

**Professional Services Agreement  
Between the County of San Mateo and  
Scott Oesterling MD, Inc.  
For Obstetrics and Gynecology Services**

**THIS PROFESSIONAL SERVICES AGREEMENT** is entered into by and between the County of San Mateo, San Mateo Health System (“County”) and Scott Oesterling MD, Inc. (“Contractor”).

W I T N E S S E T H:

WHEREAS, County operates health care facilities collectively known as “San Mateo Medical Center” (SMMC); and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing professional services described in this Agreement for SMMC; and

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for the County; and

WHEREAS, Contractor desires to provide such services all upon the terms and conditions stated below, and this Agreement is entered into for the purpose of defining the parties’ respective rights and responsibilities.

**NOW, THEREFORE**, in consideration of the mutual agreements set out below, the parties agree as follows:

**Section 1: Contractor’s Obligations**

**1.1 Organizational Status**

Contractor represents and warrants that Contractor is:

A partnership, professional services corporation, or association duly organized and validly existing under the laws of the State of California and authorized to engage in the profession of obstetrics and gynecology in the State of California.

**1.2 Contractor’s Representatives**

1.2.1 The term “Contractor” shall include all Contractor’s representatives, employees, shareholders, partners, subcontractors, and agents providing services in San Mateo County under this Agreement; i.e., every member of a medical group that contracts with the County shall be considered a “Contractor” for purposes of complying with this Agreement.

1.2.2 Where Contractor represents more than one individual, Contractor will designate a “Lead Contractor”. This Lead Contractor will be the contact person for the

County when dealing with issues affecting both parties, including but not limited to enforcement of this Agreement, in cases where direct discussion with the contractor fails to adequately resolve this issue.

### 1.3 **Qualifications**

The following indicate qualifications that must be satisfied by each Contractor as a condition of providing services under this Agreement:

- 1.3.1 Must be accepted by the Chief Executive Officer of SMMC or his/her designee; said acceptance may be withdrawn immediately at any time with written notice to Contractor at the reasonable discretion of the Chief Executive Officer of SMMC, his/her designee, the County's Chief, Health System, or his/her designee.
- 1.3.2 Shall at all times keep and maintain a valid license to engage in the practice of medicine in the State of California and active Medical Staff membership and/or privileges as may be required under the Bylaws of County for Contractor's representatives to provide the services contemplated by this Agreement.
- 1.3.3 Contractor's representatives shall be certified by the appropriate state-recognized board in California (or eligible for certification by such board by virtue of having successfully completed all educational and residency requirements required to sit for the board examinations).
- 1.3.4 Contractor is not currently excluded, debarred, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; nor has Contractor been convicted of a criminal offense.
- 1.3.5 Contractor agrees to participate in the County's Organized Health Care Arrangement (OHCA), as described by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractors who choose to opt out of OHCA agree to advise the SMMC Medical Staff Office in writing and will provide their own Notice of Privacy Practice (NPP).

### 1.4 **Services to be Performed by Contractor**

In consideration of the payments hereinafter set forth, Contractor, under the general direction of the Chief Executive Officer of SMMC or his/her designee, with respect to the product or results of Contractor's services, shall provide medical services as described in Exhibit A, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

## 1.5 **Payments**

### 1.5.1 Maximum Amount

In full consideration of Contractor's performance of the services described in Exhibit A, the amount that County shall pay for services rendered under this Agreement shall not exceed FIVE MILLION SIX HUNDRED THOUSAND DOLLARS (\$5,600,000).

### 1.5.2 Rate of Payment

The rate and terms of payment shall be as specified in Exhibit B, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Chief, Health System or his/her designee and shall not be binding on County unless so approved in writing. Each payment shall be conditioned on the Contractor's performance of the provisions of this Agreement, to the full satisfaction of the Chief, Health System, Chief Executive Officer of SMMC, or either of their designees.

### 1.5.3 Time Limit for Submitting Invoices

Contractor shall submit an invoice for services to County for payment in accordance with the provisions of Exhibit B. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

## 1.6 **Substitutes**

Contractor shall provide, at Contractor's sole cost and expense, a substitute for any Contractor who is unable to provide services required under this Agreement. As a condition of providing services under this Agreement, any such substitute shall first be approved by the Chief Executive Officer of SMMC or his/her designee and shall otherwise satisfy all qualification requirements applicable to the Contractor, including but not limited to being covered under Contractor's insurance or submitting separate insurance issued by a company under such terms and limitations as County shall reasonably approve.

## 1.7 **General Duties of Contractor**

### 1.7.1 Administrative and Miscellaneous Duties and Responsibilities

Contractor will cooperate with the administration of the Medical Center. Such cooperation shall include but not be limited to the following: maintaining medical records in a timely fashion (including the appropriate use of dictation or other technology, as required by County), billing, peer review, completing time studies as required by California and Federal reimbursement regulations, and County's compliance programs. To the extent applicable, Contractor shall provide appropriate supervision and review of services rendered by physician assistants and other non-physicians involved in the direct medical care of County's patients.

