

**CORPORATE INTEGRITY AGREEMENT  
BETWEEN THE  
OFFICE OF INSPECTOR GENERAL  
OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
SELECT MEDICAL CORPORATION AND  
SELECT SPECIALTY HOSPITAL-COLUMBUS, INC.**

**I. PREAMBLE**

Select Medical Corporation and Select Specialty Hospital – Columbus, Inc. (collectively Select) 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 promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (Federal health care program requirements). Contemporaneously with this CIA, Select is entering into a Settlement Agreement with the United States. This CIA applies to Select’s corporate office(s) and each Long Term Acute Care Hospital (LTACH) in which Select has an ownership or control interest, as defined in 42 U.S.C. § 1320a-3(a)(3).

Prior to the Effective Date, Select established a voluntary compliance program (Compliance Program). The Compliance Program includes, among other things, a Compliance Officer and a compliance committee responsible for compliance oversight. The Compliance Program also includes a Code of Conduct, written policies and procedures, educational and training initiatives, a Disclosure Program that allows for the confidential disclosure and investigation of potential compliance violations, and screening measures for Ineligible Persons. Select shall continue the Compliance Program throughout the term of this CIA and shall do so in accordance with the terms set forth below. Select may modify the Compliance Program as appropriate, but, at a minimum, Select shall ensure that during the term of this CIA, it shall comply with the obligations set forth herein.

## **II. TERM AND SCOPE OF THE CIA**

A. The period of the compliance obligations assumed by Select under this CIA shall be five years from the effective date of this CIA. The “Effective Date” shall be the date on which the final signatory of this CIA executes this CIA, unless otherwise specified. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a “Reporting Period.”

B. Sections VII, X, and XI shall expire no later than 120 days after OIG’s receipt of: (1) Select’s final annual report; or (2) any additional materials submitted by Select pursuant to OIG’s request, whichever is later.

C. The scope of this CIA shall be governed by the following definitions:

1. “Arrangements” shall mean every arrangement or transaction that:
  - a. involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value; and is between Select and any actual or potential source of health care business or referrals to Select or any actual or potential recipient of health care business or referrals from Select. The term “source of health care business or referrals” shall mean any individual or entity that refers, recommends, arranges for, orders, leases, or purchases any good, facility, item, or service for which payment may be made in whole or in part by a Federal health care program and the term “recipient of health care business or referrals” shall mean any individual or entity (1) to whom Select refers an individual for the furnishing or arranging for the furnishing of any item or service, or (2) from whom Select purchases, leases or orders or arranges for or recommends the purchasing, leasing, or ordering of any good, facility, item, or service for which payment may be made in whole or in part by a Federal health care program; or

- b. is between Select and a physician (or a physician's immediate family member (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Select for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).

2. "Focus Arrangements" means every Arrangement for medical director, program director, on-call services, or other similar physician services that:

- a. is between Select and any actual source of health care business or referrals to Select and involves, directly or indirectly, the offer, payment, or provision of anything of value; or
- b. is between Select and any physician (or a physician's immediate family member) (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Select for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).

Notwithstanding the foregoing provisions of Section II.C.2, any Arrangement that satisfies the requirements of 42 C.F.R. § 411.356 (ownership or investment interests), 42 C.F.R. § 411.357(g) (remuneration unrelated to the provision of designated health services); 42 C.F.R. § 411.357(i) (payments by a physician for items and services); 42 C.F.R. § 411.357(k) (non-monetary compensation); 42 C.F.R. § 411.357(m) (medical staff incidental benefits), 42 C.F.R. § 411.357(o) (compliance training), 42 C.F.R. § 411.357(q) (referral services), 42 C.F.R. § 411.357(s) (professional courtesy), 42 C.F.R. § 357(u) (community-wide health information systems), or any exception to the prohibitions of 42 U.S.C. § 1395nn enacted following the Effective Date that does not require a written agreement shall not be considered a Focus Arrangement for purposes of this CIA.

3. "Covered Persons" includes:

- a. all owners, officers, directors, and employees of Select; and

- b. all contractors, subcontractors, agents, and other persons who provide patient care items or services in a Select LTACH or who perform billing or coding functions on behalf of Select excluding vendors whose sole connection with Select is selling or otherwise providing medical supplies or equipment to Select and who do not bill the Federal health care programs for such medical supplies or equipment; and
- c. all physicians and other non-physician practitioners who are members of Select's active medical staff.

Notwithstanding the above, this term and "Covered Off-Site Contractor," below, do not include part-time or per diem employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to work more than 160 hours per year, except that any such individuals shall become "Covered Persons" at the point when they work more than 160 hours during the calendar year for Select or in Select's LTACHs. The exception for persons who are not expected to work more than 160 hours does not apply to medical directors, program directors, or physicians contracted to provided on-call coverage.

4. "Arrangements Covered Persons" includes each Covered Person who is involved with the development, approval, management, or review of Select's Arrangements.

5. "Covered Off-Site Contractor" includes all contractors, subcontractors, agents, and other persons who provide patient care items or services at a location other than in a Select LTACH.

