CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
GOLDEN EMPIRE MANAGEMENT SERVICES
AND
RAGE

I. PREAMBLE

Golden Empire Management Services and RAGE, a joint venture between Golden Empire Air Rescue, Inc. and Rogers Helicopters (hereinafter collectively referred to as "Golden Empire") hereby enter into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance with the requirements of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))(hereinafter collectively referred to as the "Federal health care programs"), by its employees and other health care professionals, as well as all third parties with whom Golden Empire may choose to engage to act as billing, contracting, coding agents, or consultants for Golden Empire. Golden Empire's compliance with the terms and conditions in this CIA shall constitute an element of Golden Empire's present responsibility with regard to participation in the Federal health care programs. This CIA covers all employees of Golden Empire Management Services and Golden Empire Air Rescue, Inc. It also includes employees of Rogers Helicopters and contractors and agents of Golden Empire who are responsible for: 1) ensuring that the requirements of this CIA are met; 2) preparing or submitting claims to any Federal health care program; and 3) providing information that is relied upon in the preparation or submission of claims to any Federal health care program. Should Golden Empire Ambulance, Inc. begin rendering health care services reimbursed by Federal health care programs, it shall also be covered by this CIA. References to employees, contractors, and agents in this CIA shall be limited to the foregoing individuals. Contemporaneously with this CIA, Golden Empire is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. TERM OF THE CIA

The period of the compliance obligations assumed by Golden Empire under this CIA shall be three (3) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA (the "effective date").

III. CORPORATE INTEGRITY OBLIGATIONS

Golden Empire shall establish a compliance program that includes the following elements.

A. Compliance Officer and Compliance Committee.

Within one hundred and twenty (120) days after the effective date of this CIA, Golden Empire shall appoint an individual to serve as Compliance Officer, who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of the Federal health care programs. The Compliance Officer shall be a member of senior management of Golden Empire, shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of Golden Empire and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by Golden Empire to further its compliance objectives as well as any reporting obligations created under this CIA. In the event a new Compliance Officer is appointed during the term of this CIA, Golden Empire shall notify the OIG, in writing, within fifteen (15) days of such a change.

Golden Empire shall also appoint a Compliance Committee within one hundred and twenty (120) days after the effective date of this CIA. The Compliance Committee shall, at a minimum, include the Compliance Officer and any other appropriate officers or individuals as necessary to meet the requirements of this CIA within the provider's corporate structure. The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

B. Written Standards.

1. *Code of Conduct.* Golden Empire shall establish and distribute a Code of Conduct. The Code of Conduct shall be distributed to all employees, contractors, and agents within one hundred and twenty (120) days of the effective date of this CIA.

Golden Empire shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

a. Golden Empire's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Health Care Financing Administration ("HCFA") (or other appropriate regulatory agencies) and/or its agents;

b. Golden Empire's requirement that all of its employees, contractors, and agents shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Golden Empire's own policies and procedures (including the requirements of this CIA);

c. the requirement that all of Golden Empire's employees, contractors, and agents shall be expected to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or with Golden Empire's own policies and procedures;

d. the possible consequences to both Golden Empire and to any employee, contractor, or agent of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Golden Empire's own policies and procedures, or of failure to report such non-compliance; and

e. the right of all employees, contractors, and agents to use the Confidential Disclosure Program, as well as Golden Empire's commitment to confidentiality and non-retaliation with respect to disclosures.

Within one hundred and twenty (120) days of the effective date of the CIA, each employee, contractor, and agent shall certify, in writing, that he or she has received, read, understands, and will abide by Golden Empire's Code of Conduct. New employees, contractors, and agents shall receive the Code of Conduct and shall complete the required certification within two (2) weeks after the commencement of their employment or

contract or within one hundred and twenty (120) days of the effective date of the CIA, whichever is later.

Golden Empire will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such a change. Employees, contractors, and agents shall certify on an annual basis that they have received, read, understand and will abide by the Code of Conduct.

2. *Policies and Procedures.* Within one hundred and twenty (120) days of the effective date of this CIA, Golden Empire shall develop and initiate implementation of written Policies and Procedures regarding the operation of Golden Empire's compliance program and its compliance with all Federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs. At a minimum, the Policies and Procedures shall specifically address the necessity to accurately reflect the number of loaded miles for air ambulance services. In addition, the Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to Golden Empire management through the Confidential Disclosure Program required by section III.E. Golden Empire shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request.

Within one hundred and twenty (120) days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be distributed to all appropriate employees, contractors, and agents. Compliance staff or supervisors should be available to explain any and all policies and procedures.