#### 1.7.2 Billing and Compliance

Contractor shall prepare such administrative and business records and reports related to the service in such format and upon such intervals as County shall reasonably require. Contractor agrees to keep accurate and complete records. To the extent that billing is discussed in more detail in Exhibits to this Agreement, Contractor shall comply with those billing-related requirements.

#### 1.7.3 Compliance with Rules and Regulations

Contractor agrees to abide by rules, regulations, and guidelines of County. County may from time to time amend, add, or delete rules, regulations, or guidelines at County's sole discretion, and such amendment will not affect the enforceability or terms of this Agreement.

#### 1.7.4 Managed Care Contracts

Contractor is obligated to participate in and observe the provisions of all managed care contracts which County may enter into on behalf of Contractor for health care services with managed care organizations, including but not limited to Health Maintenance Organizations (HMOs), Independent Practice Associations (IPAs), Preferred Provider Organizations (PPOs), Medical Service Organizations (MSOs), Integrated Delivery Systems (IDSs), and Physician-Hospital Organizations (PHOs).

#### 1.7.5 Requirement of Physician to Notify County of any Detrimental Professional Information or Violation of Contract Rules or Policies

During the term of this Agreement, Contractor shall notify County immediately, or as soon as is possible thereafter, in the event that:

- I. Contractor's license to practice in any jurisdiction is suspended, revoked, or otherwise restricted;

- II. A complaint or report concerning Contractor's competence or conduct is made to any state medical or professional licensing agency;
- III. Contractor's privileges at any hospital or health care facility or under any health care plan are denied, suspended, restricted, terminated, or under investigation for medical disciplinary cause or reason;
- IV. Contractor's controlled substance registration certificate (issued by the Drug Enforcement Administration), if any, is being or has been suspended, revoked, or not renewed;
- V. Contractor's participation as a Medicare or Medi-Cal provider is under investigation or has been terminated;
- VI. There is a material change in any of the information the Contractor has provided to County concerning Contractor's professional qualification or credentials; or
- VII. Contractor is convicted of a crime.

Contractor must also notify County within thirty (30) days of any breach of this Agreement, of violation of any of County's rules or regulations, whether by others or by the Contractor himself/herself, or if the Contractor is subject to or a participant in any form of activity which could be characterized as discrimination or harassment.

#### 1.7.6 Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San

Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in Exhibit B, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

#### 1.8 **Citizenship Duties of Contractor**

- A. Contractor will make all reasonable efforts to participate in co-ordination and optimization of services, including but not limited to participation in quality improvement and utilization management efforts.
- B. Contractor will make all reasonable efforts to communicate effectively and coordinate care and services with primary care providers, including but not limited to direct contact with individual providers where clinically indicated.
- C. Contractor will conduct himself/herself with professionalism at all times, which includes but is not limited to courteous and respectful conduct toward, and reasonable cooperation with, all County employees.
- D. To the extent that citizenship duties are discussed in more detail in Exhibits to this Agreement, Contractor shall comply with those additional duties and requirements.

#### 1.9 **Provision of Records for County**

Contractor shall furnish any and all information, records, and other documents related to Contractor's services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor shall participate in one or more of such plans and/or programs.

#### 1.10 **Cooperation with County in Maintaining Licenses**

Contractor shall assist County in obtaining, achieving, and/or maintaining any and all licenses, permits, other authorization, and/or accreditation standards which are dependent upon, or applicable to, in whole or in part, Contractor's services under this Agreement.

#### 1.11 **Contractor's Conflict of Interest**

Contractor shall inform County of any other arrangements which may present a professional, financial, Stark Law, or any other state or federal conflict of interest or materially interfere in Contractor's performance of its duties under this Agreement. In the event Contractor pursues conduct which does, in fact, constitute a conflict of interest or which materially interferes with (or is reasonably anticipated to interfere with) Contractor's performance under this Agreement, County may exercise its rights and privileges under Section 3 below.

1.12 **Non-Permitted Uses of County Premises**

Contractor agrees not to use, or permit any of Contractor's representatives to use, any County facility or service for any purpose other than the performance of services under this Agreement. Without limiting the generality of the foregoing, Contractor agrees that no part of the premises of County shall be used at any time as an office for private practice or delivery of care for non-County patients.

1.13 **No Contract in County Name**

Contractor shall not have the right or authority to enter into any contract in the name of County or otherwise bind County in any way without the express written consent of County.

1.14 **Regulatory Standards**

Contractor shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to County and the relevant medical service, including, without limitation, those requirements imposed by the Joint Commission, the Medicare/Medi-Cal conditions of participation, and any amendments thereto.

1.15 **Availability of Records for Inspection**

As and to the extent required by law, upon written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations

thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor's representative by virtue of this Agreement.

#### 1.16 **Professional Standards**

Contractor shall perform his or her duties under this Agreement in accordance with the rules of ethics of the medical profession. Contractor shall also perform his/her duties under this Agreement in accordance with the appropriate standard of care for his/her medical profession and specialty.