### **III. CORPORATE INTEGRITY OBLIGATIONS**

Select shall establish and maintain a Compliance Program that includes the following elements:

#### **A. Compliance Officer and Committee**

1. *Compliance Officer.* Select represents that, prior to the Effective Date, Select appointed an individual to serve as its Compliance Officer and shall maintain a Compliance Officer for the term of the CIA. The Compliance Officer 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 Federal health care program requirements. The Compliance Officer shall be a member of senior management of Select, shall report directly to the Chief Executive Officer or President of Select. If the Compliance Officer reports to the President, the Compliance Officer shall be authorized to report compliance matters directly to the Chief Executive Officer at any time. The Compliance Officer shall make periodic (at least quarterly) reports regarding compliance matters directly to the Compliance and Audit Committee of the Board of Directors of Select, and shall be authorized to report on such matters to the Compliance and Audit Committee of the Board of Directors at any time. The Compliance Officer shall not be or be subordinate to the General Counsel or Chief Financial Officer. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Select as well as for any reporting obligations created under this CIA. Any noncompliance job responsibilities of the Compliance Officer shall be limited and must not interfere with the Compliance Officer's ability to perform the duties outlined in this CIA.

Select shall report to OIG, in writing, any changes in the identity or position description of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA, within five days after such a change.

2. *Compliance Committee.* Select represents that, prior to the Effective Date, Select appointed a Compliance Committee. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this CIA (e.g., senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of Select's risk areas and shall oversee monitoring of internal and external audits and investigations). The Compliance Committee shall meet at least quarterly.

Select shall report to OIG, in writing, any changes in the composition of the Compliance Committee, or any actions or changes that would affect the Compliance Committee's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

3. *Board of Directors Compliance Obligations.* Prior to the Effective Date, the Board of Directors of Select delegated to its Audit and Compliance Committee responsibility to oversee Select's Compliance Program on behalf of the Board and to

regularly report the results of its activities to the Board. The Audit and Compliance Committee shall continue to be responsible for the review and oversight of matters related to compliance with Federal health care program requirements and the obligations of this CIA.

The Audit and Compliance Committee shall, at a minimum, be responsible for the following:

- a. meeting at least quarterly to review and oversee Select's Compliance Program, including but not limited to the performance of the Compliance Officer and Compliance Committee;
- b. ensuring that Select adopts and implements policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and Federal health care program requirements; and
- c. for each Reporting Period of the CIA, adopting a resolution, signed by each member of the Audit and Compliance Committee summarizing its review and oversight of Select's compliance with Federal health care program requirements and the obligations of this CIA.

At minimum, the resolution shall include the following language:

“The Board of Directors has made a reasonable inquiry into the operations of Select's Compliance Program including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, Select has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA.”

If the Board is unable to provide such a conclusion in the resolution, the Board shall include in the resolution a written explanation of the reasons why it is unable to provide the conclusion and the steps it is taking to implement an effective Compliance Program at Select.

Select shall report to OIG, in writing, any changes in the composition of the Board or Audit and Compliance Committee, or any actions or changes that would affect the Board's or Audit and Compliance Committee's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

B. Written Standards

1. *Code of Conduct.* Select represents that, prior to the Effective Date, Select developed, implemented, and distributed a written Code of Conduct. Select shall maintain the Code of Conduct, as required herein, for the term of the CIA, and shall continue to make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. Select's commitment to full compliance with all Federal health care program requirements;
- b. Select's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Select's own Policies and Procedures;
- c. the requirement that all of Select's Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by Select, suspected violations of any Federal health care program requirements or of Select's own Policies and Procedures;
- d. the right of all individuals to use the Disclosure Program described in Section III.F, and Select's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

To the extent not already accomplished, within 90 days after the Effective Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by Select's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later.

Within 90 days after the Effective Date and during each subsequent Reporting Period, Select shall send written notification to all Covered Off-Site Contractors of Select's obligations under this CIA and its commitment to full compliance with all Federal health care programs requirements. Select shall identify in the notification the publicly accessible internet address for its Code of Conduct and ask the Covered Off-Site Contractor to make the Code of Conduct available to all contractor personnel, including employees, contractors, and other persons providing services on behalf of the Covered Off-Site Contractor, who provide patient care items or services to Select patients. The Compliance Officer shall retain copies of all such correspondence with Covered Off-Site Contractors.

Select shall periodically review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. Any revised Code of Conduct shall be distributed within 30 days after any revisions are finalized. Each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by the revised Code of Conduct within 30 days after the distribution of the revised Code of Conduct.

2. *Policies and Procedures.* To the extent not already accomplished, within 90 days after the Effective Date, Select shall implement written Policies and Procedures regarding the operation of Select's compliance program, including the compliance program requirements outlined in this CIA and Select's compliance with Federal health care program requirements. The Policies and Procedures also shall address:

- a. 42 U.S.C. § 1320a-7b(b) (Anti-Kickback Statute) and 42 U.S.C. § 1395nn (Stark Law), and the regulations and other guidance documents related to these statutes, and business or financial arrangements or contracts that generate unlawful Federal health care program business in violation of the Anti-Kickback Statute or the Stark Law; and
- b. the requirements set forth in Section III.D (Compliance with the Anti-Kickback Statute and Stark Law).

