

PROPOSED CONTRACT N1000010781
For Administration of a
Health Reimbursement Arrangement Program

THIS Contract Number ~~N1000010781~~ for the Administration of a Health Reimbursement Arrangement Program, hereinafter referred to as ("Contract") is effective ~~April 1, 2009~~ by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and ~~ICMA Retirement Corporation~~, with a place of business at ~~777 North Capitol Street, N.E., Washington, D.C., 20002~~, hereinafter referred to as "Contractor", which are sometimes individually referred to as "Party," or collectively referred to as "Parties."

RECITALS

WHEREAS, Contractor responded to a Request for Proposal ("RFP") for the Administration of a Health Reimbursement Arrangement (HRA) Program (~~also referred to hereinafter as "RHS Plan" or "Plan"~~);

WHEREAS, the Contractor represents that its services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor for Professional Services in the Administration of a HRA Program.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work/Additional terms:** The Scope of Work for this Contract are attached hereto as Attachment A.
2. **Pricing:** The Contract, as specified in Attachment B hereto, includes full compensation for providing all services to be provided under this Contract.
3. **Invoicing/Payment:** All invoicing and payment for services performed under this Contract shall be as specified in Attachment B, hereto.
4. **Contract Term:** The initial term of this Contract is ~~three (3) years effective on the date execution is completed by both Parties, continuing for three (3) years from that date~~ ~~April 1, 2009 through March 31, 2012~~, unless terminated by County. Contract may be renewed for up to one (1) additional two (2) year term, upon mutual agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors.
5. **Entire Agreement:** This Contract, including its Attachments, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.
6. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties.
7. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California,

without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

8. **Appropriation/Contingency of Funds:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the Term of this Contract. If such appropriations are not approved, this Contract may be immediately terminated by the County; ~~If contract is terminated under this paragraph, the Contractor will receive compensation under Attachment B "Implementation Costs."~~
9. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
10. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
11. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
12. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any ~~specific custom services to be provided for the County hereunder~~ portion thereof may be assigned or sub-contracted by Contractor without ~~prior the express~~ written notice to the ~~consent of~~ the County. ~~By executing this Contract, the County expressly consents to the use of Contractor's sub-contractors in existence as of the date of execution of this Contract. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof specific custom services to be provided for the County under this Contract without prior the express~~ written notice to ~~consent of~~ the County shall be invalid and shall constitute a breach of this Contract. ~~Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all services required herein including but not limited to compliance with all relevant state and federal codes, regulations, ordinances, orders, or statutes. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents as relates to this contract may be performed outside the United States of America. Further no participant specific data including but not limited to name, personal health information, social security numbers, addresses, information regarding dependents, or date of birth may be accessed outside the United States of America by Contractor, its affiliates, or their employees, directors, or subcontractors. Contractor is required to receive approval from County for any subcontractor engaged to perform work specific to the County or to access County participant data before that work is performed. Failure to receive approval will be considered a breach of this Contract.~~
13. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1720 *et seq.*, of the California Labor Code.

14. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
16. **Warranty:** Contractor expressly warrants that the services covered by this Contract are: 1) merchantable and good for the ordinary purposes for which they are used; and 2) fit for the particular purpose for which they are intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 19 below and as more fully described in paragraph 19, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, Contractor's faulty work performance, negligent or unlawful acts, ~~or~~ and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
17. **Patent/Copyright Materials/Proprietary Infringement:** Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 19 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
18. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the

services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 19 below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to ~~a~~ its violation of such laws.

19. **Indemnification and Insurance:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from ~~or related to the services, products or other performance provided by the willful misconduct, negligent acts or failure of Contractor pursuant to perform services in accordance with the terms of this Contract.~~ If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

INSURANCE PROVISIONS

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

~~All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.~~

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurers

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

~~Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).~~

If the carrier is a non-admitted carrier in the State of California, and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$5,000,000 per claims made or per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

~~All liability insurance, except Professional Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.~~

~~The County shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.~~

~~All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.~~

All insurance policies required by this Contract shall give the County 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance ~~an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:~~

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

~~Contractor's Commercial General Liability policy shall waive all rights of subrogation against the County and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.~~

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of this Contract.

The Commercial General Liability policy shall contain a severability of interest's clause ~~also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).~~

~~The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.~~

Insurance certificates should be forwarded to the agency/department address listed on the solicitation. If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified ~~vendor~~ contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

~~The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above mentioned insurance requirements in place of commercial insurance certificates and endorsements.~~

20. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
21. **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
22. **Contractor's Account Manager and Key Personnel:** Contractor shall appoint an Account Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract ~~provide the staffing set forth in Attachment D of this Contract for performance of its obligations under this Contract.~~ The staffing plan for this Contract This Account Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.

The Contractor's Account Manager ~~Retirement Plans Specialist~~ and key personnel, ~~listed in Attachment D,~~ shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Account Manager ~~Retirement Plan Specialist.~~

23. **Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor. The County's project manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's Project Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within one (1) day after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's Account Manager. The County is not required to provide any additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing services to County under this Contract.

24. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
25. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced ~~specifically for the County including but not limited to all participant data~~ under this Contract by the Contractor. All ~~such~~ documents, reports and other incidental or derivative work or materials ~~developed hereunder specifically for the County~~ **furnished** shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or materials shall be used by the Contractor without the express written consent of the County.
26. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
27. **Records:** The Contractor shall keep ~~and maintain~~ **an accurate** ~~such records of time expended by Contractor and the sub-contractors working for Contractor in the performance of, including but not limited to participant transactions, interaction with participants and participant logins, as may be necessary to document or support its provisions of services or products under this Contract.~~ **such records** of time expended by Contractor and the sub-contractors working for Contractor in the performance of, ~~including but not limited to participant transactions, interaction with participants and participant logins, as may be necessary to document or support its provisions of services or products under this Contract.~~ Such records shall be available for periodic inspection by the County at reasonable times. ~~Payment may be withheld under this contract until such records are made available to the County.~~
28. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

29. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
30. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractor's and third parties associated with accomplishing services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
31. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after ~~30~~ 60 days' written notice without cause, unless otherwise specified in this contract. ~~If Contract is terminated without cause, Contractor will receive compensation as defined under Attachment B.~~ Cause shall be defined as any material breach of this Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. ~~The County shall have the right to terminate Contractor's services for all but not limited to the following reasons and timeframes:~~
 - ~~a. Immediately upon the firm committing a material breach of the terms of the Contract with the County.~~
 - ~~b. Immediately for violation of any fiduciary duty or if the Contractor commits a fraud or criminal act in providing the agreed upon services.~~
 - ~~c. If the Contractor sells all of their assets or transfers control of management or operations of its business or this Contract to any third party, the County may immediately terminate with written notice.~~
 - ~~d. Immediately with appropriate written notice if there has been a filing of a petition for voluntary or involuntary bankruptcy or dissolution involving Contractor; Immediately with appropriate written notice if Contractor has a filing under Title 11 of the United States Bankruptcy Code, the firm becomes subject to any voluntary or involuntary insolvency, reorganization or similar proceedings or the Contractor has made an assignment for the benefit of creditors.~~
 - ~~e. Upon thirty days appropriate written notice to Contractor, if the County determines there has been a significant decline in the firm's financial condition; provided, however, that Contractor shall be permitted to provide documentation or information to County to indicate to the County's satisfaction that there has been no significant decline or that any decline will~~

~~not materially impact Contractor's ability to perform obligations under this Contract. In such event, County shall rescind its notice of termination.~~

~~In the event Contractor attempts to terminate this Contract or otherwise ceases delivery of the services provided in Attachment A— Scope of Work, without complying with the Termination provisions herein, Contractor agrees to pay the County as damages the sum of: (1) the County's (including County consultants and advisors) reasonable costs and expenses in procuring a new contractor to perform the services, (2) the additional fees, expenses and other compensation paid to the new contractor in excess of what would have been paid to Contractor had Contractor fully performed the services under this Contract and (3) any and all other costs, expenses, damages or liabilities of the County resulting from Contractor's improper termination of this Contract of the failure to perform Contract services.~~

32. **Breach of Contract:** The failure of the Contractor to comply with any of the material terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above; and/or
 - c. Terminate this Contract immediately, without penalty to the County.
33. **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's project manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:
- a. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. ~~Contractor may request that County specify the reasoning behind a decision under this section.~~ Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.
34. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by

each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

35. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any ~~reasonably~~ available remedies.
36. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
37. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
38. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing, except through the course of the County's project manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Human Resources/Employee Benefits
Project Manager, Tracy Vonada
333 W. Santa Ana Blvd, ~~2nd Floor~~ Room 137
Santa Ana, CA 92701

cc: Human Resources/Employee Benefits
Attn: Barbara Voelkel
333 W. Santa Ana Blvd., ~~2nd Floor~~ Room 137
Santa Ana, Ca 92701

Contractor: ~~TBD ICMA Retirement Corporation~~
~~777 North Capitol Street, NE~~
~~Washington, D.C. 20002~~

39. **County Child Support Enforcement:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Contract.

40. **Change Of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
41. **Precedence:** The documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the attachments and exhibits.
42. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
43. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
44. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
45. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
46. **Waiver Of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
47. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
48. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
49. **Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County

for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Attachment E hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Attachment E shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.

50. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18 and 19 shall survive the termination of this Contract.
51. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
52. **Bills and Liens** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 19 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
53. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
54. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
55. **Incorporation:** This Contract and its Attachments A through E are attached hereto and incorporated by reference and made a part of this Contract.

PROPOSED CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

~~ICMA Retirement Services~~ CONTRACTOR*

Print Name Title

*** DO NOT SIGN THIS PAGE AT THIS TIME***

Signature Date

Print Name Title

*** DO NOT SIGN THIS PAGE AT THIS TIME***

Signature Date

*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Print Name Title

Signature Date

Approved by Board of Supervisors on: Date_____

APPROVED AS TO FORM:

Deputy, Office of County Counsel
Orange County, California

Attachment A

Scope of Work

I. Background

The County currently provides retirees with monthly grants to pay for medical insurance premiums. In 2008, the County implemented a plan to restructure the Retiree Medical Program for two of the County's represented units – the Association of Orange County Deputy Sheriffs (AOCDS) and the Association of Orange County Law Enforcement Management (ACLEM). Individual Health Reimbursement Arrangement (HRA) accounts were created for the current and future AOCDS and ACLEM represented employees, funded by a combination of County and mandatory employee contributions (all contributions are made on a pre-tax basis). Benefits (HRA account balances) become available upon retirement of the individual Participant to be used to reimburse eligible qualified medical expenses.

As of September 2012, approximately 2,100 County employees and approximately 160 retirees participate in the HRA. The County makes no representations or warranties regarding the number of participants or amount of contributions. The County reserves the option to add Participants from other represented units if and when agreement is reached with said units to restructure Retiree Medical Programs.

II. Definitions

1. "Administrator" means the County of Orange, Director of Human Resources, or his designee.
2. "Benefits" means the reimbursement of substantiated, unreimbursed Qualified Medical Expenses as further defined in The County of Orange Health Reimbursement Arrangement Plan Document (Exhibit 4).
3. "Claims Administrator" means a self-service contractor with which the County has a contract to provide full Benefits administration such as benefits eligibility and enrollment.
4. "Code" means the Internal Revenue Code of 1986, as amended and including all regulations, rulings, notices, procedures, determinations and case law.
5. "Covered Dependent" means a Retired Participant's Spouse or a dependent as defined by Code section 152 ((without regard to (b)(1), (b)(2) and (b)(1)(B)). To the extent a Covered Dependent incurs Qualified Medical Expenses after the death of a Participant, Inactive Participant or Retired Participant, the Covered Dependent will be eligible for Benefits under the Plan as if, and to the same extent, he/she were a Retired Participant.
6. "Implementation Date" means such date as the Parties mutually agree in writing on which Contractor shall begin to provide HRA services to the County pursuant to this RFP.
7. "Inactive Participant" means a Participant who is employed by County and is either no longer an eligible employee or is on an unpaid leave of absence.
8. "Participant" means an Eligible Employee who maintains a Reimbursement Account under this Plan and is not a Retired Participant. Participants and their Spouses and Covered Dependents are not eligible to receive benefits under this Plan until Participants become Retired Participants.