### **Section 2: Change of Circumstances**

In the event either (i) Medicare, Medi-Cal, or any third party payor or any federal, state, or local legislative or regulative authority adopts any law, rule, regulation, policy, procedure, or interpretation thereof which establishes a material change in the method or amount of reimbursement or payment for services under this Agreement; or (ii) any or all such payors/authorities impose requirements which require a material change in the manner of either party's operations under this Agreement and/or the costs related thereto; then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstance while preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days prior written notice.

### **Section 3: Term and Termination**

#### 3.1 **Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2018, through December 31, 2019.

#### 3.2 **Extension of Term**

The term of the Agreement may be extended by mutual written, signed agreement by both parties.

#### 3.3 **Termination**

##### 3.3.1 Termination By County



This agreement may be terminated by County at any time upon ninety (90) days written notice to the Contractor.

The County may immediately terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon (1) unavailability of Federal, State, or County funds or (2) closure of the County, SMMC, or the department of SMMC at which Contractor is to provide services, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding or closure.

### 3.3.2 Automatic Termination

This Agreement shall be immediately terminated as follows:

- A. Upon Contractor's loss, restriction, or suspension of his or her professional license to practice medicine in the State of California;
- B. Upon Contractor's suspension or exclusion from the Medicare or Medi-Cal Program;
- C. If the Contractor violates the State Medical Practice Act;
- D. If the Contractor's professional practice imminently jeopardizes the safety of patients;
- E. If Contractor is convicted of a crime;
- F. If Contractor violates ethical and professional codes of conduct of the workplace as specified under state and federal law;
- G. Upon revocation, cancellation, suspension, or limitation of the Contractor's medical staff privileges at the County;
- H. If Contractor has a guardian or trustee of its person or estate appointed by a court of competent jurisdiction;
- I. If Contractor becomes disabled so as to be unable to perform the duties required by this Agreement;
- J. If Contractor fails to maintain professional liability insurance required by this Agreement;
- K. Upon County's loss of certification as a Medicare and/or Medi-Cal provider; or

- L. Upon the closure of the County, SMMC, or the medical service at SMMC in relation to which the Contractor is providing services.

### 3.3.3 Termination for Breach of Material Terms

Either party may terminate this Agreement at any time in the event the other party engages in an act or omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the breaching party with no fewer than thirty (30) days advance written notice specifying the nature of the breach. The breaching party shall then have thirty (30) days from the date of the notice (or such longer period as is specified in the notice) in which to remedy the breach and conform its conduct to this Agreement. If such corrective action is not taken within the time specified, this Agreement shall terminate at the end of the notice and cure period (typically sixty (60) days) measured from the date of initial notice without further notice or demand. Upon breach of the terms of this Agreement by an individual contractor's representative, County shall have the option of withdrawing its acceptance of that individual contractor's representative, as described in Section 1.3.1, without terminating this Agreement. Upon withdrawal of acceptance, Contractor must replace said contractor representative as specified in Section 1.6 of this Agreement. Withdrawal of acceptance of an individual contractor's representative will not, of itself, constitute grounds for termination of this Agreement by either party.

### 3.3.4 Patient Records Upon Termination and Notice to Patients

All original patient records shall be property of the County. Upon termination of this Agreement, Contractor shall return any such records as may be in Contractor's possession to County, subject to Contractor's right to copies of records.

## **Section 4: Insurance and Indemnification**

### 4.1 **Insurance**

Contractor shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the County. Contractor shall furnish County with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

#### 4.1.1 Violation of This Section or Decrease/Cancellation of Coverage

In the event of either (1) violation of any provision of Section 4 of this Agreement or (2) receipt of notice by the County that any insurance coverage required under Section is will be diminished or cancelled, County at its option may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

4.1.2 Workers' Compensation and Employer Liability Insurance

Contractor shall have in effect during the entire life of this Agreement workers' compensation and employer liability insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

4.1.3 Liability Insurance

Contractor shall take out and maintain during the life of this Agreement such bodily injury liability and property damage liability insurance as shall protect him or her, while performing work covered by this Agreement, from any and all claims for property damage which may arise from Contractor's operations or actions under this Agreement, whether such operations/ actions are done by himself or herself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage coverage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- A. Comprehensive general liability insurance... \$1,000,000
- B. Motor vehicle liability insurance..... \$0-
- C. Professional liability insurance.....\$1,000,000/\$3,000,000

4.1.4 County Adjustment of Insurance Coverage

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving (60) days notice to Contractor. Contractor must obtain such increased amount of coverage by the end of that notice period.

#### 4.1.5 County as Certificate Holder

County and its officers, agents, employees, and servants shall be named as Certificate Holder on any such policies of general liability insurance. Such policies shall also contain a provision that the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Said certificate(s) of insurance is (are) attached hereto.

#### 4.2 **Tail Coverage**

If Contractor obtains one or more claims-made insurance policies to fulfill its obligations, Contractor will: (i) maintain coverage with the same company during the term of this Agreement and for at least three (3) years following termination of this Agreement; or (ii) purchase or provide coverage that assures protection against claims based on acts or omissions that occur during the period of this Agreement which are asserted after the claims-made insurance policy expired.

