and all other COMMISSION funded projects.) Through this separate contract, Mosaic has created and operates, and will continue to operate and maintain, the evaluation and contract management system relating to all COMMISSION projects.

**19.1.1 CONTRACTORS** acknowledge and agree that as a part of the integrated data structure of the evaluation and contract management system in its performance under this Agreement (and the performance of all other COMMISSION contractors/funding recipients under separate agreements) there may be individual client shared core data elements. It is the responsibility of each contractor, including CONTRACTORS under this Agreement, to participate in the evaluation and contract management system using confidentiality and consent protocols approved by COMMISSION. CONTRACTORS agree each shall cooperate with COMMISSION, ADMINISTRATOR, and Mosaic (or other information technology contractors); it shall provide data to Mosaic; and it shall utilize the evaluation and contract management system (or other data system, as elected by COMMISSION and its ADMINISTRATOR in their sole discretion) for reporting data related to or created by the Services provided under this Agreement in order for COMMISSION to track, analyze, and evaluate all services provided by CONTRACTORS and each and all of COMMISSION’s funding recipients. The level of participation with the evaluation and contract management system required by each CONTRACTOR shall be determined by ADMINISTRATOR.

**19.1.2 CONTRACTORS** acknowledge and agree that as a part of the integrated data structure of the evaluation and contract management system in its performance under this Agreement (and the performance of all other COMMISSION contractors/funding recipients under separate agreements) there shall be project level reporting to COMMISSION with respect to either CONTRACTOR’s work plan through the evaluation and contract management system’s Administrative Management Module (“AMM”), and in some instances also through the evaluation and contract management system’s Client Level Data Module (“CLDM”), as set forth in the Work Plan, Exhibit A-1. CONTRACTORS agree to participate in AMM, and if applicable to the Services to CLDM, and to cooperate with COMMISSION, ADMINISTRATOR, and Mosaic (or other information technology contractor(s)); and provide data to Mosaic, utilize the AMM, , and if applicable to the Services to CLDM, for reporting data related to or created by the Services provided under this Agreement in order for COMMISSION to track, analyze, and evaluate all Services provided by each CONTRACTOR and each and all of COMMISSION’s funding recipients.

**19.2** Nothing in the above provisions relating to collection and reporting to the evaluation and contract management system shall require either CONTRACTOR to release or disclose confidential health data or other patient identification which is expressly protected from disclosure by applicable Federal and State laws; provided however, any applicable exception set forth in applicable Federal or State laws which permits disclosure by either CONTRACTOR to COMMISSION

(through ADMINISTRATOR) of health or other data shall require disclosure by either CONTRACTOR to COMMISSION and ADMINISTRATOR in order to input to the evaluation and contract management system. COMMISSION advises CONTRACTORS that by the separate agreement between Mosaic and COMMISSION, Mosaic is required to, and shall, maintain the confidentiality of all data in accordance with all applicable California and Federal codes and regulations relating to confidentiality, privacy, and/or security standards of patient records and other health care information, as they now exist or may be enacted or amended after the Date of Agreement.

**20. COPYRIGHT ACCESS.** COMMISSION (and to the extent reasonably determined by COMMISSION to be in furtherance of the Strategic Plan, the County of Orange, and the State of California) shall have a royalty-free, nonexclusive, and irrevocable license to publish, translate, or use now and hereafter, all CONTRACTORS' Materials (as defined in Section 18.5 above) (both tangible and intangible) including those materials covered by copyright; provided to the extent such materials are covered by copyright such publication, translation or use by the County and the State may only occur with the prior written consent of the applicable CONTRACTOR(S), such consent not to be unreasonably withheld or delayed.

**21. NOTICES.**

**21.1 Method and Form of Notice.** Unless otherwise specified, all formal notices, claims, correspondence, or reports shall be addressed as follows:

**COMMISSION:** Children and Families Commission of Orange County  
17320 Redhill, Suite 200  
Irvine, CA 92614  
Attention: Contracts Officer

**CONTRACTOR:** (Contractor)

(Contractor)

All notices shall be deemed effective when in writing and personally delivered or deposited in the United States mail, express, priority, or first class, postage prepaid and addressed as above. All notices to CONTRACTOR by any party hereto shall be to both (Contractor) and (Contractor) Any notices addressed in any other fashion shall be deemed not given. ADMINISTRATOR and CONTRACTOR may mutually agree in writing to change the addresses to which notices are sent.