To the extent not already accomplished, within 90 days after the Effective Date, the relevant portions of the Policies and Procedures shall be made available to all Covered Persons whose job functions relate to those Policies and Procedures.

Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), Select shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be made available to all Covered Persons whose job functions relate to those Policies and Procedures.

C. Training and Education

1. *General Training.* Select represents that, prior to the Effective Date, it provided employees training regarding Select's Compliance Program and that it provided this training on an annual basis between July 1 and September 30 of each year. Within 90 days after the Effective Date, each Covered Person shall receive at least one hour of General Training. This training, at a minimum, shall explain Select's:

- a. CIA requirements; and
- b. Compliance Program, including the Code of Conduct.

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later. After receiving the initial General Training described above, each Covered Person shall receive at least one hour of General Training in each subsequent Reporting Period.

To the extent that General Training provided to Covered Persons during the three months immediately prior to the Effective Date satisfies the requirements set forth above, OIG shall credit the training towards the General Training requirements for the first Reporting Period. Select may satisfy its remaining General Training obligations for those Covered Persons who received training as described above by notifying the Covered Persons of the fact that Select has entered into a CIA and notifying them of Select's requirements under the CIA.

Select shall make the General Training described in this section available to all Covered Off-Site Contractor personnel, including employees, contractors, and other persons providing services on behalf of the Covered Off-Site Contractor, who provide patient care items or services and shall use its best efforts to encourage such employees to

complete the training annually. The Compliance Officer shall maintain records of all such contractor personnel who receive training, including the topic of the training and the date received.

2. *Arrangements Training.* Select represents that, prior to the Effective Date, it provided employees training regarding the Anti-Kickback Statute and the Stark Law and that it provided this training on an annual basis between July 1 and September 30 of each year. Within 90 days after the Effective Date, each Arrangements Covered Person shall receive at least two hours of Arrangements Training, in addition to the General Training required above. The Arrangements Training shall include a discussion of:

- a. Arrangements that potentially implicate the Anti-Kickback Statute or the Stark Law, as well as the regulations and other guidance documents related to these statutes;
- b. Select's policies, procedures, and other requirements relating to Arrangements and Focus Arrangements, including but not limited to the Focus Arrangements Tracking System, the internal review and approval process, and the tracking of remuneration to and from sources of health care business or referrals required by Section III.D of the CIA;
- c. the personal obligation of each individual involved in the development, approval, management, or review of Select's Arrangements to know the applicable legal requirements and the Select's policies and procedures;
- d. the legal sanctions under the Anti-Kickback Statute and the Stark Law; and
- e. examples of violations of the Anti-Kickback Statute and the Stark Law.

New Arrangements Covered Persons shall receive this training within 30 days after the beginning of their employment or becoming Arrangements Covered Persons, or within 90 days after the Effective Date, whichever is later.

After receiving the initial Arrangements Training described in this Section, each Arrangements Covered Person shall receive at least two hours of Arrangements Training, in addition to the General Training, in each subsequent Reporting Period.

To the extent that Arrangements Training provided to Arrangements Covered Persons during the three months immediately prior to the Effective Date satisfies the requirements described above, OIG shall credit the training toward Arrangements Training requirements for the first Reporting Period.

3. *Board Member Training.* Within 90 days after the Effective Date, Select shall provide at least one hour of training to each member of the Board of Directors, in addition to the General Training. This training shall address the responsibilities of board members and corporate governance.

New members of the Board of Directors shall receive the Board Member Training described above within 30 days after becoming a member or within 90 days after the Effective Date, whichever is later.

4. *Certification.* Each individual who is required to attend training shall certify, in writing, or in electronic form, if applicable, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or designee) shall retain the certifications, along with all course materials.

5. *Qualifications of Trainer.* Persons providing the training shall be knowledgeable about the subject area.

6. *Update of Training.* Select shall review the training annually, and, where appropriate, update the training to reflect changes in Federal health care program requirements, any issues discovered during internal audits or the Arrangements Review, and any other relevant information.

7. *Computer-based Training.* Select may provide the training required under this CIA through appropriate computer-based training approaches. If Select chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the individuals receiving such training.

8. *Exception for Active Medical Staff Members.* Select shall make the annual General Training and annual Arrangements Training (as appropriate) described in this section available to all of Select's active medical staff members and shall use its best efforts to encourage such active medical staff members to complete the training. The Compliance Officer shall maintain records of all active medical staff members who receive training, including the type of training and the date received. Select represents that many members of its LTACHs' medical staff are present in the LTACHs less frequently than is typical for members of the medical staff of regular acute care hospitals. The evaluation of Select's "best efforts" required under this Paragraph shall take into account the medical staff's role and composition. Best efforts shall include, but not be limited to, making General Training available to all medical staff biennially in connection with Select's medical staff reappointment process.