#### 4.3 **Hold Harmless**

Contractor shall indemnify and hold harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description brought for or on account of: (i) injuries or death of any person, including Contractor; (ii) damage to any property of any kind whatsoever and to whomsoever belonging; (iii) any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this agreement; (iv) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (v) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code. Contractor shall indemnify, defend, and hold County harmless from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Contractor's representatives for services provided under this Agreement.

## **Section 5: Miscellaneous Provisions**

### **5.1 Notice Requirements**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below; and (2) either deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested -or- deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to the address below. In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

If to County: Chief Executive Officer  
San Mateo Medical Center  
222 W 39<sup>th</sup> Avenue  
San Mateo, CA 94403  
Facsimile: 650/573-2950

With Copy to: County Counsel's Office  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Facsimile: 650/363-4034

If to Contractor: Scott Oesterling MD, Inc.  
1831 Stanford Ave  
Menlo Park, CA 94025  
[Scott.Oesterling@gmail.com](mailto:Scott.Oesterling@gmail.com)

### **5.2 Merger Clause, Amendment, and Counterparts**

This Agreement, including the Exhibits and Attachments attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in this body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this Agreement, the provisions of this body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not

expressly stated in this document, whether written or otherwise, are not binding. All subsequent modifications shall be in writing and signed by the parties.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### 5.3 **Partial Invalidity**

In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided that the fundamental rights and obligations remain reasonably unaffected.

### 5.4 **Assignment**

Because this is a personal service contract, Contractor may not assign any of its rights or obligations hereunder without the prior written consent of County. County may assign this Agreement to any successor, to all or substantially all of County's operating assets, or to any affiliate of County. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### 5.5 **Independent Contractor**

Contractor and all Contractor's representatives are performing services and duties under this Agreement as independent contractors and not as employees, agents, or partners of or joint ventures with County. County does retain responsibility for the performance of Contractor and Contractor's representatives as and to the extent required by law and the accreditation standards applicable to County. Such responsibility, however, is limited to establishing the goals and objectives for the service and requiring services to be rendered in a competent, efficient, and satisfactory manner in accordance with applicable standards and legal requirements. Contractor shall be responsible for determining the manner in which services are provided and ensuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.

### 5.6 **Regulatory Requirements**

The parties expressly agree that nothing contained in this Agreement shall require Contractor or Contractor's representatives to refer or admit any patients to or order any goods or services from County. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself

or herself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medi-Cal programs.

5.7 **Alternate Dispute Resolution and Venue**

The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective reputations and the confidential nature of certain aspects of their relationship. Accordingly, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be mediated. If mediation is unsuccessful, the parties may take the dispute to Superior Court in San Mateo County.

5.8 **Third Party Beneficiaries**

This Agreement is entered into for the sole benefit of County and Contractor. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including, without limitation, any Contractor's representative.

5.9 **Governing Law**

This Agreement shall be governed by the laws of the State of California.

5.10 **Non-Discrimination**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting as part of this Agreement a signed letter of assurance of compliance (Attachment I to this Agreement). Contractor shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

**General Non-Discrimination.** No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

Contractor shall comply with the County admission and treatment policies, which provide that patients are accepted for care without discrimination on the basis of race,

color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Equal Employment Opportunity. Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties to be determined by the County Manager, including but not limited to:

- A. Termination of this Agreement;
- B. Disqualification of Contractor from bidding or being awarded a County contract for a period of up to three (3) years;
- C. Liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation; and/or
- D. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of these paragraphs, the County Manager shall have the authority to:

- A. Examine Contractor's employment records with respect to compliance with this paragraph; and
- B. Offset all or any portion of the amount described in this paragraph against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

Within thirty (30) days, Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notifications shall include the name of the complainant, a copy of such complaint, and description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed/submitted.



Compliance with Equal Benefits Ordinance. Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

Compliance with Federal Regulations. Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

History of Discrimination. Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

#### 5.11 **Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

#### 5.12 **General Standards**

Contractor shall maintain its operations in compliance with all applicable laws and rules relating to licensure and certification, including but not limited to: Title XXII of the California Administrative Code; those necessary to participate in the Medicare and Medi-Cal programs under Title VIII and Title XIX, respectively, of the Social Security Act; and those required by the Joint Commission. Contractor shall provide satisfactory evidence of such licenses and certificates. Contractor shall inform County of any notice of any incident within its operations which may affect any license or certification held by Contractor.

#### 5.13 **Confidentiality of Patient Information and Compliance With Laws**

Contractor shall keep in strictest confidence and in compliance with all applicable state and federal laws any patient information. Contractor shall not disclose such information except as permitted by law.

All services to be performed by Contractor pursuant to this Agreement shall be performed (1) in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance and, if applicable, (2) in compliance with the Business Associate requirements set forth in Attachment H, if attached hereto. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### 5.14 **Non-Disclosure of Names**

Notwithstanding any other provision of this Agreement, names of patients receiving public social services hereunder are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, Code of Federal Regulations, Section 431.300 *et seq.* and Section 14100.2 of the California Welfare and Institutions Code and regulations adopted thereunder.