C. Training and Education.

1. *General Training.* Within one hundred and twenty (120) days of the effective date of this CIA, Golden Empire shall provide at least two (2) hours of training to each employee, contractor, and agent. This general training shall explain Golden Empire's:

1. Corporate Integrity Agreement requirements;

2. Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and

3. Code of Conduct.

These training materials shall be made available to the OIG, upon request. Persons providing the training must be knowledgeable in all necessary subjects as specified above. New employees shall receive the general training described above within thirty (30) days of the beginning of their employment or within one hundred and twenty (120) days after the effective date of this CIA, whichever is later. Each year, every employee, contractor, and agent shall receive such general training on an annual basis.

2. *Specific Training.* Within one hundred and twenty (120) days of the effective date of this CIA, each employee, contractor, and agent who is involved directly or indirectly in the preparation or submission of claims for reimbursement (including, but not limited to, coding and billing) to any Federal health care programs shall receive at least three (3) hours of training in addition to the general training required above. Within one hundred and twenty (120) days of the effective date of this CIA, each employee, contractor, and agent who provides information or documentation that is relied upon in the billing process shall receive at least two (2) hours of training in addition to the general training required above. This training shall be tailored to the specific duties and responsibilities of the employees, and, as applicable, shall include a discussion of:

a. the submission of accurate bills for services rendered to Medicare and/or Medicaid patients, including methods to determine if the bills accurately reflect the number of loaded miles;

b. policies, procedures and other requirements applicable to ensuring that the ambulance service is medically necessary;

c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;

d. applicable reimbursement rules and statutes;

e. the legal sanctions for improper billings; and

f. examples of proper and improper billing practices.

These training materials shall be made available to OIG upon request. Persons providing the training must be knowledgeable about reimbursement of both air and ground ambulance service.

Affected new employees, contractors, and agents shall receive this training within thirty (30) days of the beginning of their employment or within one hundred and twenty (120) days of the effective date of this CIA, whichever is later. If a new employee, contractor, or agent has any responsibility for the preparation or submission of claims prior to completing this specific training, a Golden Empire employee, contractor, or agent who has completed the substantive training shall review all of the untrained person's work regarding preparation or submission of claims.

Each year, every employee, contractor, and agent shall receive such specific training on an annual basis.

3. *Certification.* Each employee, contractor, and agent shall certify, in writing, that he or she has attended the required training or completed a study guide and comprehension review. The certification shall specify the type of training received and the date received. The Compliance Officer shall retain the certifications, along with specific course materials. These shall be made available to OIG upon request.

D. Review Procedures.

Golden Empire shall retain an entity, such as an accounting, auditing or law firm (hereinafter "Independent Review Organization"), to perform review procedures to assist Golden Empire in assessing the adequacy of its billing and compliance practices pursuant to this CIA. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs. The Independent Review Organization must be retained to conduct the audit of the first year within one hundred and twenty (120) days of the effective date of this CIA.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of Golden Empire's air ambulance billing practices to assist Golden Empire and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("billing engagement"). The second engagement will determine whether Golden Empire is in compliance with this CIA ("compliance engagement").

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of air ambulance claims that can be projected to the population of claims for air ambulance services for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be within a ninety (90) percent confidence level and a precision of twenty-five (25) percent.

The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. Both the probe sample and the sample must be selected through random numbers. Golden Empire shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "hhtp://www.hhs.gov/progorg/oas/ratstat.html."

Each annual billing engagement analysis shall include the following components in its methodology:

a. Billing Engagement Objective: A statement stating clearly the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective;

b. Billing Engagement Population: Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination;

c. Sources of Data: Provide a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations;

d. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest; and

e. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The billing engagement shall provide:

a. findings regarding Golden Empire's air ambulance billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

b. findings regarding whether Golden Empire is submitting accurate claims for services billed to the Federal health care programs,

including, but not limited to, findings regarding whether claims accurately reflect the actual number of loaded miles flown;

c. findings regarding Golden Empire's procedures to correct inaccurate billings or codings to the Federal health care programs; and

d. findings of the steps Golden Empire is taking to bring its operations into compliance or to correct problems identified by the Independent Review Organization.

2. *Compliance Engagement.* An Independent Review Organization shall also conduct a compliance engagement, that shall provide an analysis of whether Golden Empire's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include a section by section analysis of the requirements of this CIA.

A complete copy of the Independent Review Organization's contracting and compliance engagement shall be included in each of Golden Empire's Annual Reports to OIG.