**21.2 Advisory Notices Required.** Notwithstanding Section 6.4 relating to Claims, CONTRACTOR shall notify COMMISSION, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature that may expose COMMISSION to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COMMISSION property in possession of CONTRACTOR.

**22. RIGHTS OF TERMINATION.**

**22.1 Termination Without Cause by Either Party Prior to Expiration of Term.** This section 22.1 shall govern termination of this Agreement by either party without cause. Termination for cause shall be governed by Section 22.2 and the default provisions of this Agreement.

**22.1.1** COMMISSION and CONTRACTORS (individually, or collectively) each COMMISSION and CONTRACTOR each reserve the right to terminate this Agreement, without cause, effective as of the end of any annual funding period (i.e., June 30) of each year, upon one hundred twenty (120) days written notice to the other party(ies). Termination by (Contractor) or (Contractor) shall automatically act as a termination as to the other party unless COMMISSION in its sole and absolute discretion affirms the Agreement as to the other party in writing, it being the COMMISSION's intent that this Agreement shall at all times be a joint effort of (CONTRACTOR) and (CONTRACTOR). Upon receipt of a notice of termination without cause, CONTRACTORS shall immediately cease all Services hereunder except such as may be specifically approved and delineated by ADMINISTRATOR. CONTRACTORS shall be entitled to compensation for all Services rendered through the current contract year and for any Services authorized by the ADMINISTRATOR thereafter in accordance with the compensation provisions of this Agreement including Section 8.6 hereof and Exhibit B or such other arrangement for compensation as may be approved by the ADMINISTRATOR in writing. Without limiting the foregoing, in the event of termination by COMMISSION under this Section 22.1.1, COMMISSION shall be responsible to pay Committed Costs, as such term is defined in Section 8.6, to the extent identified in an approved Implementing Plan, and consistent with the requirements of this Agreement.

To the extent COMMISSION becomes liable to pay Committed Costs after the termination of the selected Funded Program or this Agreement under this Section 22.1.1, CONTRACTORS shall cooperate reasonably and CONTRACTORS shall cause any involved Subcontractor to so cooperate with COMMISSION to mitigate the amount of any such Committed Cost, including through negotiated early termination of any arrangement or through redeployment of the goods or service comprising the Committed Cost to other approved COMMISSION purposes. Where the Committed Cost involves goods or services which COMMISSION reasonably determines may be deployed in furtherance of COMMISSION goals and programs, CONTRACTORS agrees to execute such transfers, conveyances and assignments as are reasonably requested by COMMISSION in connection therewith, including assignment of contract rights, employment agreements, etc.; provided, however, in no event shall COMMISSION be obliged to consider or accept any such transfer, conveyance or assignment except in its sole discretion.

**22.2 Termination For Cause Due to Default of (Contractor).** COMMISSION reserves the express right to terminate this Agreement as to both (Contractor) and (Contractor) for cause due to the default (as defined in Section 23 hereinafter) by either (Contractor) or (Contractor) in its performance obligations under this Agreement. COMMISSION may in any notice of default advise CONTRACTORS it also intends to terminate the Agreement for cause. The notice of default from COMMISSION shall advise CONTRACTORS if COMMISSION intends to elect to terminate the Agreement and in such event CONTRACTORS shall immediately cease performance and provision of Services hereunder as of the date the notice of default is received or deemed received, whichever is earlier. In such event of termination, COMMISSION may, but is not required, to take over the work and prosecute the same to completion by contract or otherwise. Also, in such event of termination for cause, CONTRACTORS shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that the COMMISSION shall use reasonable efforts to mitigate damages), and COMMISSION expressly reserves the right to withhold any outstanding payments to either CONTRACTOR for the purpose of set off or partial payment of the amounts owed the COMMISSION as previously set forth herein.

**23. DEFAULT.**

**23.1 Default by CONTRACTOR or CONTRACTORS.** Any one or more of the following events constitute a default of this Agreement.

**23.1.1** Failure by CONTRACTOR to substantially observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the applicable CONTRACTOR by the COMMISSION; provided, however, if in the reasonable opinion of such CONTRACTOR the failure stated in the notice can be corrected, but not within such thirty (30) day period, the COMMISSION shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by such CONTRACTOR within such thirty (30) day period and up to a total of one hundred eighty (180) days diligently pursued until the default is corrected.