D. Compliance with the Anti-Kickback Statute and Stark Law

1. *Focus Arrangements Procedures.* Within 90 days after the Effective Date, Select shall revise existing procedures or create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or the Stark Law or the regulations, directives, and guidance related to these statutes (Focus Arrangements Procedures). These procedures shall include the following:

- a. creating and maintaining a centralized tracking system for all existing and new or renewed Focus Arrangements (Focus Arrangements Tracking System);
- b. tracking remuneration to and from all parties to Focus Arrangements;
- c. tracking service, activity logs, and time sheets to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable);
- d. monitoring the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable);

- e. establishing and implementing a written review and approval process for all Focus Arrangements, the purpose of which is to ensure that all new and existing or renewed Focus Arrangements do not violate the Anti-Kickback Statute and Stark Law, and that includes at least the following: (i) a legal review of all Focus Arrangements by counsel with expertise in the Anti-Kickback Statute and Stark Law, (ii) a process for specifying the business need or business rationale for all Focus Arrangements, and (iii) a process for determining and documenting the fair market value of the remuneration specified in the Focus Arrangement;
- f. requiring the Compliance Officer to review the Focus Arrangements Tracking System, internal review and approval process, and other Focus Arrangements Procedures on at least an annual basis and to provide a report on the results of such review to the Compliance Committee; and
- g. implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and quantifying and repaying Overpayments pursuant to Sections III.I and III.J when appropriate.

2. *New or Renewed Arrangements.* Prior to entering into new Focus Arrangements or renewing existing Focus Arrangements, in addition to complying with the Focus Arrangements Procedures set forth above, Select shall comply with the following requirements (Focus Arrangements Requirements):

- a. Ensure that each Focus Arrangement is set forth in writing and signed by Select and the other parties to the Focus Arrangement;
- b. Include in the written agreement a requirement that each party to a Focus Arrangement who meets the definition of a Covered Person shall complete the Arrangements Training required by Section III.C.2 of this CIA. Additionally, Select shall provide each party to the Focus Arrangement with a

copy of its Code of Conduct and Stark Law and Anti-Kickback Statute Policies and Procedures;

- c. Include in the written agreement a certification by the parties to the Focus Arrangement that the parties shall not violate the Anti-Kickback Statute and the Stark Law with respect to the performance of the Arrangement.

3. *Records Retention and Access.* Select shall retain and make available to OIG, upon request, the Focus Arrangements Tracking System and all supporting documentation of the Focus Arrangements subject to this Section and, to the extent available, all non-privileged communications related to the Focus Arrangements and the actual performance of the duties under the Focus Arrangements.

E. Review Procedures

1. *General Description.*

- a. *Engagement of Independent Review Organization.* Within 90 days after the Effective Date, Select shall engage an individual or entity (or entities), such as an accounting, auditing, law, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform the reviews listed in this Section III.E. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.
- b. *Retention of Records.* The IRO and Select shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Select) related to the reviews.
- c. *Responsibilities and Liabilities.* Nothing in this Section III.E affects Select’s responsibilities or liabilities under any criminal, civil, or administrative laws or regulations applicable to any Federal health care program including, but not limited to, the Anti-Kickback Statute and/or the Stark Law.

2. *Arrangements Review.* The IRO shall perform an Arrangements Review and prepare an Arrangements Review Report as outlined in Appendix B to this CIA, which is incorporated by reference.

3. *Unallowable Cost Review.* For the first Reporting Period, the IRO shall conduct a review of Select's compliance with the unallowable cost provisions of the Settlement Agreement. The IRO shall determine whether Select has complied with its obligations not to charge to, or otherwise seek payment from, federal or state payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable federal or state payors any unallowable costs included in payments previously sought from the United States, or any state Medicaid program. This unallowable cost analysis shall include, but not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Select or any affiliates. To the extent that such cost reports, cost statements, information reports, or payment requests, even if already settled, have been adjusted to account for the effect of the inclusion of the unallowable costs, the IRO shall determine if such adjustments were proper. In making this determination, the IRO may need to review cost reports and/or financial statements from the year in which the Settlement Agreement was executed, as well as from previous years.

4. *Unallowable Cost Review Report.* The IRO shall prepare a report based upon the Unallowable Cost Review performed (Unallowable Cost Review Report). The Unallowable Cost Review Report shall include the IRO's findings and supporting rationale regarding the Unallowable Costs Review and whether Select has complied with its obligation not to charge to, or otherwise seek payment from, federal or state payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable federal or state payors any unallowable costs included in payments previously sought from such payor.

5. *Validation Review.* In the event OIG has reason to believe that: (a) Select's Arrangements Review or Unallowable Cost Review fails to conform to the requirements of this CIA; or (b) the IRO's findings or Arrangements Review or Unallowable Cost Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Arrangements Review or Unallowable Cost Review complied with the requirements of the CIA and/or the findings or Arrangements Review or Unallowable Cost Review results are inaccurate (Validation Review). Select shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of Select's final

Annual Report shall be initiated no later than one year after Select's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Select of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, Select may request a meeting with OIG to: (a) discuss the results of any Arrangements Review or Unallowable Cost Review submissions or findings; (b) present any additional information to clarify the results of the Arrangements Review or Unallowable Cost Review or to correct the inaccuracy of the Arrangements Review or Unallowable Cost Review; and/or (c) propose alternatives to the proposed Validation Review. Select agrees to provide any additional information as may be requested by OIG under this Section III.E.5 in an expedited manner. OIG will attempt in good faith to resolve any Arrangements Review or Unallowable Cost Review issues with Select prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

6. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Select a certification or sworn affidavit that it has evaluated its professional independence and objectivity and has concluded that it is, in fact, independent and objective.

