

CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
VANGUARD HEALTHCARE, LLC

I. PREAMBLE

Vanguard Healthcare, LLC (Vanguard) hereby enters 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, Vanguard is entering into a Settlement Agreement with the United States.

II. TERM AND SCOPE OF THE CIA

A. The period of the compliance obligations assumed by Vanguard under this CIA shall be five years from the effective date of this CIA, unless otherwise specified. The effective date shall be the date on which the final signatory of this CIA executes this CIA (Effective Date). 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) Vanguard’s final annual report; or (2) any additional materials submitted by Vanguard 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 Vanguard and any actual or potential source of health care business or referrals to Vanguard or

any actual or potential recipient of health care business or referrals from Vanguard. 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 Vanguard refers an individual for the furnishing or arranging for the furnishing of any item or service, or (2) from whom Vanguard 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 Vanguard 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 Vanguard for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).

2. “Focus Arrangements” means every Arrangement that:

a. is between Vanguard and any actual source of health care business or referrals to Vanguard and involves, directly or indirectly, the offer, payment, or provision of anything of value; or

b. is between Vanguard 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 Vanguard 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.

2. “Covered Persons” includes:

- a. all owners, officers, directors, and employees of Vanguard;
- b. all contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of Vanguard excluding vendors whose sole connection with Vanguard is selling or otherwise providing medical supplies or equipment to Vanguard 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 Vanguard’s active medical staff.

Notwithstanding the above, this term does 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.

3. “Arrangements Covered Persons” includes each Covered Person who is involved with the development, approval, management, or review of Vanguard’s Arrangements.

III. CORPORATE INTEGRITY OBLIGATIONS

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

A. Compliance Officer and Committee.

1. *Compliance Officer.* Within 90 days after the Effective Date, Vanguard shall appoint 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 Vanguard, shall report directly to the Chief Executive Officer of Vanguard, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Board of Directors of Vanguard, and shall be authorized to report on such matters to 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 Vanguard 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.

Vanguard 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.* Within 90 days after the Effective Date, Vanguard shall appoint 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 Vanguard's risk areas and shall oversee monitoring of internal and external audits and investigations). The Compliance Committee shall meet at least quarterly.

Vanguard 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.

B. Written Standards.

1. *Code of Conduct.* Within 90 days after the Effective Date, Vanguard shall develop, implement, and distribute a written Code of Conduct to all Covered Persons. Vanguard shall 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. Vanguard's commitment to full compliance with all Federal health care program requirements;
- b. Vanguard's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Vanguard's own Policies and Procedures;
- c. the requirement that all of Vanguard's Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by Vanguard, suspected violations of any Federal health care program requirements or of Vanguard's own Policies and Procedures;
- d. the right of all individuals to use the Disclosure Program described in Section III.F, and Vanguard's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

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 Vanguard'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.

Vanguard 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.* Within 90 days after the Effective Date, Vanguard shall implement written Policies and Procedures regarding the operation of Vanguard's compliance program, including the compliance program requirements outlined in this CIA, and Vanguard'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).

Within 90 days after the Effective Date, the relevant portions of the Policies and Procedures shall be distributed 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), Vanguard 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 distributed to all Covered Persons whose job functions relate to those Policies and Procedures.

C. Training and Education.

1. *General Training.* Within 90 days after the Effective Date, Vanguard shall provide at least two hours of General Training to each Covered Person. This training, at a minimum, shall explain Vanguard's:

- a. CIA requirements; and
- b. Vanguard's 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.

2. *Arrangements Training.* Within 90 days after the Effective Date, each Arrangements Covered Person shall receive at least three 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. Vanguard'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 Vanguard's Arrangements to know the applicable legal requirements and the Vanguard'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 each subsequent Reporting Period.

3. *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. These shall be made available to OIG, upon request.

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

5. *Update of Training.* Vanguard 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.

6. *Computer-based Training.* Vanguard may provide the training required under this CIA through appropriate computer-based training approaches. If Vanguard 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.

7. *Exception for Active Medical Staff Members.* Vanguard shall make the General Training described in this Section III.C available to all of Vanguard'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. These records shall be made available to OIG, upon request.