9. "Plan" means the County of Orange Health Reimbursement Arrangement as set forth herein and as may be amended from time to time by sole discretion of County.
10. "Plan Description" means the benefit document prepared by the Contractor in conjunction with the County and approved in writing by the County, which is used by the Contractor in processing prescription drug claims in connection with this Contract.
11. "Project Manager" means Assistant Director of Human Resources, Employee Benefits or his/her designee
12. "Qualified Medical Expense" means medical expenses as defined under Code Article 213(d), which are incurred by a Retired Participant and/or his Covered Dependents.
13. "Retired Participant" means a Participant who retires from County's service or separates or terminates service with the County. Only Retired Participants, their Spouse, and their Covered Dependents are eligible to receive Benefits under this Plan.
14. "Spouse" means an individual who is legally married to a Participant or Retired Participant as determined under California law and recognized by Federal law.

III. Scope of Services

The contracted vendor will be required to perform the following services, including but not limited to:

- Ability to provide claims processing capabilities and provide reimbursement for eligible claims from individual account balances
- Provide individuals who are licensed and hold applicable certificates necessary to serve our plan.
- Ability to service funded Health Reimbursement Arrangement account plans with over 1,500 Participants.
- Ability to provide a diverse offering of investment options.
- Ability to monitor the investment performance and present results to the County.
- Ability to communicate and work with County employees
- Ability to provide plan management
- Ability to provide Customer Service to Participants
- Ability to provide Website access
- Ability to meet IRS Compliance

Contractor will provide, at a minimum, the following services:

1. Claims Administration

Contractor, acting as Claims Administrator, shall provide Claims Administration services for the HRA. If Contractor utilizes a subcontractor for Claims Administration services, Contractor will ensure that any subcontractor meets all contractual requirements and performance guarantees. Contractor shall monitor its subcontractor's services and submit reports to County. County shall also have the ability to review any subcontractor's performance at County's sole discretion.

Claims Administration services shall include, but not be limited to, the following:

- a. Establishment and maintenance of each Participant's HRA Account in accordance with The County of Orange Health Reimbursement Arrangement Plan Document (Exhibit 3).
- b. Adjustment of each Participant's HRA Account for contributions, earnings, losses and administrative costs. ~~Contractor shall make adjustments to each Participant's HRA Account in accordance with its normal business practices and consistent with reasonable industry standards;~~ The County will determine the frequency by which HRA Accounts will be

adjusted, as can be accommodated by Contractor, provided that adjustments are made no less frequently than annually.

c. Claims Payment

- 1) Claims Administrator shall pay all Retired Participant, Spouse and Covered Dependent claims that meet the Qualified Medical Expense criteria.
- 2) County and Claims Administrator shall have discretionary authority to administer and interpret all claims, including the full discretionary authority to determine eligibility for Benefits under the plan, ~~provided, however, that discretionary authority for final claims determinations shall rest with the County.~~
- 3) Benefits under this Plan will only be paid to the extent the claimant Retired Participant, Spouse or Covered Dependent complies, in addition to the other requirements of this Plan, with the claims administration procedures established from time-to-time in writing by County or Contractor. At a minimum such claims administration procedures will require submission by the claimant of a written claim form (signed under penalty of perjury), proof of payment, and sufficient back up materials regarding the claim in order for County or Contractor to substantiate the claim.
- 4) Approved claims will be paid to the Retired Participant as soon as possible following the County's or Claims Administrator's approval. Reimbursement payments under the Plan shall be made directly to the Retired Participant.

d. Claims Review Procedures

- 1) If the Claims Administrator denies a claim, the Claims Administrator shall provide a written denial notice to the Retired Participant. The notice shall be written in a manner calculated to be understood by the claimant and shall set forth (i) the specific reason(s) for the denial; (ii) specific references to the pertinent Plan or administrative provisions or procedures on which the denial is based; (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and (iv) an explanation of the Plan's claims procedure.
- 2) After receipt of a written denial notice, the claimant shall have sixty (60) days to appeal the claim denial to the Claims Administrator. The claimant or his duly authorized representative may (i) appeal upon written notice to the Claims Administrator; (ii) review pertinent documents; and (iii) submit issues and comments in writing.
- 3) A decision by the Claims Administrator will be made no later than sixty (60) days after receipt of an appeal, unless special circumstances (in the opinion of the Claims Administrator) require an extension of time for processing, in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Claims Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

2. Account Management

a. Contractor shall:

- 1) Provide a cohesive, dedicated and responsive account management team that is experienced in services similar to County's, trained in the County's plan issues, accessible to the County geographically, focused on proactive and efficient management of the program service, and with sufficient capacity and authority to respond to the County's issues in a timely manner.
- 2) Provide an Account Manager as primary point-of-contact for day-to-day communications with the County and have an Account Assistant Manager and back-up plan when the primary person is unavailable.