F. Disclosure Program

Select represents that, prior to the Effective Date, it established a Disclosure Program designed to facilitate communications relating to compliance with Federal health care program requirements and Select's policies and procedures. During the term of the CIA, Select shall maintain a Disclosure Program, as required herein, that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Select's policies, conduct, practices, or procedures with respect to a Federal health care program believed by the individual to be a potential violation of criminal, civil, or administrative law. Select shall appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

The Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous communications for which

appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. 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, Select shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews.

#### G. Ineligible Persons

1. *Definitions.* For purposes of this CIA:

- a. an “Ineligible Person” shall include an individual or entity who:
  - i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or
  - ii. has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- b. “Exclusion Lists” include:
  - i. the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>); and

ii. the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov>).

2. *Screening Requirements.* Select shall ensure that all prospective and current Covered Persons are not Ineligible Persons, by implementing the following screening requirements.

- a. Select shall screen all prospective Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons.
- b. Select shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.
- c. Select shall implement a policy requiring all Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

Nothing in Section III.G affects Select's responsibility to refrain from (and liability for) billing Federal health care programs for items or services furnished, ordered, or prescribed by an excluded person. Select understands that items or services furnished by excluded persons are not payable by Federal health care programs and that Select may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Select meets the requirements of Section III.G.

3. *Removal Requirement.* If Select has actual notice that a Covered Person has become an Ineligible Person, Select shall remove such Covered Person from responsibility for, or involvement with, Select's business operations related to the Federal health care programs and shall remove such Covered Person from any position for which the Covered Person's compensation or the items or services furnished, ordered, or prescribed by the Covered 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 Covered Person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Select has actual notice that a Covered Person is charged with a criminal offense that falls within the scope of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion during the Covered Person's employment or contract term or during the term of a physician's or other practitioner's medical staff privilege, Select shall take all appropriate actions to ensure that the responsibilities of that Covered Person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or any claims submitted to any Federal health care program.

5. *Covered Off-Site Contractor Screening.* Select shall ensure that all Covered Off-Site Contractor personnel, including employees, contractors, and other persons providing services on behalf of the Covered Off-Site Contractor, who provide patient care items or services to Select patients are not Ineligible Persons by either screening them against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter or getting a certification from the Covered Off-Site Contractor that they have screened such personnel against the Exclusion Lists pursuant to that same schedule and none are Ineligible Persons or, in the case there is an Ineligible Person, they have followed the removal requirements set forth in section III.G.3, above.

#### H. Notification of Government Investigation or Legal Proceedings

Within 30 days after discovery, Select shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Select conducted or brought by a governmental entity or its agents involving an allegation that Select has committed a crime or has engaged in fraudulent activities. 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. Select shall also provide written notice to OIG within 30 days after the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the investigation or proceedings, if any.

#### I. Repayment of Overpayments

1. *Definition of Overpayments.* For purposes of this CIA, an "Overpayment" shall mean the amount of money Select has received in excess of the amount due and payable under any Federal health care program requirements.

2. *Repayment of Overpayments.*

- a. If, at any time, Select identifies any Overpayment, Select shall repay the Overpayment to the appropriate payor (e.g., Medicare fiscal intermediary or carrier) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. If not yet quantified, within 30 days after identification, Select shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor's policies.
- b. Notwithstanding the above, notification and repayment of any Overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

J. Reportable Event

1. *Definition of Reportable Event.* For purposes of this CIA, a "Reportable Event" means anything that involves:

- a. a substantial Overpayment;
- b. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized;
- c. the employment of or contracting with a Covered Person who is an Ineligible Person as defined by Section III.G.1.a; or
- d. the filing of a bankruptcy petition by Select.

A Reportable Event may be the result of an isolated event or a series of occurrences.

2. *Reporting of Reportable Events.* If Select determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Select shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists.

3. *Reportable Events under Section III.J.1.a.* For Reportable Events under Section III.J.1.a, the report to the OIG shall be made at the same time as the repayment to the payor required under Section III.I, and shall include:

- a. a copy of the notification and repayment to the payor required in Section III.I.2;
- b. a description of the steps taken by Select to identify and quantify the Overpayment;
- c. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- d. a description of Select's actions taken to correct the Reportable Event; and
- e. any further steps Select plans to take to address the Reportable Event and prevent it from recurring.

4. *Reportable Events under Section III.J.1.b and c.* For Reportable Events under Section III.J.1.b and III.J.1.c, the report to OIG shall include:

- a. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- b. a description of Select's actions taken to correct the Reportable Event;

- c. any further steps Select plans to take to address the Reportable Event and prevent it from recurring; and
- d. if the Reportable Event has resulted in an Overpayment, a description of the steps taken by Select to identify and quantify the Overpayment.