**23.1.2** The filing by CONTRACTOR of a voluntary petition in bankruptcy, or failure by CONTRACTOR promptly to lift any execution, garnishment or attachment, or adjudication of CONTRACTOR as a bankrupt, or assignment by such CONTRACTOR for the benefit of creditors, or the entry by such CONTRACTOR into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to such CONTRACTOR in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

**23.2 Remedies Upon Default.** In the event of default ADMINISTRATOR, in his/her sole discretion, may avail on behalf of COMMISSION (or COMMISSION may avail itself) of any remedies available at law, in equity, or otherwise specified in this Agreement (including immediate termination for cause as set forth in Section 22.2 above) and may elect any of the following:

**23.2.1** Discontinue payment and eligibility for payment to CONTRACTOR with respect to an applicable Work Plan or administrative Implementing Plan to which the default pertains for and during the period in which such CONTRACTOR is in breach, which payment may not be entitled to later recovery; and/or

**23.2.2** Offset against any funds invoiced by the applicable CONTRACTOR, but yet unpaid by COMMISSION those monies disallowed pursuant to the above section; and/or

**23.2.3** Withhold from any monies payable to such CONTRACTOR sufficient funds to compensate COMMISSION for any losses, costs, liabilities or damages it reasonably believes were or will be suffered by or incurred by COMMISSION due to the default of such CONTRACTOR in the performance of the Services required by this Agreement.

## **24. REVERSION OF ASSETS.**

**24.1 Unencumbered or Unexpended Funds.** Upon the termination or expiration of the term of this Agreement, CONTRACTORS shall transfer to COMMISSION any unexpended and unencumbered COMMISSION funds on hand at the time of such termination or expiration and any accounts receivable attributable to the use of subject funds.

**24.2 Real or Personal Property Assets.** Any real property or moveable or immovable personal property under either CONTRACTOR's control or ownership that was acquired or improved in whole or in part with COMMISSION funds disbursed under this Agreement, the original cost for which exceeded five thousand dollars (\$5,000.00) shall either be, at the election of

ADMINISTRATOR: (1) used by either CONTRACTOR for the Services or comparable services meeting the purposes of the Act and Strategic Plan for a period of five (5) years after termination or expiration of this Agreement, or such longer period as is determined pursuant to Section 24.2.3 below; or (2) disposed of and proceeds paid to COMMISSION in a manner that results in COMMISSION being reimbursed in the amount of the current fair market value (assuming depreciation in accordance with customary business practices) of the real or personal property less any portion of the current value attributable to such CONTRACTOR's out of pocket expenditures using non-commission funds for acquisition of, or improvements to, such real or personal property and less any direct and reasonable costs of disposition, including a reasonable and customary broker's fee incurred in listing and completion of sale of such asset.

**24.2.1** In furtherance of the foregoing, if ADMINISTRATOR selects continued use of the capital asset, then CONTRACTOR hereby agrees that it shall be subject to an ongoing operating and use covenant relating to the subject real or personal property. The foregoing covenant shall survive the termination or expiration of this Agreement and shall be actionable at law or in equity by COMMISSION against CONTRACTORS and its successors in interest.

**24.2.2** In the event CONTRACTOR selects disposition of the subject real or personal property, then such CONTRACTOR shall exercise due diligence to dispose of such property in conformity with applicable laws and regulations and in accordance with customary business practices. The net proceeds of such disposition shall be disbursed directly to and be payable to COMMISSION upon the close of the applicable disposition transaction, such as close of escrow for the sale of real property, transfer of motor vehicle "pink slip" in accordance with applicable California Vehicle Code requirements, or completion of sale of personal property by bill of sale in accordance with UCC requirements.

**24.2.3** [Use, if applicable CONTRACTORS and COMMISSION recognize that significant capital expenditures ("Capital Expenditures") are contemplated to be made with moneys funded in whole or in part by the COMMISSION pursuant to this Agreement. This section 24.2.3 shall govern with respect to such Capital Expenditures, anything to the contrary herein notwithstanding. In connection with such Capital Expenditures, each of ---(Contractor)--- and ---(Contractor)--- agree that the CONTRACTOR making the Capital Expenditure will comply with all applicable laws related to the expenditure of COMMISSION funds related to such Capital Expenditure, including without limitation, the requirement that all contractors in connection with public works pay prevailing wages, to the extent required by Labor Code Section 1770, et seq. In addition, prior to committing funds to such Capital Expenditures, CONTRACTORS and ADMINISTRATOR, on behalf of the COMMISSION, shall enter into an agreement relative to the means by which the COMMISSION's investment in such Capital Expenditures will be protected. If a CONTRACTOR or CONTRACTORS propose(s) to protect the investment in a manner consistent with Section 24.2.1 and 24.2.2, such agreement shall address the useful life of the assets and reasonable measures to create and perfect a security interest in favor of the COMMISSION related to such assets, or other assets of comparable value and useful life. CONTRACTORS may propose alternative means to protect the investment in such an agreement, subject to COMMISSION approval.]