3. *Verification/Validation.* In the event that OIG has reason to believe that Golden Empire's analyses required by section III.D fail to conform to Golden Empire's obligations under this section or indicate improper billings not otherwise adequately addressed in the audit report, and OIG thus determines that it is necessary to conduct an independent analysis or review to determine whether or the extent to which Golden Empire is complying with it obligations under this CIA, Golden Empire agrees to pay for the reasonable cost of any such analysis or review by OIG or any of its designated agents.

E. Confidential Disclosure Program.

Within one hundred and twenty (120) days after the effective date of this CIA, Golden Empire shall establish a Confidential Disclosure Program, which must include measures (e.g., a toll-free compliance telephone line) to enable employees, contractors, agents, or other individuals to disclose any identified issues or questions associated with Golden Empire's policies, practices, or procedures with respect to the Federal health care programs, believed by the individual to be inappropriate. The Confidential Disclosure Program shall allow for such disclosure to be made to the Compliance Officer or some other person who is not in the reporting individual's chain of command. Golden Empire

shall publicize the existence of the program (e.g., e-mail to employees or post hotline number or other access in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information, and, if possible, from the individual reporting the alleged misconduct. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Golden Empire shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation. A copy of the confidential disclosure log shall be made available to the OIG upon request.

F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred, or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

2. *Screening Requirement.* Golden Empire shall not hire or engage as contractors any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Golden Empire shall screen all prospective employees and prospective contractors prior to engaging their services by: (i) requiring applicants to disclose whether they are Ineligible Persons; and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://www.arnet.gov/epls) and the HHS/OIG Cumulative Sanction Report (available through the Internet at http://www.dhhs.gov/progorg/oig) (these lists and reports will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within one hundred and twenty (120) days of the effective date of this CIA, Golden Empire will review its list of current employees and contractors against the Exclusion Lists. Thereafter, Golden Empire will review the list once semi-annually. If Golden Empire has notice that an employee, contractor, or agent has become an Ineligible Person, Golden Empire will remove such person from responsibility for, or involvement with, Golden Empire's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Golden Empire has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is suspended or proposed for exclusion during his or her employment or contract with Golden Empire, within ten (10) days of receiving such notice Golden Empire will remove such individual from responsibility for, or involvement with, Golden Empire's business operations related to the Federal health care programs until the resolution of such criminal action, suspension, or proposed exclusion.

G. Notification of Proceedings.

Within thirty (30) days of discovery, Golden Empire shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Golden Empire, its employees, or agents have committed a crime or have engaged in fraudulent activities or any other knowing misconduct. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Golden Empire shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

If, at any time, Golden Empire identifies any billing, coding or other policies, procedures and/or practices that result in an overpayment, Golden Empire shall notify the payor (e.g., Medicare fiscal intermediary or Medi-Cal) within thirty (30) days of discovering the deficiency or overpayment and take remedial steps within sixty (60) days of discovery (or such additional time as may be agreed to by the payor) to correct the

problem, including preventing the deficiency or overpayment from recurring. The notice to the payor shall include:

1. a statement that the refund is being made pursuant to this CIA;

2. a description of the complete circumstances surrounding the overpayment;

3. the methodology by which the overpayment was determined;

4. the amount of the overpayment;

5. any claim-specific information used to determine the overpayment (e.g., beneficiary health insurance number, claim number, service date, and payment date);

6. the cost reporting period (if applicable); and

7. the provider identification number under which the repayment is being made.

If Golden Empire determines that there is a material deficiency, contemporaneous with Golden Empire's notification to the payor as provided above (if there is an overpayment), or, if there is not an overpayment, not later than thirty (30) days after becoming aware of the material defeciency, Golden Empire shall also notify OIG of:

1. a complete description of the material deficiency;

2. amount of overpayment due to the material deficiency (if applicable);

3. Golden Empire's action(s) to correct and prevent such material deficiency from recurring;

4. the payor's name, address, and contact person where the overpayment was sent (if applicable); and,

5. the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid (if applicable).

For purposes of this CIA, an "overpayment" shall mean the amount of money the provider has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

For purposes of this CIA, a "material deficiency" shall mean anything that involves: (i) a substantial overpayment or improper payment relating to the Medicare and/or Medicaid programs; (ii) conduct or policies that clearly violate the Medicare and/or Medicaid statute, regulations or directives issued by HCFA and/or its agents; or (iii) serious quality of care implications for Federal health care beneficiaries or recipients. A material deficiency may be the result of an isolated event or a series of occurrences.