5. *Reportable Events under Section III.J.1.d.* For Reportable Events under Section III.J.1.d, the report to the OIG shall include documentation of the bankruptcy filing and a description of any Federal health care program authorities implicated.

6. *Reportable Events Involving the Stark Law.* Notwithstanding the reporting requirements outlined above, any Reportable Event that involves only a probable violation of section 1877 of the Social Security Act, 42 U.S.C. §1395nn (the Stark Law) should be submitted by Select, where appropriate, to the Centers for Medicare & Medicaid Services (CMS) through the self-referral disclosure protocol (SRDP), with a copy to the OIG. The requirements of Section III.I.2 that require repayment to the payor of any identified Overpayment within 30 days shall not apply to any Overpayment that may result from a probable violation of only the Stark Law that is disclosed to CMS pursuant to the SRDP.

#### **IV. CHANGES TO BUSINESS UNITS OR LOCATIONS**

##### **A. Change or Closure of Unit or Location**

In the event that, after the Effective Date, Select changes locations or closes a LTACH or a location thereof, Select shall notify OIG of this fact as soon as possible, but no later than 30 days after the date of change or closure of the location.

##### **B. Purchase or Establishment of New Unit or Location**

In the event that, after the Effective Date, Select purchases or establishes a new LTACH or location thereof, Select shall notify OIG at least 30 days prior to such purchase or the operation of the new LTACH or location thereof, or as soon as Select is aware of the purchase or operation of a new LTACH or location thereof, whichever is later. This notification shall include the address of the new LTACH or location thereof, phone number, fax number, the location's Medicare and state Medicaid program provider number and/or supplier number(s), and the name and address of each Medicare and state

Medicaid program contractor to which Select currently submits claims. Each new LTACH or location thereof and all Covered Persons at each new LTACH or location thereof shall be subject to the applicable requirements of this CIA.

C. Sale of Unit or Location

In the event that, after the Effective Date, Select proposes to sell any or all of its LTACHs or locations thereof that are subject to this CIA, Select shall notify OIG of the proposed sale at least 30 days prior to the sale of such LTACH or location thereof, or as soon as Select is aware of the proposed sale, whichever is later. This notification shall include a description of the LTACH or location thereof to be sold, a brief description of the terms of the sale, and the name and contact information of the prospective purchaser. This CIA shall be binding on the purchaser of such LTACH or location thereof, unless otherwise determined and agreed to in writing by the OIG.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report

Within 120 days after the Effective Date, Select shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A, and a summary of other noncompliance job responsibilities the Compliance Officer may have;
2. the names and positions of the members of the Compliance Committee required by Section III.A;
3. a copy of Select's Code of Conduct required by Section III.B.1;
4. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be made available to OIG upon request);
5. a description of the process for notification to Covered Off-Site Contractors of Select's CIA obligations and provision of Select's Code of Conduct;

6. a summary of all Policies and Procedures required by Section III.B (copies of the Policies and Procedures shall be made available to OIG upon request);

7. the following information regarding the notification and each type of training required by Section III.C:

- a. a description of the notification procedures required under Section III.C.1, the number of individuals required to be notified, the percentage of individuals actually notified, and an explanation of any exceptions;
- b. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions;
- c. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions;
- d. with respect to active medical staff members, the number and percentage who completed the training, the type of training and the date received, and a description of Select's efforts to encourage medical staff members to complete the training; and
- e. with respect to Covered Off-Site Contractor personnel, the number who completed the training, the topic of the training and the date received, and a description of Select's efforts to encourage such contractor personnel to complete the training.

8. a description of (a) the Focus Arrangements Tracking System required by Section III.D.1.a, (b) the internal review and approval process required by Section III.D.1.e; and (c) the tracking and monitoring procedures and other Focus Arrangements Procedures required by Section III.D.1;

9. a description of the Disclosure Program required by Section III.F;

10. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the IRO has the qualifications outlined in Appendix A to this CIA, (d) a summary and description of any and all current and prior engagements and agreements between Select and the IRO; and (e) a certification from the IRO regarding its professional independence and objectivity with respect to Select;

11. a description of the process by which Select fulfills the requirements of Section III.G regarding Ineligible Persons;

12. with respect to Covered Off-Site Contractors who screen their own personnel under Section III.G.5, the number of Covered Off-Site Contractors that provided a certification, the number that did not provide a certification, and an explanation of any exceptions.

13. a list of all of Select's locations (including all business locations, not just LTACHs); the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and state Medicaid program provider number(s) and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Select currently submits claims;

14. a description of Select's corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business; and

15. the certifications required by Section V.C.