Notwithstanding this exception, any active medical staff member who is also a party to a Focus Arrangement must complete the Arrangements Training, as required by Section III.D.2.b.

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

1. *Focus Arrangements Procedures.* Within 90 days after the Effective Date, Vanguard shall 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 and activity logs 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, Vanguard shall comply with the following requirements (Focus Arrangements Requirements):

a. Ensure that each Focus Arrangement is set forth in writing and signed by Vanguard 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, Vanguard 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.* Vanguard 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, Vanguard 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 following reviews: (i) a review to assist Vanguard in assessing its compliance with the obligations pursuant to Section III.D of this CIA (Arrangements Review) and (ii) a review to analyze whether Vanguard sought payment for certain unallowable costs (Unallowable Cost Review). The IRO engaged by Vanguard to perform the Unallowable Costs Review shall have expertise in the cost reporting requirements applicable to Vanguard and in the general requirements of the Federal health care program(s) from which Vanguard seeks reimbursement. The IRO engaged by Vanguard to perform the Arrangements Review shall be knowledgeable about the Anti-Kickback Statute and Stark Law and the regulations and other guidance documents related to these statutes.

Each IRO shall assess, along with Vanguard, whether it can perform the IRO review in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or other engagements that may exist. The engagement of the IRO for the Arrangements Review shall not be deemed to create an attorney-client relationship between Vanguard and the IRO. The other applicable requirements relating to the IRO(s) are outlined in Appendix A to this CIA, which is incorporated by reference.

b. *Frequency of Arrangements Review.* The Arrangements Review shall be performed annually and shall cover each of the Reporting Periods. The IRO(s) shall perform all components of each annual Arrangements Review.

c. *Frequency of Unallowable Cost Review.* If applicable, the IRO shall perform the Unallowable Cost Review for the first Reporting Period.

d. *Retention of Records.* The IRO and Vanguard shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Vanguard) related to the reviews.

e. *Responsibilities and Liabilities.* Nothing in this Section III.E affects Vanguard'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 a review to assess whether Vanguard is complying with the Focus Arrangements Procedures and Focus Arrangements Requirements required by Sections III.D.1 and III.D.2 of this CIA (Arrangements Review). The Arrangements Review shall consist of two components – a systems review and a transactions review. The Arrangements Systems Review shall assess Vanguard's systems, processes, policies, and procedures relating to Arrangements, including Vanguard's implementation of the Focus Arrangements Procedures (including the Focus Arrangement Tracking System) and Focus Arrangements Requirements. If there are no material changes to Vanguard's systems, processes, policies, and procedures relating to Arrangements, the Arrangements Systems Review shall be performed for the first and fourth Reporting Periods. If Vanguard materially changes the relevant Arrangements systems, processes, policies and procedures, the IRO shall perform an Arrangements Systems Review for the Reporting Period in which such changes were made in addition to conducting the systems review for the first and fourth Reporting Periods. The Arrangements Transactions Review shall be performed annually and shall cover each of the five Reporting Periods. The IRO shall perform all components of each Arrangements Transactions Review. The Arrangements Transactions Review shall consist of a review of all Focus Arrangements that were entered into or renewed during

the Reporting Period, provided, however, that if the number of Focus Arrangements exceeds 50, then the number of Focus Arrangements to be reviewed shall be a randomly selected sample to equal 25% of all Focus Arrangements. The IRO shall assess for each selected Focus Arrangement whether Vanguard has complied with the Focus Arrangements Procedures and Focus Arrangements Requirements specifically with respect to that Focus Arrangement. The applicable procedures and reporting requirements for the Arrangements Review are outlined in Appendix B to this CIA which is incorporated by reference.

3. *Arrangements Review Report.* The IRO shall prepare a report based upon the Arrangements Review performed (Arrangements Review Report). The information to be included in the Arrangements Review Report is described in Appendix B.

4. *Unallowable Cost Review.* The IRO shall conduct a review of Vanguard's compliance with the unallowable cost provisions of the Settlement Agreement. The IRO shall determine whether Vanguard 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 Vanguard 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.