IV. NEW LOCATIONS

In the event that Golden Empire purchases or establishes new business units involved in the provision of items or services reimbursed by Federal health care programs after the effective date of this CIA, Golden Empire shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. All employees at such locations shall be subject to the requirements in this CIA that apply to new employees (e.g., completing certifications and undergoing training).

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one hundred and fifty (150) days after the effective date of this CIA, Golden Empire shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number, and position description of the Compliance Officer required by section III.A;

2. the names and positions of the members of the Compliance Committee required by section III.A;

3. a copy of Golden Empire's Code of Conduct required by section III.B.1;

4. the summary of the Policies and Procedures required by section III.B.2;

5. a description of the training programs required by section III.C including a description of the targeted audiences and a schedule of when the training sessions were held;

6. a certification by the Compliance Officer that:

a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all pertinent employees, contractors, and agents;

b. all employees, contractors, and agents have completed the Code of Conduct certification required by section III.B.1; and

c. all employees, contractors, and agents have completed the training and executed the certification required by section III.C.

7. a description of the confidential disclosure program required by section III.E;

8. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first review; and

9. a summary of personnel actions taken pursuant to section III.F.

B. Annual Reports. Golden Empire shall submit to OIG an Annual Report with respect to the status and findings of Golden Empire's compliance activities. The Annual Reports shall include:

1. any change in the identity or position description of the Compliance Officer and/or members of the Compliance Committee described in section III.A;

2. a certification by the Compliance Officer that:

a. all employees, contractors, and agents have completed the annual Code of Conduct certification required by section III.B.1; and

b. all employees, contractors, and agents have completed the training and executed the certification required by section III.C;

3. notification of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);

4. a complete copy of the report prepared pursuant to the Independent Review Organization's billing and compliance engagement, including a copy of the methodology used;

5. Golden Empire's response/corrective action plan to any issues raised by the Independent Review Organization;

6. a summary of material deficiencies reported throughout the course of the previous twelve (12) months pursuant to III.H and the results of any corrective action plans that were instituted;

7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

8. an attestation by the Compliance Officer that he or she has maintained a confidential disclosure log required by section III.E, and has met the obligations has required by section III.E;

9. a description of any personnel action (other than hiring) taken by Golden Empire as a result of the obligations in section III.F;

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Golden Empire, its employees, or agents, have committed a crime or have engaged in fraudulent activities, which have been reported pursuant to section III.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information; and,

11. a listing of all of the Golden Empire's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s)

and the payor (specific contractor) that issued each provider identification number.

The first Annual Report shall be received by the OIG no later than one year and thirty (30) days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer under penalty of perjury, that: (1) Golden Empire is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

Golden Empire:

John Penrose
Chief Executive Officer
2700 "F" Street
Bakersfield, California 93301
Phone: 805.321.3191
Fax: 805.321.3190

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may examine and/or photocopy Golden Empire's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (a) Golden Empire's compliance with the terms of this CIA; and (b) Golden Empire's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Golden Empire to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Golden Empire's employees, contractors, or agents who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee, contractor or agent and OIG. Golden Empire agrees to assist OIG in contacting and arranging interviews with such employees, contractors or agents upon OIG's request. Golden Empire's employees, contractors, or agents may elect to be interviewed with or without a representative of Golden Empire present.

VIII. DOCUMENT AND RECORD RETENTION

Golden Empire shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with this CIA, one year longer than the term of this CIA (or longer if otherwise required by law).

IX. DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Golden Empire prior to any release by OIG of information submitted by Golden Empire pursuant to its obligations under this CIA and identified upon submission by Golden Empire as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. Golden Empire shall have an opportunity to object to any proposed release, in accordance with the procedures set forth in the regulations. Golden Empire shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

Golden Empire is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Golden Empire and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning the day after the time frame specified in this CIA, and concluding at the end of the term of this CIA, Golden Empire fails to have in place any of the following:

a. a Compliance Officer;

b. a Compliance Committee;

c. written Code of Conduct;

d. written Policies and Procedures;

e. a training program; or

f. a Confidential Disclosure Program;

2. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Golden Empire fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of $2,000 (which shall begin to accrue on the date the failure to comply began) for each day Golden Empire:

a. hires or enters into a contract with an Ineligible Person after that person has been listed by a Federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be

demanded for any time period during which Golden Empire can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person);

b. employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, Golden Empire's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (this Stipulated Penalty shall not be demanded for any time period during which Golden Empire can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or

c. employs or contracts with a person who: (i) has been charged with a criminal offense related to any Federal health care program, or (ii) is suspended or proposed for exclusion, and that person has responsibility for, or involvement with, Golden Empire's business operations related to the Federal health care programs (this Stipulated Penalty shall not be demanded for any time period before ten (10) days after Golden Empire received notice of the relevant matter or after the resolution of the matter).