- 3) Provide an escalation process to assist in matters which are unable to be resolved at the account team level.
 - 4) Allow the County administration thirty (30) days advance notice of any planned change in the primary account manager.
 - 5) Provide the County administration the right to interview and agree to the intended replacement of the primary account manager. The County shall provide written or verbal approval of all proposed replacements.
 - 6) Provide access to an electronic tracking and resolution log of the County issues.
 - 7) Provide documentation of a process for prompt issue resolution in the event of a failure to perform a required service.
 - 8) Attend monthly teleconferences and in person quarterly and annual program reviews on site as requested at the County benefits office to review Plan benefit performance, programs, financial results and servicing of County's account.
- b. Each individual of the account management team assigned to County will have at least two years experience in HRA or similarly related services, and will be available to County during normal business hours. In the event the primary account manager is not available, County is to have a back-up contact person with a guaranteed return call guarantee within 24 hours.
- c. Contractor shall administrator the HRA in accordance with IRS regulations.
- d. Contractor shall ensure its record keeping is complete and thorough and in compliance with all required rules and regulations. Contractor shall keep accurate records that meet the following minimum requirements:
- 1) Maintain a consolidated database that shows at any time the daily valuation of each Participant's account.
 - 2) Maintain a database listing all statistics related to bi-weekly data transmissions and cash transfers from the County.
 - 3) Maintain a database and supporting records substantiating all Participant withdrawals and claims payments.
- e. Contractor shall maintain daily information associated with a Participant's account, including but not limited to investment balances, contributions, transfers, distributions, earnings, administrative costs, investment elections, current address, beneficiary designation(s), and any other information necessary for the proper administration of a Participant's account. Regarding the valuation of a Participant's account, the Contractor will adhere to the following:
- 1) Amounts that are not guaranteed as to principal or interest will be valued at their net asset value as of the close of each business day, and/or in accordance with any applicable contract with a mutual fund Contractor or in accordance with the fund prospectus.
 - 2) Plan assets invested in stable income option(s) which provide for guaranteed interest rate and a guarantee of principal shall be valued at book value, unless otherwise required by generally accepted accounting principles. Interest shall be accounted for on a daily effective method, in accordance with the contract with the County and stable value investment option providers.
- f. Contractor shall maintain records relating to individual Participants and a database shall be kept which, at a minimum, shall include the following fields for active and inactive Participants:
- 1) Name
 - 2) Date of Plan entry
 - 3) Date of birth
 - 4) Date of hire

- 5) Contribution amounts
 - 6) Claim activity
 - 7) Bargaining Unit that the Participant works for
 - 8) Home address and telephone number
 - 9) Social security number
 - 10) Personal identification number (PIN)
 - 11) Beneficiary (ies) -- Contractor shall be the primary record holder of beneficiary designations.
- g. Contractor shall develop a system for correcting erroneous contributions or claim payments. Any errors made by the Contractor shall be corrected at its expense so that the value of the Participant's account is not less than it would have been had the error not occurred. Such system shall provide for prompt repayment or credit of any refunds within fifteen (15) business days following the date on which the reason for such refund or credit is brought to the Contractor's attention by the County.
- h. Contractor shall issue quarterly Participant statements of accounts. Statements are to be mailed by the Contractor to Participants' home addresses (or to County location(s) at the direction of the County) no later than the agreed upon date. Statements shall include, but not be limited to, the following information:
- 1) Participant's name, address, and social security number.
 - 2) Beginning and end balances for the quarter.
 - 3) All activity for the quarter including claims payments, transfers, contributions, earnings/losses, and administrative costs all detailed by investment choice.
 - 4) Show year-to-date information on contributions and withdrawals as well as the totals for a Participant since he/she became eligible.
 - 5) Individual Participant investment performance.
 - 6) General Plan-related messages provided or agreed to by the County.
 - 7) Statement "stuffers" prepared and inserted by the Contractor into each statement mailing envelope: The stuffers will show the results of all investment options for the quarter, the last year, and the last three (3), five (5), and ten (10) years, if applicable, and compare to the appropriate benchmarks, as agreed upon with the Project Manager.
- i. At the request of County, Contractor shall be available to participate in all of County's open enrollment meetings and health fairs throughout the year up to a maximum of twenty one (21) meetings per calendar year. Attendance and promotional materials to be provided by Contractor as part of the base administrative fees and at no additional charge to the County.
- j. Contractor shall provide enrollment support specific to the County's plan design, including welcome packets, handbooks, and ID card production and distribution, as part of the base administrative fees and at no additional charge to the County.
- k. Contractor shall support quarterly account management satisfaction surveys/score cards. The survey and scoring methodology shall be mutually agreed upon prior to contract finalization.
- l. Contractor shall ensure that it complies with all HIPAA Security, Portability and Privacy requirements.
- m. Contractor shall cooperate with the Project Manager and other County officials to establish administrative rules for the operation of the Plan, including enrollments, address changes, contributions, transfers, and termination withdrawals. The Contractor will prepare and publish a comprehensive administrative manual that includes the administrative rules described in the first sentence of this paragraph as well as all legal and tax requirements.

- n. Contractor shall notify the County within thirty (30) days of purchase, acquisition, and any other change in its ownership or partners or control affecting 10% or greater interest, any acquisition by it of 10% or greater interest in any subsidiary, and any new agreement with, by, or between any affiliates that is relevant to the contract.
- o. No services provided to the County will be provided offshore.

3. Investment Services and Trust Administration

Investment Services

- a. Contractor shall ~~make available~~ **recommend** investment options to County. County shall have sole discretion to make the final determination of which investment options shall be made available to Participants. County may elect to make fund changes at any time.
- b. Contractor shall ~~make available to~~ **offer** Participants all investment options authorized by County.
- c. Contractor shall set up all necessary investment accounts and contracts required for the operation of the investment choices to be offered.
- d. Contractor shall record contributions and investment allocations.
- e. Contractor shall accept contribution information in a manner compatible with the County payroll system(s). County will be submitting contribution data on a twenty-six (26) payroll cycle basis.
- f. Contractor will transfer funds ~~it receives to the appropriate investment service provider on the same day it receives the funds, if Contractor receives such amounts in good order before the required time each day. Amounts received in good order later in the day shall be transferred on the next business day~~ **it received to the appropriate investment service provider on the same day it receives the funds, subject to penalty.**
- g. Contractor shall compute the amount of transfers between investment options, adjust the amounts allocated to each investment option, and make these transfers on the day instructions are received in good order from the Participant.
- h. In the event of a change in investment value, including interest, between the time the suspense item should have been invested and the time it is ultimately invested, if the investment value has increased, and the Contractor caused the suspense item to occur, the Contractor must pay the difference between the initial contribution amount and the price of the investment when it is actually purchased. In the event the investment value has gone down, the entire initial contribution amount will be utilized to purchase the investment at its current price so that there is no gain to the Contractor. The Contractor will maintain and report to the County a monthly suspense account balance reflecting all unpaid and uncleared transactions with corresponding occurrence dates. The Contractor will not be responsible for errors made by Participants or the County.