For the purpose of this Agreement, all information, records, data, and data elements collected and maintained for the operation of the Agreement and pertaining to patients shall be protected by Contractor from unauthorized disclosure.

With respect to any identifiable information concerning a Medi-Cal patient that is obtained by Contractor, Contractor: (i) will not use any such information for any purpose other than carrying out the express terms of this Agreement; (ii) will promptly submit to California Department of Public Health (CDPH) and the applicable Medi-Cal plan all requests for disclosure of such information; (iii) will not disclose, except as otherwise

specifically permitted by this Agreement, any such information to any party other than CDPH and the applicable Medi-Cal plan without prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 *et seq.*, under Section 14100.2 of the Welfare and Institutions Code and regulations adopted thereunder, or as ordered by a court or tribunal of competent jurisdiction; and (iv) will, at the expiration or termination of this Agreement, return all such information to CDPH and the applicable Medi-Cal Plan or maintain such information according to written procedures sent to health plan by CDPH and the applicable Medi-Cal plan for this purpose.

#### 5.15 **Disclosure of Records**

Contractor agrees to provide upon reasonable notice to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives, and/or to their appropriate audit agencies access to and the right to examine and audit all records and documents necessary to determine compliance with this Agreement, to determine compliance with relevant federal, state, and local statutes, ordinance, rules, and regulations, and to evaluate the quality, appropriateness, and timeliness of services performed under this Agreement. Contractor shall comply with all provisions of the Omnibus Budget Reconciliation Act of 1980 regarding access to books, documents, and records.

Without limiting the foregoing, Contractor shall maintain such records and provide such information to County and to government officials as may be necessary for compliance by County with all applicable provisions of all state and federal laws governing County. Upon request, County and government officials shall have access to and be given copies of, at reasonable times at the Contractor's place of business (or such other mutually agreeable location in California), the medical records, books, charts, business records, and papers relating to the Contractor's provision of health care services to patients, the cost of such services, payments received by the Contractor from patients (or from others on their behalf), and the financial condition of Contractor. Such records described herein shall be maintained at least four (4) years from the end of the contract term.

All records of Contractor shall be maintained in accordance with the general standards applicable to such book or record keeping and shall be maintained during any governmental audit or investigation.

#### 5.16 **Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and

County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

5.17 **Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments

Exhibit C—Performance Metrics

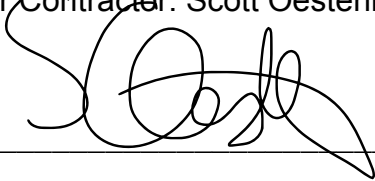
Exhibit D—List of Providers

Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)

Attachment I—§ 504 Compliance

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Scott Oesterling MD, Inc.



**11/13/2017**

Scott D. Oesterling

Contractor Signature

Date

Contractor Name (please print)

---

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

## **EXHIBIT A**

### SERVICES

In consideration of the payments specified in Exhibit B, Contractor shall perform the services described below under the general direction of the Chief Medical Officer, Medical Director of Specialty Services, or designee.

- I. Administrative Responsibilities – Contractor shall provide a Chief of the OB/GYN Department “Department Chief” (the identity of whom is subject to SMMC approval), who shall perform the following duties:
  - A. Within the Department of Surgery, collaborate with administration, clinic managers, and nursing leadership to provide health care programs at San Mateo Medical Center (SMMC) and outlying clinic facilities for prenatal and gynecological care.
  - B. Provide direct supervision of the day to day operations of the Department of Obstetrics and Gynecology (OB/GYN) by assuring the overall efficiency and delivery of care consistent with the proper standard of care. The administrative duties of the Department Chief shall include, at a minimum, the following:
    1. Participation in regular meetings with clinic managers and/or their designees to discuss ongoing patient flow issues, standard of care, quality assurance initiatives, patient grievances, CDM review and compliance, policy issues, productivity, and evening clinic.
    2. Review and approval of all policies and procedures affecting the OB/GYN Department, including nursing, physician, pharmacy, and ancillary services.
    3. Ongoing monitoring of the professional performance of all individuals who have delineated clinical privileges under this contract; recommending to the medical staff the criteria for clinical privileges for each member of the OB/GYN Department.
    4. Assuring that the quality and appropriateness of patient care provided by the OB/GYN Department is monitored and evaluated quarterly through the routine collection of information (metrics) about important aspects of patient care provided in the Department and about the clinical performance of its members, as reported to the Department of Surgery and Medical Executive Committee meetings.
    5. Responding in writing to issues raised by SMMC Administration within a reasonable period of time commensurate with the nature of the issue. Where

there is a serious question of quality assurance, a written response will be required within seven (7) days, or sooner if reasonably requested.

6. Attending Department of Surgery and Medical Executive Committee meetings.
7. Being available by pager or telephone, or designating an “on-call” alternative, Twenty-four (24) hours a day, seven (7) days a week.
8. Assisting SMMC Administration in continuing to develop, revise, and maintain departmental rules and regulations.
9. Completing Quality Assurance reports on a monthly basis and submitting the reports through appropriate medical staff reporting channels.

