

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into effective on the 1st day of January, 2014 (“Effective Date”), the date of actual signature by the parties notwithstanding, by and between County Of El Dorado (“Contractor”), and The Permanente Medical Group, Inc. (“TPMG”).

Lawrence Manhart, M.D. (“*Doctor*”) is a physician employed by TPMG. *Contractor* desires to utilize *Doctor* to provide the services described in Exhibit A (Services). This Agreement establishes the terms under which the parties, TPMG and *Contractor* agree that *Doctor*, though an employee of TPMG, will perform Services for and on behalf of *Contractor*.

RECITALS

- A. WHEREAS, California Health and Safety Code, Section 123800 et seq., is the enabling statute for the California Children’s Services (CCS) program; and
- B. WHEREAS, the CCS program is mandated by the Welfare and Institutions Code and California Code of Regulations (Title 22, Section 51013) to act as an “agent of Medi-Cal” for Medi-Cal beneficiaries with CCS medically eligible conditions; and
- C. WHEREAS, it is the intent of the parties hereto that the Services shall be in conformity with all applicable federal, state and local laws.

The parties to the Agreement, TPMG and *Contractor* agree as follows:

- 1. **Engagement.** *Contractor* will utilize *Doctor* to provide the services described in Exhibit A in a professional and timely manner, and under the terms and conditions set forth in this Agreement.
- 2. **Term.** This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, and thereafter on a month to month basis until this Agreement is terminated by either party as provided in Section 7.8 below.
- 3. **Compensation.** In consideration for its provision of the Services hereunder, *Contractor* shall create claims to bill for *Doctor*’s Services to Medi-Cal at the rate described in Exhibit B for Services provided by *Doctor* to *Contractor*. The parties agree that *Doctor* shall provide Services pursuant to a mutually agreed-upon schedule which shall not exceed eight (8) hours per month.

3.1 No Other Compensation. TPMG shall not be entitled to any other compensation or consideration for the Services rendered hereunder without the prior written consent of *Contractor*, which it may grant or withhold in its sole discretion.

3.2 Expense Reimbursement. *Doctor* shall be entitled to any expense reimbursement from *Contractor* that is authorized by *Contractor* and provided in a manner consistent with *Contractor*'s policies for expense reimbursement.

4. Employment Status. The parties agree that *Doctor* is and shall be at all times an employee of TPMG, not *Contractor*. Accordingly, TPMG is responsible for the payment of employment taxes, income tax withholding, employee benefits and other expenses which relate to *Doctor*'s compensation. The hourly compensation described in Section 3 of this Agreement is a partial offset of the cost to TPMG of employing *Doctor* while *Doctor* provides Services. *Doctor* shall receive no compensation or benefits from *Contractor* except reimbursement of actual expenses incurred, as provided in Section 3.2.

5. Right of Control. Notwithstanding the provisions of Section 4 above, the parties agree that TPMG shall have no right of control over *Doctor* when he is delivering Services or the circumstances under which Services shall be provided by *Doctor*. Any supervision, direction or control of the delivery of Services by *Doctor* shall be the sole responsibility of *Contractor*.

6. Warranties, Representations and Assurances. TPMG makes no warranties, representations or assurances concerning *Doctor*'s qualifications, expertise and skills to perform Services, *Doctor*'s compliance with applicable ordinances, statutes, rules and regulations, policies or protocols while providing Services, or any outcomes or consequences of the provision of Services by *Doctor*.

7. Miscellaneous.

7.1 Entire Agreement; Modification. This Agreement constitutes the full and complete understanding and agreement of the parties with respect to the utilization of *Doctor* by *Contractor* and the provision of Services by *Doctor*, and supersedes any prior or contemporaneous understanding or agreement, whether written, oral or communicated in any other type of medium, between the parties relating thereto. No amendment or modification of any provision of this Agreement shall be binding unless made in writing and signed by the parties hereto.

7.2 Assignment. Neither party may assign any of their rights or obligations under this Agreement without the prior written consent of the other party, which consent may be withheld for any reason. In the event of any permitted assignment or transfer by either party, all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by or against the successors and assigns of the assignor.

7.3 Waiver. No waiver of, acceptance of non-performance or failure to insist upon performance of any term, condition, covenant or breach of this Agreement by a party shall be deemed to be a waiver of any subsequent non-performance or breach of the same or other terms, covenants or conditions hereof by such party.

7.4 Construction. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective or valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, this Agreement shall be interpreted and applied, whenever possible, so as to reflect the intentions of the parties as indicated by the Agreement as a whole.

7.5 Headings. Headings to sections of this Agreement are solely for convenience and do not modify or interpret any provisions contained therein.

7.6 Governing Law; Venue. This Agreement, and all acts and transactions pursuant or relating hereto, and all rights and obligations of the parties hereto will be governed, construed, and interpreted in accordance with the domestic laws of the State of California without giving effect to any choice of law provision or rule (whether of the State of California or any other jurisdiction that would cause application of the laws of any jurisdiction other than the State of California).

7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.

7.8 Termination. Either party may terminate this Agreement at any time and for any reason; provided, however, that *Contractor* shall promptly create a claim to bill Doctor's hours to Medi-Cal for Services performed by *Doctor* rendered as of the date of termination, and shall reimburse *Doctor* for expenses incurred prior to such termination and payable under the terms of Section 3 of this Agreement. The party wishing to terminate this Agreement shall provide written notice to the other party at least five (5) days before the date of proposed termination delivered by US Mail or facsimile. Upon termination under this paragraph, *Contractor* shall have no further financial obligation to TPMG and shall not be responsible or liable for any additional costs or damages of any nature whatsoever.