**25. COUNTERPARTS.** This Agreement may be executed in several counterparts, all of which shall constitute but one and the same instrument. Faxed and/or electronically scanned signatures shall have the same force and effect as an original signature.

**[Signature blocks begin on next page]**

**IN WITNESS WHEREOF**, the COMMISSION and CONTRACTORS have executed this Agreement in the County of Orange, State of California.

**ORANGE COUNTY CHILDREN AND FAMILIES COMMISSION**, a public body and legal public entity

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chair

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF COMMISSION

By: \_\_\_\_\_  
DARLENE J. BLOOM  
Clerk of COMMISSION

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: \_\_\_\_\_  
Terry C. Andrus, Commission Counsel

**[Signature block for CONTRACTORS on next page.]**

**[Signature block continued from previous page.]**

(Contractor)

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
(Contractor)

(Contractor) DATED: \_\_\_\_\_

BY: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
(Contractor)

**Pediatric Health Services  
Summary of Recommended Funding Allocations  
Term: July 1, 2011 – June 30, 2014**

<b>Contract Number</b>	<b>Program</b>	<b>FY 11/12</b>	<b>FY 12/13</b>	<b>FY 13/14</b>	<b>Total</b>	<b>Contractors</b>
FCI-PHS-01	Early Developmental Programs	\$3,750,000	\$3,750,000	\$3,750,000	\$11,250,000	CHOC and UCI
FCI-PHS-02	Primary Care	\$1,250,000 (Pediatric and OB)	\$ 750,000 (OB)	\$ 250,000 (OB)	\$2,250,000	CHOC and UCI
FCI-PHS-03 FCI-PHS-03 FCI-HPE-01	Specialty Services A - Asthma Program B - Community Support Services C - Metabolic Program D - Specialty Pediatric Loan	\$1,000,000	\$1,000,000	\$1,000,000	\$3,000,000	A - CHOC and UCI B - To Be Determined C - CHOC and UCI D - Health Professions Education Foundation
	<b>TOTAL BASE FUNDING</b>	\$6,000,000	\$5,500,000	\$5,000,000	\$16,500,000	
	Catalytic Investments				\$1,500,000	To Be Determined May be One-Time
	<b>TOTAL PEDIATRIC HEALTH SERVICES FUNDING</b>				\$18,000,000	

**CHOC** = Children's Hospital of Orange County

**UCI** = The Regents of the University of California (University of California, Irvine College of Medicine and Medical Center)

**CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**

**RESOLUTION NO. \_\_\_-11-C&FC**

**February 2, 2011**

**A RESOLUTION OF THE CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY DIRECTING THE EXECUTIVE DIRECTOR AND COMMISSION COUNSEL TO PREPARE AND NEGOTIATE AGREEMENTS WITH DESIGNATED ORGANIZATIONS TO PROVIDE PEDIATRIC HEALTH SERVICES; AND, AUTHORIZING APPROVAL AND EXECUTION OF SUCH AGREEMENTS ON BEHALF OF THE COMMISSION**

**WHEREAS**, in order to facilitate the creation and implementation of an integrated, comprehensive, and collaborative system of information and services to enhance optimal early childhood development, the legislature adopted legislation set forth in the California Children and Families Act of 1998, Health and Safety Code Section 130100, *et seq.* (as amended, the “Act”) implementing the Children and Families First Initiative passed by the California electorate in November, 1998 and establishing the California Children and Families Commission and County Children and Families Commissions, including this Children and Families Commission of Orange County (“Commission”); and

**WHEREAS**, Commission adopted its Strategic Plan to define how funds authorized under the Act and allocated to the Commission should best be used to meet the critical needs of Orange County’s children prenatal to five years of age as codified in the Act; and

**WHEREAS**, the Executive Director and Commission Counsel have prepared a standard Master Agreement for Services (“Master Agreement”), which was approved by the Commission; and