5. *Unallowable Cost Review Report.* The IRO shall prepare a report based upon the Unallowable Cost Review performed. The Unallowable Cost Review Report shall include the IRO's findings and supporting rationale regarding the Unallowable Costs Review and whether Vanguard 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.

6. *Validation Review.* In the event OIG has reason to believe that: (a) Vanguard'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). Vanguard 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 Vanguard's final Annual Report shall be initiated no later than one year after Vanguard's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Vanguard 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, Vanguard 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. Vanguard agrees to provide any additional information as may be requested by OIG under this Section III.E.8 in an expedited manner. OIG will attempt in good faith to resolve any Arrangements Review or Unallowable Cost Review issues with Vanguard 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.

7. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Vanguard a certification or sworn affidavit that it has evaluated its professional independence and objectivity, as appropriate to the nature of the engagement, with regard to the Arrangements Review or Unallowable Cost Review and that it has concluded that it is, in fact, independent and objective.

F. Disclosure Program.

Within 90 days after the Effective Date, Vanguard shall establish a Disclosure Program 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 Vanguard’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. Vanguard 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 nonretribution, nonretaliation 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, Vanguard 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. The disclosure log shall be made available to OIG upon request.

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.* Vanguard shall ensure that all Covered Persons are not Ineligible Persons, by implementing the following screening requirements.

a. Vanguard shall screen all 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. Vanguard shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.

c. Vanguard 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 this Section affects Vanguard'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. Vanguard understands that items or services furnished by excluded persons are not payable by Federal health care programs and that Vanguard may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Vanguard meets the requirements of this Section III.G.

3. *Removal Requirement.* If Vanguard has actual notice that a Covered Person has become an Ineligible Person, Vanguard shall remove such Covered Person from responsibility for, or involvement with, Vanguard'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 Vanguard 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 of during the term of a physician's or other practitioner's medical staff privilege, Vanguard 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.

H. Notification of Government Investigation or Legal Proceedings.

Within 30 days after discovery, Vanguard shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Vanguard conducted or brought by a governmental entity or its agents involving an allegation that Vanguard 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. Vanguard 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 Vanguard 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, Vanguard identifies any Overpayment, Vanguard 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, Vanguard 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 Events.

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 Vanguard.

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

2. *Reporting of Reportable Events.* If Vanguard determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Vanguard 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 Vanguard 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 Vanguard's actions taken to correct the Reportable Event; and
- e. any further steps Vanguard 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 Section 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 Vanguard's actions taken to correct the Reportable Event;

c. any further steps Vanguard 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 Vanguard 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.

IV. CHANGES TO BUSINESS UNITS OR LOCATIONS

A. Change or Closure of Unit or Location. In the event that, after the Effective Date, Vanguard changes locations or closes a business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Vanguard shall notify OIG of this fact as soon as possible, but no later than within 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, Vanguard purchases or establishes a new business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Vanguard shall notify OIG at least 30 days prior to such purchase or the operation of the new business unit or location. This notification shall include the address of the new business unit or location, 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 Vanguard currently submits claims. Each new business unit or location and all Covered Persons at each new business unit or location shall be subject to the applicable requirements of this CIA.

C. Sale of Unit or Location. In the event that, after the Effective Date, Vanguard proposes to sell any or all of its business units or locations that are subject to this CIA, Vanguard shall notify OIG of the proposed sale at least 30 days prior to the sale of such business unit or location. This notification shall include a description of the business unit or location 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 business unit or location, 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, Vanguard 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 Vanguard's Code of Conduct required by Section III.B.1;
4. a summary of all Policies and Procedures required by Section III.B.2 (a copy of such Policies and Procedures shall be made available to OIG upon request);
5. 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 available to OIG, upon request);
6. the following information regarding each type of training required by Section III.C:

a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and

b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

7. a description of the Focus Arrangements Tracking System required by Section III.D.1.a;

8. a description of the internal review and approval process required by Section III.D.1.e;

9. a description of the tracking and monitoring procedures and other Focus Arrangements Procedures required by Section III.D.1;

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

11. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; and (c) a summary and description of any and all current and prior engagements and agreements between Vanguard and the IRO;

12. a certification from the IRO regarding its professional independence and objectivity with respect to Vanguard;

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

14. a list of all of Vanguard'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 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 Vanguard currently submits claims;

15. a description of Vanguard’s corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business; and

16. the certifications required by Section V.C.