Trust Administration

- i. On behalf of County, Contractor will open and maintain ~~an integral part trust~~ **Internal Revenue** Services Code Section 501(c)(9) or Section 115 trust account, and hold, or instruct the trustee to hold, in such accounts all cash, securities, and certificates of ownership initially deposited plus any additional cash, securities and certificates of ownership that may be received from time to time for the account.

- j. Contractor shall keep accurate books and records detailing all investments, receipts (including all investment income), expenses, disbursements and other transactions relating to the account. Contractor shall maintain records of all transactions, including all historical cost basis information, and provide reports required under this Contract and the applicable trust Contract based on those records. Such reports shall include all information necessary for the preparation of any applicable government or other required filings.
- k. Contractor shall conduct all necessary transactions, including ~~facilitating the purchase and sale~~ ~~the buying and selling~~ of securities and making deposits and withdrawals from investment accounts upon the instructions of authorized parties. As necessary, Contractor shall establish daily interfaces with all investment managers and funds and the record keeper
- l. Contractor shall accrue and pay all authorized Plan expenses in accordance with the applicable Plan document and trust/custody agreement.
- m. Contractor shall conduct all necessary activities to register all securities and shareholder accounts and vote all proxies and tender offers received in accordance with the applicable trust agreement.
- n. Contractor shall provide County a monthly statement of account of the inventory of all the assets in each account, all activity during the previous month, and the market value of all the assets in the account. Contractor shall also provide such other reports as County may reasonably request, including reports to the County Auditor-Controller or its authorized agents. Contractor shall also provide a monthly summary of transactions, including the payment of benefits and expenses from the Plan.
- o. Contractor shall ensure that all custody activities and transactions are in compliance with the provisions of applicable Plan document and trust agreements and do not jeopardize the tax status of the Plan.
- p. Contractor shall prepare all report documents necessary to meet trust reporting requirements and CAFR requirements in accordance with GASB and Federal/State requirements.
- q. Contractor shall provide assistance with preparation of final trust document.
- r. The County is considering inclusion of an optional program for the Contractor to also offer investment advisory and managed account services for those participants who are interested in such services. At County's sole discretion and upon County's specific request, Contractor will offer a program to provide Plan investment account management and advisory services to interested Plan participants. This program would be an optional service. Compensation or financial Incentives paid to vendor representatives for enrolling participants in said services or based on the percentage of participation in the program would be strictly prohibited.

4. Implementation

- a. Within fifteen (15) calendar days of ~~the Contract execution~~ approval by the County Board of Supervisors, Contractor shall begin implementation process (new contract anticipated to start April 1, 2014), ~~and start up of the Plan's current account balance records to its system. On that date, the Contractor shall also begin the approved start up communication and education program that resulted from the submission of the draft implementation plan.~~ The Contractor shall:
 - 1) Provide ~~all requested advice and counsel to the County during the period within thirty (30) days of the Contract Effective Date. The Contractor will also prepare~~ a detailed implementation plan outlining all the steps necessary ~~for the implementation including, but not limited~~ to set up Participant data records, create interfaces with County payroll,

and establish enrollment and reconciliation procedures for data and trust/custody/investment accounts.

- 2) At least thirty (30) calendar days after the Contract Effective Date, Contractor's customer service telephone line must be staffed with a sufficient number of qualified customer service representatives to answer Participant questions about ~~any applicable~~ the changes. Contractor shall have their website available as of Plan implementation, for Participants view Plan information.
 - 3) Communicate changes to Plan Participants. Introduce all investment options, services, pricing, and how Participants may select among any investment options made available under this Contract.
- b. Contractor shall ~~be available to within the three (3) months of the Contract Effective Date,~~ conduct a full schedule of group meetings to announce the Plan and assist Participants in making any changes necessitated by Contractor's provision of services. The Contractor must provide educational personnel qualified to provide comprehensive information on the Plan, record keeping and administration, and the investment lineup agreed to between the Contractor and the County. The meetings should also provide an abbreviated explanation of the basics of investing, including investment concepts and investment risks and returns and how the Plan's options fit on the risk/return continuum. During the implementation ~~this introductory communication~~ phase, the Contractor shall provide meetings at the County's request, in order ~~there must be at least forty (40) group meetings conducted~~ to maximize the opportunity for all Participants to attend.
- 1) Contractor shall also be available to conduct individual meetings to provide more detailed information on any investment options, and assisting Participants with selecting appropriate investments using risk profiling and/or similar educational tools. It is expected the Contractor will conduct individual meetings at locations in or near various work locations. Meeting times and locations will be as mutually agreed upon between the Contractor and the County.
 - 2) Contractor shall enhance the visibility of the Plan by marketing the program through a publicity campaign, including education materials, such as, newsletter, business card with County Logo, brochures, magnets, and pamphlets for all County employees. Text must be prepared and printed by Contractor, subject to review and approval by the County. Contractor will utilize its full line of professional materials including posters, business cards, brochures, magnets, and information cards. These materials will be customized to fit the County's needs ~~and produced and distributed at no additional cost.~~
 - 3) Contractor shall provide additional meetings at the County's request in the event of significant plan changes that the County wishes to communicate to participants.
- c. ~~During the implementation~~ ~~Within the first thirty (30) days after Contract execution,~~ the Contractor will prepare and submit to the Project Manager an educational plan for the initial and ongoing training of County staff. Such training will be delivered to personnel as designated by the County. The training program must give each County staff member the information needed to accurately disseminate information to Participants. This training must, at a minimum, include information on:
- 1) Plan provisions and legal requirements;
 - 2) Plan administration requirements, including the Contractor's administrative operations;
 - 3) Investment concepts; and
 - 4) Details on the investment offerings provided by the Contractor.
 - 5) Procedures for contributions.