7.9 Confidentiality. In the event the parties acquire information and materials from each other and knowledge about operations, businesses, contracts, financial condition, marketing plans, development plans, employee training programs, operating policies and procedures, customers and suppliers, specifications, policies and practices, and other information (collectively "Confidential Information") that is not known to the public, that this information shall be treated as confidential and proprietary and as information that would be useful and valuable to competitors of the party that owns the information.

Confidential Information does not include, however, any information that is or becomes part of the public domain through no fault of the party acquiring the information or that the party that owns the information regularly provides to third parties without restriction on use or

disclosure. If a party is uncertain of certain information is Confidential Information, it shall treat it as such and immediately seek clarification from the party that owns the information.

Each party agrees to use commercially reasonable efforts to: (i) hold all Confidential Information in strict confidence; (ii) not to disclose it to others or use it in any way, commercially or otherwise, except in performing the Services; (iii) disclose it to their respective employees, attorneys and those authorized in writing to receive it by the party owning the information, only on a need-to-know basis; and (iv) not to allow any unauthorized person access to it, either before or after expiration or termination of this Agreement. The parties further agree to take commercially reasonable actions to protect the confidentiality of the Confidential Information including, without limitation, implementing and enforcing operating procedures to minimize the likelihood of unauthorized use or copying of the Confidential Information.

Upon expiration or termination of this Agreement for any reason, the parties shall immediately return, or destroy if authorized, all Confidential Information in its care, custody or control, in whatever form (paper, electronic, copies) and however obtained.

7.10 Payment. Doctor shall submit to Contractor a monthly invoice of hours worked for Services no later than the 15th day of each month, as described in Exhibit B. The invoice shall be in a form and substance reasonably acceptable to Contractor and a Medical claim shall be submitted no later than thirty (30) calendar days following receipt by Contractor of each invoice properly submitted.

7.11 Indemnification. Contractor shall indemnify and hold harmless TPMG and its officers, directors, partners, shareholders, agents and employees, including Doctor to the extent allowed by law, from and against any and all demands, claims, losses, damages, liability, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, actions or causes of action whatsoever, to the extent arising from or in connection with any acts, failures to act or the performance of or failure to perform Services by Doctor.

7.12 Insurance. Contractor hereby represents that it maintains or will arrange for, through the Term, either through a commercial policy or a program of self-insurance, adequate coverage for professional liability as necessary to insure itself TPMG and Doctor against any claim or claims for damages arising out of Doctor's provision of Services during this Agreement. Such coverage provides Contractor the ability to respond to damages to at least the financial level of One Million Dollars (\$1,000,000) per occurrence, and Three Million Dollars (\$3,000,000) annual aggregate. Upon written request from TPMG, Contractor shall produce, within a reasonable time from such written request, documentation substantiating the existence of such insurance.

Contractor shall maintain through the Term the appropriate lines of insurance with limits not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate; or more as necessary to insure itself, TPMG and Doctor during the provision of Services against any claim or claims for damages arising out of or relating in any way to its operation of its business operations. Upon written request from

TPMG, *Contractor* shall produce, within a reasonable time from such written request, documentation substantiating the existence of such insurance.

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement effective as of the day and year first above written.

COUNTY OF EL DORADO

By: 

Norma Santiago

Chair, Board of Supervisors

Date: 11-17-14

ATTEST:

James S. Mitrison


Clerk of the Board of Supervisors

By: 

Deputy Clerk

Date: 11-17-14

THE PERMANENTE MEDICAL GROUP, INC.

By: 

Christopher Palkowski, M.D.
Physician in Chief, Roseville Medical Center

Date: 10/17/14

EXHIBIT A

PROVISION OF SERVICES

Type of Services. The parties agree that *Doctor* will be utilized by *Contractor* to provide the following California Children's Services (CCS) Medical Therapy Unit (MTU) Services:

1. Provide medical consultation and client specific intervention to CCS eligible children participating in Contractor's MTUs, with a list of locations to be provided, and updated as necessary.
2. Attend an inter-disciplinary Medical Therapy Conference (MTC) four (4) to six (6) times per year at one of Contractor's MTU locations.
3. Conduct physiatry evaluations, including, but not limited to, disease and wellness history, physical examinations, laboratory analysis and interpretation, and prosthetic application, on appropriate patients.
4. Review physical and occupational therapy assessment summaries for evaluation and intervention planning specific to client treatment, including, but not limited to, frequency and duration, upper and/or lower extremity bracing, and durable medical equipment (DME) needs.
5. Issue therapy, medication, and intervention prescriptions based on the above assessment criteria, and as appropriate, for the condition of the clients.
6. Identify clients who may benefit from medical intervention for their underlying conditions and make referrals to local medical centers as appropriate.
7. Promptly notify the Supervising Physical Therapist if for any reason Doctor, during the course of providing the Services described herein, becomes unable to fulfill or complete the assignment.

EXHIBIT B

BILLING PROCEDURE AND COMPENSATION SCHEDULE

- A. TPMG through *Doctor* shall provide Services as specified in Exhibit A on an as requested basis to *Contractor*.
- B. Doctor shall provide written notification of hours worked to Contractor.
- C. Contractor shall create a claim to bill Doctor's hours to Medi-Cal. Doctor shall receive payments from Medi-Cal for hours worked, in accordance with claims submitted by Contractor, at the current Medi-Cal rate, which is \$125 per hour as of January 1, 2014, but subject to change. Doctor shall submit payments received from Medi-Cal to TPMG.
- D. Contractor shall direct payments on the Medi-Cal claim forms to:

Lawrence Manhart, M.D.
Kaiser Permanente
MOB-2 Pediatric Specialties
1600 Eureka Road
Roseville, CA 95661