B. Annual Reports. Vanguard shall submit to OIG annually a report with respect to the status of, and findings regarding, Vanguard’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. 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);

3. 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 available to OIG, upon request);

4. 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; and

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.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

5. a description of any changes to the Focus Arrangements Tracking System required by Section III.D.1.a;

6. a description of any changes to the internal review and approval process required by Section III.D.1.e;

7. a description of any changes to the tracking and monitoring procedures and other Arrangements Procedures required by Section III.D.1;

8. a complete copy of all reports prepared pursuant to Section III.E, along with a copy of the IRO's engagement letter;

9. Vanguard'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;

10. a summary and description of any and all current and prior engagements and agreements between Vanguard and the IRO, if different from what was submitted as part of the Implementation Report;

11. a certification from the IRO regarding its professional independence and objectivity with respect to Vanguard;

12. a summary of Reportable Events (as defined in Section III.J) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

13. 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;

14. 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;

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

16. 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;

17. a description of all changes to the most recently provided list of Vanguard's locations (including addresses) as required by Section V.A.14; 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 Vanguard currently submits claims; and

18. 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, Vanguard is in compliance with all of the requirements of this CIA;

2. to the best of his or her knowledge, Vanguard 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, Vanguard 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, Vanguard 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. Vanguard 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. Vanguard 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

Vanguard:

Bonnie Lou Binnig, Chief Compliance Officer
Vanguard Healthcare Services, LLC
6 Cadillac Drive, Suite 310
Brentwood, TN 37027
Telephone: 615.250.7145
Facsimile: 615.324.4945

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, Vanguard 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), either instead of or 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 Vanguard's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Vanguard's locations for the purpose of verifying and evaluating: (a) Vanguard's compliance with the terms of this CIA; and (b) Vanguard's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Vanguard 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 Vanguard'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. Vanguard shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Vanguard's employees may elect to be interviewed with or without a representative of Vanguard present.

VIII. DOCUMENT AND RECORD RETENTION

Vanguard 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 Vanguard prior to any release by OIG of information submitted by Vanguard pursuant to its obligations under this CIA and identified upon submission by Vanguard as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Vanguard shall have the rights set forth at 45 C.F.R. § 5.65(d).

X. BREACH AND DEFAULT PROVISIONS

Vanguard 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, Vanguard 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 Vanguard 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 and Arrangements Covered Persons;
- 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 Vanguard fails to engage an IRO, as required in Section III.E 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 Vanguard 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 Vanguard 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 Vanguard fails to grant access as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date Vanguard fails to grant access.)

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Vanguard 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 Vanguard fails to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to Vanguard stating the specific grounds for its determination that Vanguard has failed to comply fully and adequately with the CIA obligation(s) at issue and steps Vanguard shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after Vanguard 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. Vanguard 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 Vanguard 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 Vanguard 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 Vanguard 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 Vanguard of: (a) Vanguard's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Vanguard 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 Vanguard elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Vanguard 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 Vanguard 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 Vanguard to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.I;
- 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.D and Appendix B.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Vanguard constitutes an independent basis for Vanguard's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Vanguard has materially breached this CIA and that exclusion is the appropriate remedy, OIG shall notify Vanguard of: (a) Vanguard'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").