C. Assist in the ongoing development of the Quality Management program.

D. Meet on a regular basis with the Department of Surgery at SMMC to discuss common medical issues and conduct peer review.

E. Participate in health education programs at SMMC.

F. Supervise the clinical practice of nurse practitioners (NPs) and provide oversight of OB/GYN NP-led clinics.

G. Participate in peer review as outlined in the Medical Staff Bylaws.

H. Provide other administrative services not directly related to an identifiable part of the medical care of patients, as mutually agreed to by Contractor and the SMMC Chief Medical Officer or designee. Such administrative services may include, but are not limited to teaching, research, administration, supervision of professional or technical staff, quality control activities, committee work, and attending conferences.

## II. Clinical Activities

- A. Provide at least thirty five (35), and up to forty (40), provider led clinics, each of which shall be one half day (four hours) in length each week at SMMC’s main campus and the outlying clinics, including Fair Oaks, Coastside, and other clinics upon mutual agreement, for inpatient consultations, ambulatory care, and emergency care, as applicable. Each week, provide at least two (2) contracted half days of surgery, with add-on surgery times as needed. Contractor shall provide post-operative care for any surgical cases done by Contractor at SMMC. In the SMMC clinics at which contracted clinic services are provided, County shall provide Contractor a minimum of two exam

rooms and one medical assistant per provider during all times that clinics are being provided under this Agreement.

- B. Oversee the system of prenatal and obstetrical care delivery for SMMC patients and provide direct prenatal care, which includes initial visits, as well as visits that are return, post-partum, and non-pregnancy medical care/medical referrals of pregnant patients.
- C. Unless and until a subsequent contract with Lucille Packard Children's Hospital (LPCH) at Stanford is developed and approved by the County, Contractor shall provide, twenty-four (24) hours a day, seven days a week, obstetric coverage for patients registered to SMMC who are at LPCH. Such coverage shall include telephone triage of abnormal ante-partum testing (ultrasounds, non-stress tests, and amniotic fluid index), ambulatory patient triage, labor management, inpatient ante-partum care, vaginal delivery, cesarean delivery, management of obstetric complications, post-partum tubal ligation, and inpatient rounds. The parties understand and agree that a subsequent Agreement with LPCH may delineate different clinical and financial arrangements for County indigent patients admitted to LPCH, and that such arrangements, when made, may necessitate amendment of this Agreement.
- D. Provide emergency services in the Department of Surgery and be responsible for ambulatory triage of emergency pregnancy-related patient services, which can include threatened abortions, ectopic pregnancies, drop-in results of abnormal ultrasounds (i.e., miscarriages and malformations), and counseling.
- E. Develop and monitor the OB/GYN Department quality improvement plan. This plan includes specific benchmarking indicators which are detailed in Exhibit C, "Metrics."
- F. Review and co-sign orders, written in medical records, by nurses.
- G. Review cases with nurse practitioners on a regular basis each week.
- H. Participate in such teaching and/or training programs as are, or may be, established by the medical staff at SMMC. Each individual's participation in continuing education is documented and considered at the time of reappointment to the medical staff and/or renewal or revision of individual clinical privileges.
- I. Fulfill those requirements for active staff membership set forth in Articles 3 and 4.2 of the SMMC's Medical Staff Bylaws, and maintain such active staff status as a condition of the Agreement.



- J. Provide access to all records and reports, financial and otherwise, pursuant to this Agreement.
- K. Attend regularly and serve without additional compensation on committees responsible for peer review activities, quality assurance, and utilization review as outlined in the Medical Staff Bylaws, Rules and Regulations.
- L. Provide medical staff administrative support to SMMC departments and nursing services in meeting surgical and anesthesia standards as defined by the Joint Commission, Title XXII, and other applicable standards.
- M. Respond to SMMC clinical laboratory and other ancillary services for the evaluation and management of critical laboratory, imaging, and pathology values of OB/GYN patients.

## EXHIBIT B

### PAYMENTS

In consideration of the services specified in Exhibit A, County will pay Contractor based on the following:

- I. Contractor shall be paid at rates set forth herein to include the complete professional component associated with obstetrics and gynecology services, subject to the terms of Exhibit C to this agreement.
- II. Contractor compensation for services to County will be based on Medical Group Management Association (MGMA) 2017 Western U. S. Median Compensation for Obstetrics/Gynecology: General.
- III. Contractor compensation will be based on the scheduled amount below:

		Year 1 1/1/18 – 12/31/18	Year 2 1/1/19 – 12/31/19
OB/GYN Physicians	7.0	\$2,750,000	\$2,750,000
Medical Director	1.0	\$50,000	\$50,000
Annual Total		\$2,800,000	\$2,800,000

NOTE: OB/GYN: The FTE annual payment amount is based on the following metrics, included in the contract solely to illustrate the Contractors cost of providing the OB/GYN service: base salary: \$327,358; annual benefits: \$65,472; total: \$392,830. As noted above, Contractor's employees are not employees of the County, and Contractor bears full obligation for determination of how its employees are compensated in terms of salary and benefits.