**WHEREAS**, the Commission desires to enter into Agreements with each of the Organizations, hereinafter referred to as the “Contractor” in each of the Agreements authorized herein, to provide Pediatric Health Services for the terms and in amounts not to exceed those specified in Attachment 4 to the February 2, 2011 staff report for this Agenda Item; and

**WHEREAS**, each Contractor desires to enter into the applicable Agreements in furtherance of the purposes of the Act and the Strategic Plan on the terms and conditions set forth in the applicable Agreements; and

**WHEREAS**, Commission has reviewed the staff report for the February 2, 2011 Commission meeting relating to the scope of services to be provided and hereby finds and determines that the proposed Agreements are in furtherance of and consistent with the Commission’s Strategic Plan; and

**WHEREAS**, Commission desires to authorize the Commission Chair and Commission Clerk to execute the Agreements with each of the Contractors, for the terms and in amounts not to exceed those specified in Attachment 4 to the February 2, 2011 staff report for this Agenda Item; and

**NOW, THEREFORE BE IT RESOLVED BY THE COMMISSIONERS OF THE CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY AS FOLLOWS:**

**Section 1** Commission finds and determines the foregoing Recitals are true and correct and are a substantive part of this Resolution.

**Section 2** Commission authorizes the Executive Director, or designee, and Commission Counsel to prepare and negotiate Agreements with each of the Contractors to provide Pediatric Health Services for the terms and in amounts not to exceed those specified in Attachment 4 to the February 2, 2011 staff report and scope of services referenced therein; and

**Section 3** The form of the Agreements with the Contractors, for the terms and in amounts not to exceed those specified in Attachment 4 to the February 2, 2011 staff report for this Agenda Item shall be substantially similar to the form of the standard Master Agreement, subject to minor, non-substantive revisions as reviewed and approved by the Executive Director or designee and Commission Counsel. The approval by the Executive Director or designee of the Agreements shall be conclusively evidenced by the execution of such Agreements by the Commission Chair and delivery thereof to the Commission Clerk.

**Section 4** Commission hereby approves the Agreements with each of the Contractors to provide Pediatric Health Services for the terms and in amounts not to exceed those specified Attachment 4 to the February 2, 2011 staff report for this Agenda Item.

**Section 5** The Commission Chair and the Clerk of the Commission are hereby authorized to execute and attest, respectively, the Agreements on behalf of the Commission.

**Section 6** A copy of each final Agreement when executed by the Commission Chair and attested by the Clerk of the Commission shall be appended hereto as a part of Exhibit A to this Resolution. Exhibit A is hereby fully incorporated as a part of this Resolution by this reference and made a part hereof. Each final executed Agreement shall be placed on file in the office of the Clerk of the Commission.

**Section 7** In addition to the authorization of Section 2 above, the Executive Director, or designee, is hereby authorized, on behalf of the Commission, (i) to sign all documents necessary and appropriate to carry out and implement the Agreement(s), (ii) to cause the issuance of warrants, (iii) to administer the Commission's obligations, responsibilities, and duties to be performed under such agreement(s), and (iv) during the term thereof to provide waivers, administrative interpretations, and minor modifications of the provisions of such agreement(s) in the furtherance thereof.

**Section 8** The Clerk of the Commission shall certify to the adoption of this Resolution.

The foregoing resolution was passed and adopted by the following vote of the Children and Families Commission of Orange County on February 2, 2011 to wit:

AYES Commissioners: \_\_\_\_\_

NOES: Commissioner(s): \_\_\_\_\_

EXCUSED: Commissioner(s): \_\_\_\_\_

ABSTAINED: Commissioner(s) \_\_\_\_\_

\_\_\_\_\_  
CHAIR

STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE )

I, DARLENE J. BLOOM, Clerk of the Commission of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Commission and that the above and foregoing Resolution was duly and regularly adopted by the Children and Families Commission of Orange County.

**IN WITNESS WHEREOF**, I have hereto set my hand and seal.

\_\_\_\_\_  
DARLENE J. BLOOM  
Clerk of the Commission, Children and Families Commission of  
Orange County, County of Orange, State of California

Resolution No: \_\_-11-C&FC

Agenda Date: February 2, 2011

Item No. \_\_



I certify that the foregoing is a true and correct copy of the Resolution adopted by the

DARLENE J. BLOOM, Clerk of the Commission

By: \_\_\_\_\_  
Deputy

**EXHIBIT A TO RESOLUTION OF COMMISSION**

(Attach copy(ies) of final executed Agreements)