3. *Opportunity to Cure.* Vanguard 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. Vanguard 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) Vanguard has begun to take action to cure the material breach; (ii) Vanguard is pursuing such action with due diligence; and (iii) Vanguard has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Vanguard fails to satisfy the requirements of Section X.D.3, OIG may exclude Vanguard from participation in the Federal health care programs. OIG shall notify Vanguard in writing of its determination to exclude Vanguard (this letter shall be referred to hereinafter 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 Vanguard’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, Vanguard 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 Vanguard 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, Vanguard 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 Vanguard was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Vanguard 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 Vanguard to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Vanguard 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 Vanguard 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) Vanguard had begun to take action to cure the material breach within that period; (ii) Vanguard has pursued and is pursuing such action with due diligence; and (iii) Vanguard provided to OIG within that period a reasonable timetable for curing the material breach and Vanguard 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 Vanguard, only after a DAB decision in favor of OIG. Vanguard's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Vanguard 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 Vanguard 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. Vanguard 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 Vanguard, Vanguard 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

Vanguard and OIG agree as follows:

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

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 Vanguard's obligations under this CIA based on a certification by Vanguard 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 Vanguard is relieved of its CIA obligations, Vanguard will be required to notify OIG in writing at least 30 days in advance if Vanguard 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 Vanguard 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 VANGUARD HEALTHCARE, LLC

/William D. Orand/

10/5/2011

William D. Orand
President and Chief Executive Officer

DATE

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

/Gregory E. Demske/

10/7/2011

GREGORY E. DEMSKE

DATE

Assistant Inspector General for Legal Affairs

Office of Inspector General

U. S. Department of Health and Human Services

APPENDIX A

INDEPENDENT REVIEW ORGANIZATION

This Appendix contains the requirements relating to the Independent Review Organization (IRO) required by Section III.E of the CIA.

A. IRO Engagement.

Vanguard shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct the review in a professionally independent and objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives the information identified in Section V.A.11 and Section V.A.12 of the CIA, OIG will notify Vanguard if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Vanguard may continue to engage the IRO.

If Vanguard engages a new IRO during the term of the CIA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, Vanguard shall submit the information identified in Section V.A.11 and Section V.A.12 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives this information, OIG will notify Vanguard if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Vanguard may continue to engage the IRO.

B. IRO Qualifications.

The IRO shall:

1. assign individuals to conduct the Arrangements Review engagement who are knowledgeable in the requirements of the Anti-Kickback Statute and the Stark Law and the regulations and other guidance documents related to these statutes; and
2. have sufficient staff and resources to conduct the reviews required by the CIA on a timely basis.

C. IRO Responsibilities.

The IRO shall:

1. perform each Arrangements Review in accordance with the specific requirements of the CIA;

2. respond to all OIG inquiries in a prompt, objective, and factual manner; and
3. prepare timely, clear, well-written reports that include all the information required by Appendix B to the CIA.

D. IRO Independence and Objectivity.

The IRO must perform the Arrangements Review in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the IRO and Vanguard.

E. IRO Removal/Termination.

1. *Provider.* If Vanguard terminates its IRO during the course of the engagement, Vanguard must submit a notice explaining its reasons to OIG no later than 30 days after termination. Vanguard must engage a new IRO in accordance with Paragraph A of this Appendix.

2. *OIG Removal of IRO.* In the event OIG has reason to believe that the IRO does not possess the qualifications described in Paragraph B, is not independent and objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG may, at its sole discretion, require Vanguard to engage a new IRO in accordance with Paragraph A of this Appendix.

Prior to requiring Vanguard to engage a new IRO, OIG shall notify Vanguard of its intent to do so and provide a written explanation of why OIG believes such a step is necessary. To resolve any concerns raised by OIG, Vanguard may request a meeting with OIG to discuss any aspect of the IRO's qualifications, independence or performance of its responsibilities and to present additional information regarding these matters. Vanguard shall provide any additional information as may be requested by OIG under this Paragraph in an expedited manner. OIG will attempt in good faith to resolve any differences regarding the IRO with Vanguard prior to requiring Vanguard to terminate the IRO. However, the final determination as to whether or not to require Vanguard to engage a new IRO shall be made at the sole discretion of OIG.