- d. Establish Participant account records on Contractor's recordkeeping system. ~~Within ninety (90) days of the Contract Effective Date, the Contractor shall have completed implementation of Participant account balances to its recordkeeping system.~~—In particular, the Contractor shall be required to do the following:
- 1) Work with County ~~and the current provider~~ to verify all existing account records and affect the timely transfer of Participant records as of the Contract Effective Date;
 - 2) Establish Participant master files and Participant accounts to the Contractor's recordkeeping system;
 - 3) Set-up Participant balances, and any new investment options as agreed to with the County; and
 - 4) On the Contract Effective Date, begin to accept Participant contributions on a bi-weekly basis according to the County's twenty-six (26) payroll cycles.

5. Participant Services

- a. Contractor will design and print literature and prepare communications material ~~at no additional cost~~, such as brochures, posters, ~~film strips, slide presentations, webinars videos~~, and any other materials needed for use in educating eligible employees regarding all aspects of the Plan (including investment education, investment performance, investment selection based on risks and returns, and claims processing information), and, with prior written approval of the County, distribute and present this information in an accurate and clear manner ~~at no additional cost~~. In each instance, the Contractor shall fully disclose to each employee all the Plan features and costs.
- b. Contractor will create and, after receiving written approval of the County, publish easily understood Plan self-enrollment materials ~~at no additional cost~~, which can be used by Participants. Enrollment material must include promotional material, explanatory material (including explanations and notices required by law), and enrollment forms, subject to the County's approval. The Contractor will act as the County's agent with regard to the Plan's enrollment agreements.
- c. Contractor will be available to assist employees with the completion of enrollment forms and verify the completeness of the forms. Contractor must use self-enrollment packages, which must contain all information in a complete and concise manner, so that an employee will be able to enroll without having to contact an enrollment representative. Contractor must also be staffed to provide enrollment counseling to employees who wish to discuss Plan participation in person or over the telephone. A supply of self-enrollment packages must also be provided to the County to be made available at various work locations.
- d. Contractor will develop literature to communicate Plan changes when they occur ~~at no additional cost~~, and upon receipt of advance written approval of the County, distribute the literature to each appropriate County Office with a request that it be distributed to eligible Participants. Such literature shall include statement stuffers that can be distributed to employees in envelopes used to send statements.
- e. Contractor will distribute: 1) investment performance information; 2) an investment newsletter; and 3) pertinent articles as statement stuffers in each Participant's quarterly Statement of Account. The stuffers shall include updates on the Plan, investment trends, and any applicable legislative updates.
- f. Materials developed by the Contractor must be submitted to the County for final review and editing and the County must be given at least two (2) weeks for its review. Publications must present an unbiased approach to investment information and educate Participants about all aspects of the Plan, including investment options offered and performance and distribution selections. Contractor must provide adequate quantities of materials to keep in different work

locations. The Contractor must also respond to Participant's requests for publications and mail them to the Participant address of record.

- g. Contractor must maintain an adequate supply and distribute mutual fund prospectuses to Participants.
- h. Contractor shall provide Participant toll-free telephone access to Contractor customer service to: i) receive claim, account and investment option information; ii) conduct transactions related to a Participant's account; and iii) receive requests for forms, sales literature, prospectuses, and other written information between 8:00 a.m. and 5:00 p.m. Pacific Time. Contractor's customer service representatives shall be capable of assisting Participants in accessing information about HRA planning, in general, and the County's Plan, specifically. The customer service representatives will help Participants understand the educational materials the Contractor makes available to help employees make decisions about how to direct their investments given their particular situation.
- i. Contractor will maintain an adequate number of staff to provide the required information and services directly to County Participants. Contractor shall ensure that people with limited English proficiency and those who are deaf or hearing impaired have access to communication services that enable Participants to utilize the phone lines.
- j. Contractor will record all telephone conversations between service representatives and Participants. Recordings will be made available to the County upon request.
- k. Contractor will provide Participant toll-free telephone access to a Voice Response System (VRS) twenty-four (24) hours a day, seven (7) days a week, excluding scheduled maintenance, in order to: i) receive claim, account and investment option information; ii) conduct transactions regarding a Participant's account; and iii) request written information. Specific information and transactions which will be available via touch-tone telephones on this service shall be as follows:
 - 1) Current account total;
 - 2) Claim status;
 - 3) Claim denial appeal process;
 - 4) Current balances of each investment option selected by a Participant;
 - 5) Current interest rates on the stable value investment option;
 - 6) Current net asset values;
 - 7) Current investment allocation information;
 - 8) Ability to transfer balances from one investment option to another;
 - 9) Ability to change the investment allocation of future contributions; and
 - 10) Ability to request fund prospectuses or other informational brochures.
- l. Contractor shall design and maintain a secure, custom website for the Plan, available 24/7/365, and distribute information via the Internet. The website must offer the following information and services to Participants:
 - 1) The following specific Participant information services:
 - (i) Claim status
 - (ii) Claim denial appeal status and process
 - (iii) Current account total.
 - (iv) Current balances of each investment option selected by a Participant.
 - (v) Current interest rates on the fixed investment option(s).
 - (vi) Current net asset values.
 - (vii) Current investment allocation information.
 - (viii) Transfer of balances from one investment option to another.
 - (ix) Change the investment allocation of future contributions

- 2) Retirement planning information, including an interactive planning module that allows Participants to enter their personal financial data and then project a variety of “what if” scenarios, and information about age and income-appropriate portfolio structures;
- 3) Asset allocation questionnaire that will, based on a Participant’s response to several questions, propose an appropriate allocation of investments.
- 4) Information regarding all the investment options available in the Plan:
 - (i) Historical net return information for the last month, the last quarter, calendar year-to-date, the last year, the last three (3) years, the last five (5) years, and the last ten (10) years;
 - (ii) Historical fee information, including management fee information and all other investment expenses;
 - (iii) Volatility information;
 - (iv) Investment style description in layman’s terms;
 - (v) Profile of fund manager and his/her tenure in the job; and
 - (vi) Fund prospectus or informational brochure.
- 5) Information regarding the Contractor’s procedures for the following:
 - (i) When are investment election changes made by the record keeper?
 - (ii) When are changes in contribution allocation made by the record keeper?
 - (iii) Are there any limits on Participant changes or transfers?