4. A Stipulated Penalty of $1,500 (which shall begin to accrue on the date the Golden Empire fails to grant access) for each day Golden Empire fails to grant access to the information or documentation as required in section VII of this CIA.

5. A Stipulated Penalty of $1,000 (which shall begin to accrue ten (10) days after the date that OIG provides notice to Golden Empire of the failure to comply) for each day Golden Empire fails to comply fully and adequately with any obligation of this CIA. In its notice to Golden Empire, the OIG shall state the specific grounds for its determination that the Golden Empire has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties.

1. *Demand Letter*. Upon a finding that Golden Empire has failed to comply with any of the obligations described in section X.A and determining that Stipulated Penalties are appropriate, OIG shall notify Golden Empire by personal service or certified mail of: (a) Golden Empire's failure to comply; and (b) the OIG's exercise of its

contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, Golden Empire shall either: (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.D. In the event Golden Empire elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Golden Empire cures, to the OIG's satisfaction, the alleged breach in dispute. Should there be a decision that Golden Empire did not breach this CIA, any paid Stipulate Penalties shall be refunded. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.C.

2. *Timely Written Requests for Extensions.* Golden Empire may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Golden Empire fails to meet the revised deadline as agreed to by the OIG-approved extension. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after Golden Empire receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that Golden Empire has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section X.C, below.

C. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Golden Empire constitutes an independent basis for Golden Empire's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that Golden Empire has materially breached this CIA and that exclusion should be imposed, the OIG shall notify Golden Empire by certified mail of: (a) Golden Empire's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

2. *Opportunity to Cure.* Golden Empire shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

a. Golden Empire is in full compliance with this CIA;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the thirty five (35) day period, but that: (i) Golden Empire has begun to take action to cure the material breach; (ii) Golden Empire is pursuing such action with due diligence; and (iii) Golden Empire has provided to OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty five (35) day period, Golden Empire fails to satisfy the requirements of section X.C.2, OIG may exclude Golden Empire from participation in the Federal health care programs. OIG will notify Golden Empire in writing of its determination to exclude Golden Empire (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other Federal procurement and non-procurement programs. If Golden Empire is excluded under the provisions of this CIA, Golden Empire may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach.* A material breach of this CIA means:

a. a failure by Golden Empire to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.H;

b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A of this CIA;

c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section X.B above; or

d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. *Review Rights*. Upon the OIG's delivery to Golden Empire of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Golden Empire shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, the OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Stipulated Penalties Review*. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this CIA shall be (a) whether Golden Empire was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. Golden Empire shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders Golden Empire to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a

decision notwithstanding that Golden Empire may request review of the ALJ decision by the DAB.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be (a) whether Golden Empire was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) the alleged material breach cannot be cured within the 35 day period, but that: (i) Golden Empire has begun to take action to cure the material breach; (ii) Golden Empire is pursuing such action with due diligence; and (iii) Golden Empire has provided to OIG a reasonable timetable for curing the material breach.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. Golden Empire's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Golden Empire upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that Golden Empire may request review of the ALJ decision by the DAB.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Golden Empire and OIG agree as follows:

A. This CIA shall be binding on the successors, assigns and transferees[1] of Golden Empire, including, but not limited to, any transaction where the provider number is maintained;

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[1] Notwithstanding any other provision in this agreement, "successors, assigns, and transferees" shall not include any buyer of equipment or intangible assets (not including accounts receivable, a provider or supplier number or other assets used in the billing process) so long as such buyer is an unrelated third party (i.e., without overlapping ownership), no management personnel with responsibility for any part of the billing function are transferred, and no other personnel responsible for the Covered Conduct described in the in the Settlement Agreement are transferred.

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned Golden Empire signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

ON BEHALF OF GOLDEN EMPIRE

John Penrose on behalf of
Golden Empire Management Services
and RAGE

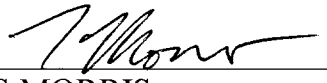
9-9-99
DATE

Approved as to form:

Michael Scarano, Esq.
Counsel for Golden Empire
Foley & Lardner
402 West Broadway, 23rd Floor
San Diego, California 92101

9-10-99
DATE

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES



LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

7/9/99
DATE