- IV. Contractor compensation for OB/GYN services will be based on a projected volume of forty-five thousand six hundred eighty-two (45,682) wRVUs per annum. The County allows each FTE Provider, 0.1 FTE of time (four hours) per week to review referrals from Primary Care to increase appropriateness of the referral and ensure studies and tests are complete prior to the Contractor servicing a new patient. The review process is referred to as SMARTT.

Additionally, the compensation in this Agreement has been based upon an assumed level of productivity. If the annualized average monthly Medicare Resource-Based Relative Value Scale Relative Value Work Units (wRVUs) for the SMMC OB/GYN services department as a whole exceed 43,170 SMARTT wRVUs, or fall below 34,947 SMARTT wRVUs, over an annual period, Contractor and the Chief Medical Officer or his/her designee will meet and confer with Contractor regarding the productivity standard, and compensation will be modified as appropriate and mutually agreed. Both parties shall have the right to review and audit the other

party's data supporting the calculation of productivity.

- V. County will provide Professional Liability (Malpractice) Insurance coverage as defined in Section 4 of the Agreement in the amounts of \$1,000,000/\$3,000,000 and the appropriate tail coverage for all Contractors included in Exhibit D providing services under this Agreement.
- VI. Contractor shall be paid monthly. Monthly payments shall be calculated as reimbursement for the actual number of existing physician FTEs and associated costs for the current month, and shall be paid no later than the 20th of the following month.
- VII. Contractor shall be paid a fixed rate of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000) per year, to be paid in twelve monthly installments of TWO HUNDRED THIRTY- THREE THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS (\$233,333) per month during the term of this Agreement. However, this amount shall be subject to the terms set forth in Exhibit C to this Agreement.
- VIII. Contractor shall submit an invoice for services to County for payment in accordance with the provisions of this Exhibit. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services or more than ninety (90) days after this Agreement terminates, whichever is earlier. This timeline also applies to tracers and appeals. No payment shall be due for any services required by this Agreement which are not provided by Contractor.
- IX. Total payment for services at SMMC under this Agreement will not exceed FIVE MILLION SIX HUNDRED THOUSAND DOLLARS (\$5,600,000).
- X. The term of this Agreement is January 1, 2018 through December 31, 2019, as stated in Section 3.1 of the Agreement.

## EXHIBIT C

### PERFROMANCE METRICS

Both County and Contractor acknowledge the need for a “pay-for-performance” reimbursement model based on mutually-acceptable units of measurement. Therefore, Contractor’s total compensation for any given quarter shall be subject to reduction as outlined by this Exhibit.

- I. Contractor’s compensation is tied to meeting the following metrics each quarter (a quarter, for purposes of this Exhibit, is defined as each successive three-month period starting on the first day of the term of the Agreement as listed in Section X of Exhibit B):
  - A. No fewer than ninety five percent (95%) of Gynecology (GYN) consults will be seen within thirty (30) days.
  - B. C-Section rate among C-Section Naïve women will be less than 17.1%.
  - C. Operating Room Block utilization time each month will be greater than eighty five percent (85%). To satisfy this metric, the utilization time must meet or exceed the listed amount for all three months in a given quarter.
  - D. Electronic Medical Record documentation (including charge capture) will be completed within seventy two (72) hours (three days) with no more than ten (10) delinquent charts for Contractor Providers each month. A delinquent chart is any chart which is not closed within twenty one (21) days.
  - E. One Contracted Provider will attend the Nurse Practitioner quarterly OB/GYN meeting and present one clinical standard the group should follow.

Compliance is measured by meeting or exceeding each of the metrics listed in this Exhibit C, Section I.

- II. Both the County and Contractor acknowledge Contractor cannot achieve the metrics detailed in Section I of this Exhibit without assistance and cooperation from the County, and, at times, there are conditions the Contractor cannot control. Therefore, the County must satisfy the following operational conditions, and failure to do so will have the consequences described below in Exhibit C, Section III.
  - A. By the 20th day of each month, a “Monthly Provider Productivity Report” for the prior month will be sent via email to Dr. Oesterling. To satisfy this metric, County must send the listed report by the 20th day of each month in a given quarter.

- B. Ninety five percent (95%) of the time, the wait time for outpatient ultrasound will be less than ten (10) business days.
- C. Ninety percent (90%) of the patients referred to the Gynecology service have been assigned a primary care physician at SMMC or a primary care provider in San Mateo County.
- D. An Information Technology (IT) liaison in eCW or Sorian will be available to meet with Contractor on a monthly basis at the request of the Contractor. This metric will not be met if Contractor identifies a need to meet and is unable to schedule a meeting with an IT liaison after requesting assistance with the Medical Director of Specialty Services.
- E. In the Operating Room (OR), the turnaround time between cases will be forty five (45) minutes or less in ninety five percent (95%) of the cases.