6) Educational Webinars and web based investment and financial planning tools

- m. Contractor shall develop and use alternate ID numbers for Participant identification in a format and style approved by County.
- n. Contractor shall provide annual Participant-specific satisfaction surveys with a statistically valid sample size that includes Participants that have utilized services from call center Customer Services Representatives and the Internet. County shall be able to customize this survey at no additional charge.
- o. During the term of the contract, additional collective bargaining units may be added to the Program. In the event this occurs, the Contractor will be required to assist in the implementation, which may include, but not be limited to, group meetings, communication materials etc. These services shall be provided at no additional cost.

6. Data and Systems

- a. Contractor will not modify any operational process during the term of this Contract without the prior notification and approval of the County ~~agrees to discuss any material changes in operational processes that may have a material impact on the administration of the Plan with the County in advance of making such changes.~~
- b. Upon termination of the Contract term, Contractor shall provide data to succeeding Contractor or the County, as directed, including all necessary data and information including but not limited to claims data and patient profiles to ensure an orderly transition, at no additional charge. Contractor shall provide up to two files for historical paid claims and open claims, respectively, within 30 days of the termination of the Contract and deliver all records, accounts of operation and claim files to County.
- c. Contractor shall accept electronic data transfer and administer membership information in compliance with HIPAA standards for privacy, security and electronic data interchange.

- d. Contractor shall provide on-line, unlimited eligibility updating and entry capabilities for authorized the County staff. Subject to applicable laws, rules and regulations relating to privacy and confidentiality, Contractor shall provide County's Benefits Administrator with on-line access to read County's eligibility information.
- e. Contractor shall receive on a twice-monthly basis, an eligibility file of eligible County Participants from County by FTP.
- f. Contractor shall notify County or its designee prior to the eligibility update application, of any material errors or coding problems on the eligibility file that exceeds agreed upon thresholds.
- g. Contractor shall notify the County **immediately** ~~within a reasonable period or as soon as administratively finished~~ upon identification of system-related problems, programming problems or data transfer problems. The Contractor shall make every effort necessary to correct such problems within 48 hours regardless of the time or date in order to minimize any disruption to Participants.
- h. Contractor shall maintain complete records of all claims and payments for a minimum of six years or greater as required by law. At the end of the six-year period, records shall either be transferred to the County or destroyed under the County's direction.
- i. Contractor shall provide necessary data files to respond to government requests or respond to class action lawsuits without additional fees for the length of the contract. Such services shall be provided at standard programmer bill rates as defined by the County after the contract has terminated.
- j. Contractor shall maintain duplicate or back-up computer data files for the Plan in a place of safekeeping. All computer data files of the Plan, as maintained by the Contractor, shall at all times remain the property of the County; notwithstanding the fact that such records may be stored upon or within one (1) or more computer or data retention systems owned, operated, or leased by the Contractor. The County or its representatives shall, at all reasonable times, have access to the records. To the extent that any such records are to be maintained upon a computer system or any other data retention system which is not owned by the Contractor, the Contractor will provide the County with assurances from the owner of such computer facilities, satisfactory to the County, of the continued availability and security of such records at all times.
- k. Contractor shall provide the County access to all back-up source materials, reports, books, records, computer programs, and all other information and documentation relating to the Plan, as reasonably required so that the County and/or its designated officers, agents, and accountants, can conduct a financial examination and/or audit of the Plan as requested by the Project Manager. "Access", for the purposes of this paragraph, is defined to explicitly include the Contractor's copying records and delivering them to the Project Manager.
- l. Contractor shall provide County support staff on-line access to information on the Contractor's recordkeeping system for inquiry and ad-hoc Plan reporting purposes. County staff must be able to obtain Participant account balance information, including the Participant's recent contributions, claims payments, and other transactions, on an inquiry only basis. Staff must also be able to run ad-hoc financial and other data reports for internal use, via easy-to-use report generation. The County will take the necessary steps to enforce password and other security requirements to restrict unauthorized access.

7. Reporting

- a. Contractor shall collect and report statistics and/or summaries on a monthly, quarterly and annual basis as specified ~~and as requested~~ by the County. The reports may be standardized reports provided by the Contractor. If any services are subcontracted, reports shall also include subcontractor's statistics. If the reports do not adequately meet the County requirements, the Contractor shall customize the reports to the County's specifications as part of the base administrative fees with no additional cost to the County. The County's requirements may change from time to time during the life of the contract.
- b. Contractor shall provide a financial and program reporting package to County on a monthly basis. These standard reports will include Plan performance and financial information as required by County.
- c. Contractor shall provide annual reports to County, as follows:
 - 1) Annual Activity Report: A cumulative Plan year statistical report delivered during the Contract Term to parties identified by the County within thirty (30) days after the end of each Plan year. If the Contractor fails to deliver the Annual Activity Report within the specified time period, the Contractor will pay the County \$500 per day.
 - 2) Annual Financial Statement: The Contractor will provide the County with the Plan's annual financial statements and information to ensure the County and/or its independent accounting firm is able to audit the Plan in accordance with generally acceptable accounting principles and GASB requirements. The summary financial reports as specified by the County will be provided within fifteen (15) days after the end of the County's fiscal year. The Plan's Annual Financial Statements will be provided to the County within forty-five (45) days after the end of each Plan year, in a quantity required by the County. If the Contractor fails to deliver the plans' fiscal year and annual financial statements within the specified timeframe, the Contractor shall pay the County a \$500 per day penalty.
 - 3) Annual Reports to Participants and Management ("Stakeholder's Report"): The Contractor will work with the Project Manager or his/her designated representative to create an Annual Report to Participants and Management (the "Annual Stakeholder's Report") that will be produced by the Contractor and delivered to the County within forty-five (45) days after the end of the Plan year. The Stakeholder's Report will include information from the Annual Activity Report and the Annual Financial Statement as well as a description of the then-current investment options available to Participants and any significant Plan changes that occurred during the Plan year. The Annual Stakeholder's Report will be distributed to Participants and senior management of the County.
 - 4) Contractor's Annual Audit: The Contractor will deliver to the County ~~it's a summary of~~ its annual audited financial statements prepared by an independent certified public accountant; ~~provided, however, that the County agrees that such information is confidential and may not be released or disclosed to any third party or used for any purpose other than evaluating Contractor's ability to meet its obligations under this Contract.~~ Contractor's ~~summary of annual audited financial statements~~ must be delivered to the County within one hundred and eighty (180) days of the end of Contractor's fiscal year.
 - 5) Annual SAS 70 Reports: Contractor will provide the Project Manager with a copy of Contractor's ~~Statement of Accounting Standards 70 systems~~ SSAE 16 audit at least annually; ~~provided, however, that the County agrees that such information is confidential~~