#### B. Annual Reports

Select shall submit to OIG annually a report with respect to the status of, and findings regarding, Select's compliance activities for each of the five Reporting Periods (Annual Report). Each Annual Report shall include, at a minimum:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer and any change in the membership of the Compliance Committee described in Section III.A;

2. the Board resolution required by Section III.A.3;
3. a summary of any changes or amendments to Select's Code of Conduct required by Section III.B.1 and the reason for such changes, along with a copy of the revised Code of Conduct;
4. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be made available to OIG upon request);
5. a description of any changes to the process for notification to Covered Off-Site Contractors of Select's CIA obligations and provision of Select's Code of Conduct;
6. a summary of any significant 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);
7. the following information regarding each type of training required by Section III.C:
  - a. a description of the initial and annual training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions;
  - b. the number of individuals required to complete the initial and annual training, the percentage of individuals who actually completed the initial and annual training, and an explanation of any exceptions;
  - c. with respect to active medical staff members, the number and percentage who completed the training, the type of training and the date received, and a description of Select's efforts to encourage medical staff members to complete the training; and

- d. with respect to Covered Off-Site Contractor personnel, the number and percentage who completed the training, the topic of the training and the date received, and a description of Select's efforts to encourage such contractor personnel to complete the training.
8. a description of (a) any changes to the Focus Arrangements Tracking System required by Section III.D.1.a; (b) any changes to the internal review and approval process required by Section III.D.1.e; and (c) any changes to the tracking and monitoring procedures and other Arrangements Procedures required by Section III.D.1;
9. a complete copy of all reports prepared pursuant to Section III.E, along with a copy of the IRO's engagement letter;
10. Select's response to the reports prepared pursuant to Section III.E., along with corrective action plan(s) related to any issues raised by the reports;
11. a summary and description of any and all current and prior engagements and agreements between Select and the IRO, if different from what was submitted as part of the Implementation Report;
12. a certification from the IRO regarding its professional independence and objectivity with respect to Select;
13. a summary of Reportable Events (as defined in Section III.J) identified during the Reporting Period and the status of any corrective action relating to all such Reportable Events;
14. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each applicable state separately, if applicable), and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;
15. a summary of the disclosures in the disclosure log required by Section III.F that: (a) relate to Federal health care programs; or (b) involve allegations of conduct that may involve illegal remunerations or inappropriate referrals in violation of

the Anti-Kickback Statute or Stark law (the complete disclosure log shall be made available to OIG upon request);

16. any changes to the process by which Select fulfills the requirements of Section III.G regarding Ineligible Persons;

17. any changes to the process by which Select fulfills the requirements regarding Covered Off-Site Contractors in Sections III.B.1, III.C.1, and III.G.5.

18. with respect to Covered Off-Site Contractors who screen their own personnel under Section III.G.5, the number of Covered Off-Site Contractors that provided a certification, the number that did not provide a certification, and an explanation of any exceptions.

19. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.H. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

20. a description of all changes to the most recently provided list of Select's locations (including addresses) as required by Section V.A.13; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and state Medicaid program provider number(s) and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Select currently submits claims; and

21. the certifications required by Section V.C.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG 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 that:

1. to the best of his or her knowledge, except as otherwise described in the applicable report, Select is in compliance with all of the requirements of this CIA;

2. to the best of his or her knowledge, Select has implemented procedures reasonably designed to ensure that all Focus Arrangements do not violate the Anti-Kickback Statute and Stark Law, including the Focus Arrangements Procedures required in Section III.D of the CIA;

3. to the best of his or her knowledge, Select has fulfilled the requirements for New and Renewed Focus Arrangements under Section III.D.2 of the CIA;

4. he or she has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information in the Report is accurate and truthful; and

5. to the best of his or her knowledge, Select has complied with its obligations under the Settlement Agreement: (a) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; (b) not to charge to or otherwise seek payment from federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs.

D. Designation of Information

Select shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Select shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

**VI. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG: Administrative and Civil Remedies Branch  
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, S.W.  
Washington, DC 20201  
Telephone: 202.619.2078  
Facsimile: 202.205.0604

Select: Robert G. Breighner, Jr.  
Compliance Officer  
Select Medical Corporation  
4716 Old Gettysburg Road  
P.O. Box 2034  
Mechanicsburg, PA 17055  
Telephone: 717.975.4535  
Facsimile: 717.412.9362  
Email: RBreighner@selectmedicalcorp.com

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt. Upon request by OIG, Select may be required to provide OIG with an electronic copy of each notification or report required by this CIA in searchable portable document format (pdf), in addition to a paper copy.

## **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 or request copies of Select's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Select's locations for the purpose of verifying and evaluating: (a) Select's compliance with the terms of this CIA; and (b) Select's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Select 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 Select's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG.

Select shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Select's employees may elect to be interviewed with or without a representative of Select present.

### **VIII. DOCUMENT AND RECORD RETENTION**

Select shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for six years (or longer if otherwise required by law) from the Effective Date.

### **IX. DISCLOSURES**

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Select prior to any release by OIG of information submitted by Select pursuant to its obligations under this CIA and identified upon submission by Select as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Select shall have the rights set forth at 45 C.F.R. § 5.65(d).

### **X. BREACH AND DEFAULT PROVISIONS**

Select is expected to fully and timely comply with all of its CIA obligations.

#### **A. Stipulated Penalties for Failure to Comply with Certain Obligations**

As a contractual remedy, Select and OIG hereby agree that failure to comply with certain obligations as 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 Select fails to establish and implement any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. a written Code of Conduct;

- d. written Policies and Procedures;
- e. the training of Covered Persons, Arrangements Covered Persons, and Board Members;
- f. the Focus Arrangements Procedures and/or Focus Arrangements Requirements described in Sections III.D.1 and III.D.2;
- g. a Disclosure Program;
- h. Ineligible Persons screening and removal requirements;
- i. notification of Government investigations or legal proceedings; and
- j. reporting of Reportable Events.