APPENDIX B

ARRANGEMENTS REVIEW

A. Arrangements Systems Review. The Arrangements Systems Review shall be a review of Vanguard's systems, processes, policies, and procedures relating to the initiation, review, approval, and tracking of Arrangements. Specifically, the IRO shall review the following:

1. Vanguard's systems, policies, processes, and procedures with respect to creating and maintaining a centralized tracking system for all existing and new and renewed Focus Arrangements (Focus Arrangements Tracking System), including a detailed description of the information captured in the Focus Arrangements Tracking System;

2. Vanguard's systems, policies, processes, and procedures for tracking remuneration to and from all parties to Focus Arrangements;

3. Vanguard's systems, policies, processes, and procedures for tracking service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable);

4. Vanguard's systems, policies, processes, and procedures for 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);

5. Vanguard's systems, policies, processes, and procedures for initiating Arrangements, including those policies that identify the individuals with authority to initiate an Arrangement and that specify the business need or business rationale required to initiate an Arrangement;

6. Vanguard's systems, policies, processes, and procedures for the internal review and approval of all Arrangements, including those policies that identify the individuals required to approve each type or category of Arrangement entered into by Vanguard, the internal controls designed to ensure that all required approvals are obtained, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law;

7. the Compliance Officer's annual review of and reporting to the Compliance Committee on the Focus Arrangements Tracking System, Vanguard's internal review and approval process, and other Arrangements Procedures;

8. Vanguard's systems, policies, processes, and procedures for 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 when appropriate; and

9. Vanguard's systems, policies, processes, and procedures for ensuring that all new and renewed Focus Arrangements comply with the Focus Arrangements Requirements set forth in Section III.D.2 of the CIA.

B. Arrangements Systems Review Report. The IRO shall prepare a report based upon each Arrangements Systems Review performed. The report shall include the following items:

1. a description of the documentation (including policies) reviewed and personnel interviewed;

2. a detailed description of Vanguard's systems, policies, processes, and procedures relating to the items identified in Section A.1-9 above;

3. findings and supporting rationale regarding weaknesses in Vanguard's systems, processes, policies, and procedures relating to Arrangements described in Section A.1-9 above; and

4. recommendations to improve Vanguard's systems, policies, processes, or procedures relating to Arrangements described in Section A.1-9 above.

C. Arrangements Transactions Review. The Arrangements Transactions Review shall consist of a review by the IRO of 50 randomly selected Focus Arrangements that were entered into or renewed by Vanguard during the Reporting Period. The IRO shall assess whether Vanguard has complied with the Arrangements Procedures and the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, with respect to the selected Focus Arrangements.

The IRO's assessment with respect to each Focus Arrangement that is subject to review shall include:

1. verifying that the Focus Arrangement is maintained in Vanguard's centralized tracking system in a manner that permits the IRO to identify the parties to the Focus Arrangement and the relevant terms of the Focus Arrangement (i.e., the items/services/equipment/space to be provided, the amount of compensation, the effective date, the expiration date; etc.)

2. verifying that the Focus Arrangement was subject to the internal review and approval process (including both a legal and business review) and obtained the necessary approvals and that such review and approval is appropriately documented;

3. verifying that the remuneration related to the Focus Arrangement is properly tracked;

4. verifying that the service and activity logs are properly completed and reviewed (if applicable);

5. verifying that leased space, medical supplies, medical devices, and equipment, and other patient care items are properly monitored (if applicable); and

6. verifying that the Focus Arrangement satisfies the Focus Arrangements Requirements of Section III.D.2 of the CIA.

D. Arrangements Transaction Review Report. The Arrangements Transaction Review Report shall include the following information:

1. *Review Methodology.*

a. Review Protocol: A detailed narrative description of the procedures performed and a description of the sampling unit and universe utilized in performing the procedures for the sample reviewed.

b. Sources of Data: A full description of the documentation and other information, if applicable, relied upon by the IRO in performing the Arrangements Transaction Review.

2. *Review Findings.* The IRO's findings with respect to whether Vanguard has complied with the Arrangements Procedures and Focus Arrangements Requirements with respect to each of the randomly selected Focus Arrangements reviewed by the IRO. In addition, the Arrangements Transactions Review Report shall include observations, findings and recommendations on possible improvements to Vanguard's policies, procedures, and systems in place to

ensure that all Focus Arrangements comply with the Arrangements Procedures and Focus Arrangements Requirements.