Compliance is measured by meeting or exceeding each of the metrics listed in this Exhibit C, Section II.

- III. Section VII of Exhibit B lists the monthly base compensation amount for services provided pursuant to this Agreement. However, that amount shall be subject to a pay-for-performance reduction based on the performance metrics listed in Sections I and II of this Exhibit, as explained by this Section III of Exhibit C.

The metrics listed by this Exhibit shall be assessed on a quarterly basis. For any quarter in which Contractor fails to meet or exceed all five of the listed metrics, its compensation for that quarter is subject to reduction up to the amount listed below, with Contractor's next monthly payment being reduced by the amount calculated pursuant to this Section.

To determine the quarterly pay-for-performance reduction (the "Quarterly Reduction"), if any, in Contractor's compensation, County shall first determine the Reduction Modifier for the quarter. The "Reduction Modifier" each quarter shall be calculated using the following formula:

$$\text{Reduction Modifier} = \frac{\text{(the total number of metrics from Section I met by Contractor)}}{\text{(the total number of metrics from Section I)}} + \frac{\text{(the total number of metrics from Section II not met by County)}}{\text{(the total number of metrics from Section II)}}$$

However, in no event shall the Reduction Modifier be greater than 5. Accordingly, if Contractor meets all five of its metrics in a given quarter, the failure of County meet any of its operational conditions during that same quarter will not have any impact on Contractor's payments since the Reduction Modifier will be 5. So, by way of example: if Contractor meets 4 metrics and the County does not meet 1, the Reduction Modifier shall be 5 for that quarter; if Contractor meets 4 metrics and the County does not meet 2, the Reduction Modifier shall be 5 for that quarter; and if Contractor meets 3 metrics and the County meets all its metrics, the Reduction Modifier shall be 3 for that quarter.

Once the Reduction Modifier for a quarter is determined using the formula above, it is then inserted into the following calculation to determine the Quarterly Reduction, if any, in Contractor's compensation for that quarter:

$$\text{Quarterly Reduction} = (5 - \text{Reduction Modifier}) \times \left( \frac{\text{Base Risk Incentive Amount}}{5 \text{ metrics}} \right)$$

The "Base Risk Incentive Amount" is SIXTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$68,750), meaning that each metric is valued at \$13,750 each quarter.

Once the calculation for a given quarter is complete, any Quarterly Reduction will be withheld from the monthly payment (the month's base pay amount listed in Section VII of Exhibit B) immediately following the date upon which County informs Contractor of the extent of its compliance with the performance metrics for the preceding quarter. So, by way of example, if the Reduction Modifier for the first quarter (January through March) is 4, then the Quarterly Reduction of \$13,750 shall be reduced from the monthly payment for April.

As outlined by the formulas above, whether the Contractor's compensation is reduced for its failure to meet performance metrics is affected by whether Contractor actually meets or fails to meet the metrics described in Section I of this Exhibit C to the Agreement, as well as whether County meets or fails to meet the operational conditions set forth in Section II of this Exhibit C to the Agreement.

The County's failure to achieve operational conditions in any given quarter shall only be considered in determining whether the Contractor is entitled to an offset for the Contractor's failure to achieve performance metrics under this Agreement and under no circumstances shall County's failure to achieve operational standards result in Contractor receiving compensation beyond that set forth in Exhibit B to this Agreement.

Under no circumstances shall Contractor's pay-for-performance reduction in any given quarter be greater than the Base Risk Incentive Amount listed above.

**EXHIBIT D**

LIST OF PROVIDERS

Anderson, John	Lock, W. Scott
Bowker, Caroline	Meier, James
Kassis, Jessica	Mummah, Ana
Suharwardy, Sanaa	Oesterling, Scott
Singer, Michael	Pao, Sharon
Kesavan, Shubhangi	Quintana, Andrea

## **EXHIBIT E**

### **CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)**

Contractor recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

The Undersigned, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

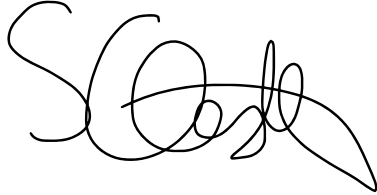
Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

***TO REPORT VIOLATIONS,  
CALL THE COMPLIANCE HOT LINE: (800) 965-9775***



Contractor hereby certifies by signing below that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and hereby commits Contractor to comply with this Code of Conduct.

A handwritten signature in black ink, appearing to read 'Scott Oesterling', written in a cursive style.

Scott Oesterling MD, Inc 11/13/17

# ATTACHMENT I

## Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

Contractor (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

**Name of 504 Person:** Scott Oesterling

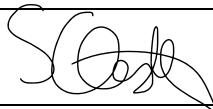
**Name of Contractor(s):** Scott Oesterling MD, Inc.

**Street Address or P.O. Box:** 1831 Stanford Ave.

**City, State, Zip Code:** Menlo Park, CA 94025

I certify that the above information is complete and correct to the best of my knowledge

**Signature:**



**Title of Authorized Official:**

Scott Oesterling MD Inc.

**Date:**

November 13, 2017

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."