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 Select fails to engage and use an IRO, as required in Section III.E, Appendix A, and Appendix B.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Select fails to submit the Implementation Report or any Annual Reports to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Select fails to submit the annual Arrangements Review Report or Unallowable Cost Review Report in accordance with the requirements of Section III.E and Appendix B.

5. A Stipulated Penalty of \$1,500 for each day Select fails to grant access as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date Select fails to grant access.)

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Select as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this CIA.

7. A Stipulated Penalty of \$1,000 for each day Select fails to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to Select stating the specific grounds for its determination that Select has failed to comply fully and adequately with the CIA obligation(s) at issue and steps Select shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after Select receives this notice from OIG of the failure to comply.) A Stipulated Penalty as described in this Subsection shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-6 of this Section.

B. Timely Written Requests for Extensions

Select may, in advance of the due date, 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 Select fails to meet the revised deadline set by OIG. 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 three business days after Select 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 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.

C. Payment of Stipulated Penalties

1. *Demand Letter.* Upon a finding that Select has failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Select of: (a) Select's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties. (This notification shall be referred to as the "Demand Letter.")

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Select shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties or (b) request a hearing before an HHS administrative law

judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event Select elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Select cures, to OIG's satisfaction, the alleged breach in dispute. 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.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by electronic funds transfer to an account specified by OIG in the Demand Letter.

4. *Independence from Material Breach Determination.* Except as set forth in Section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Select has materially breached this CIA, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section X.D, below.

D. Exclusion for Material Breach of this CIA

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

- a. a failure by Select to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.J;
- b. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C; or
- d. a failure to engage and use an IRO in accordance with Section III.E, Appendix A, and Appendix B.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Select constitutes an independent basis for Select's exclusion from participation in the Federal health care programs. Upon a determination

by OIG that Select has materially breached this CIA and that exclusion is the appropriate remedy, OIG shall notify Select of: (a) Select's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion. (This notification shall be referred to as the "Notice of Material Breach and Intent to Exclude.")

3. *Opportunity to Cure.* Select shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Select is in compliance with the obligations of the CIA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Select has begun to take action to cure the material breach; (ii) Select is pursuing such action with due diligence; and (iii) Select has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Select fails to satisfy the requirements of Section X.D.3, OIG may exclude Select from participation in the Federal health care programs. OIG shall notify Select in writing of its determination to exclude Select. (This letter shall be referred to as the "Exclusion Letter.") Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of Select's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Select may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

#### E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Select of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Select 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. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically,

OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS 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 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Select was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Select shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders Select to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Select requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 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 Select was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30-day period, but that: (i) Select had begun to take action to cure the material breach within that period; (ii) Select has pursued and is pursuing such action with due diligence; and (iii) Select provided to OIG within that period a reasonable timetable for curing the material breach and Select has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Select, only after a DAB decision in favor of OIG. Select's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Select upon the issuance of an ALJ's decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Select may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Select shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Select, Select shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA.

## **XI. EFFECTIVE AND BINDING AGREEMENT**

Select and OIG agree as follows:

A. This CIA shall be binding on the successors, assigns, and transferees of Select;

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

C. This CIA constitutes the complete agreement between the parties and may not be amended except by written consent of the parties to this CIA;

D. OIG may agree to a suspension of Select's obligations under this CIA based on a certification by Select that it is no longer providing health care items or services that will be billed to any Federal health care program and that it does not have any ownership or control interest, as defined in 42 U.S.C. §1320a-3, in any entity that bills any Federal health care program. If Select is relieved of its CIA obligations, Select will be required to notify OIG in writing at least 30 days in advance if Select plans to resume providing health care items or services that are billed to any Federal health care program or to obtain an ownership or control interest in any entity that bills any Federal health care

program. At such time, OIG shall evaluate whether the CIA will be reactivated or modified.

E. The undersigned Select 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.

F. This CIA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CIA. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this CIA.

**ON BEHALF OF SELECT**

/Robert G. Breighner, Jr./

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ROBERT G. BREIGHNER, JR.  
Vice President, Compliance and Audit Services  
and Corporate Compliance Officer  
Select Medical Corporation

Aug. 4, 2011

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DATE

/Karl A. Thallner, Jr./

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KARL A. THALLNER, JR.  
Reed Smith LLP  
Counsel for Select

Aug. 4, 2011

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DATE

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

/Gregory E. Demske/

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8/30/2011

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GREGORY E. DEMSKE  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U. S. Department of Health and Human Services

DATE

/Katie Arnholt/

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8/31/2011

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KATIE ARNHOLT  
Senior Counsel  
Office of Inspector General  
U. S. Department of Health and Human Services

DATE

/Geeta Taylor/

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8/31/2011

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GEETA TAYLOR  
Associate Counsel  
Office of Inspector General  
U. S. Department of Health and Human Services

DATE