~~and may not be released or disclosed to any third party or used for any purpose other than evaluating Contractor's ability to meet its obligations under this Contract.~~

- 6) Trust Fund Reports: Contractor will provide all necessary reports to meet Trust Fund reporting requirements. The format shall be mutually agreed upon by Contractor and County Project Manager.
- d. Contractor shall abide by the following data requirements:
 - 1) Data shall be submitted electronically and by hard copy as requested, according to agreed standards.
 - 2) Data made available electronically shall conform to HIPAA data exchange standards once finalized.
 - 3) The minimum data elements to be provided, where applicable, shall include, but are not limited to the following: participant's name, participant's date of birth, the County identification, claim valuation amounts, denial reason.
- e. The Contractor shall provide County with access to a data management/reporting tool, with access provided to the Consultant identified by County. The tool will be provided as part of the base administrative fees with no additional charge to the County.
- f. Contractor shall provide four user IDs to access the web-enabled on-line reporting tools as part of the base administrative fees with no additional charge to the County.
- g. Contractor shall offer comprehensive onsite or web-based training for the on-line reporting tool as part of the base administrative fees with no additional cost to the County.

8. Audit Rights

- a. Contractor shall provide unrestrictive operational and financial audit rights
- b. Audits shall be performed by the County or a designated, independent third party chosen by the County under the terms of a signed confidentiality and non-disclosure agreement. The designated auditor shall operate under a confidentiality agreement, approved solely by County, covering all external parties, as well as other divisions of its firm.
- c. The County requires the ability to conduct these audits at any time during the contract term upon 30-days written notice to the Contractor. Contractor shall not limit the time period of paid claims to be audited.
- d. The County shall be responsible for payment of an auditor, but shall not be responsible for any Contractor expenses related to an operational or financial audit, including the provision of records.
- e. Contractor shall support the desire for the County to audit performance metrics at any time during the Contract term.

~~9. Performance Guarantees~~

~~The following are Contractor's performance guarantees:~~

	STANDARD	\$ AT-RISK
Participant Services Phone	100% of calls will be answered within an average of less than 45 seconds annualized and in	\$1,000 per year in which this does not occur.

	aggregate for Call Center.	
Onsite Meetings	ICMA RC field staff shall be available for 10 initial education meetings and for 12 ongoing annual education meetings as requested by the County.	\$1,000 per year in which this does not occur.
Participant Statement Delivery	100% of quarterly statements in aggregate mailed within 12 business days, unless performance returns received late due to factors beyond ICMA RC's control.	\$1,000 for each quarter in which less than 99% of statements in aggregate meet deadline due to circumstances under ICMA RC control.
Administrative Functions:		
— Claims Processing	Claims: process 99% of all claims received in good order within 10 business days of receipt	Claims: \$250 for each claims reimbursement received IGO and not processed within benchmark due to ICMA RC error.
— Contribution Posting	100% of Contribution Posting: Same evening at the price as of the close of business that day, if received in good order by 4:00 p.m. Eastern Standard Time	Contribution Posting: \$1,000 per year in which at least 26 payrolls are submitted and in which two or more payrolls received in good order are not processed within benchmark due to ICMA-RC error and are not made whole through the adjustment process.
— Employer Reports	100% of Plan level quarterly statements will be mailed to Orange County within 12 business	\$1,000 for each quarter in which less than 99% of plan level statements in aggregate meet deadline due to circumstances under ICMA RC control.

Evaluation of Service and Payment of Penalties

- (a) ~~Within four (4) months after the end of each calendar year during the Term. Contractor shall compile the necessary documentation and perform the necessary calculations to evaluate its fulfillment of each performance commitment set forth in this Contract and make this information available to the County.~~
- (b) ~~Any disputes concerning the amount Contractor determines to be owed under this Agreement must be raised in writing within sixty (60) days of the date Contractor notifies the County in writing of determination.~~
- (c) ~~If Contractor fails to meet any of the performance commitments set forth in herein, Contractor shall pay to the participants the appropriate penalty as set forth under the Performance Guarantee section of the Scope of Work.~~

- ~~(d) — If the Contract under which Contractor provides insurance or administrative services to the Plan is terminated prior to the end of the Term of this Contract, any penalties owed by Contractor shall be prorated for that portion of the year for which the contract was in force, except that ICMA-RC shall owe no penalties for partial quarters and Contractor shall owe no penalties if the contract is terminated by the County with notice and without cause.~~
- ~~(e) — In the event that the period during which performance is measured is less than twelve (12) consecutive months, the penalty amount set forth under the Performance Guarantee section of the Scope of Work shall be prorated for that portion of the year for which performance measurements are in force.~~
- ~~(f) — The penalty amounts set forth under the Performance Guarantee section of the Scope of Work have been established in relationship to the quarterly fees that the participants are charged by Contractor.~~
- ~~(g) — The total amounts payable by Contractor during each calendar year of the Term for failure to meet the performance commitments set forth under the Performance Guarantee section of the Scope of Work shall not exceed the sum of the maximum penalties identified in the Performance Guarantee section of the Scope of Work.~~

Attachment B
FEES AND INVESTMENT OPTIONS
COMPENSATION/PAYMENT

(Complete and submit as Response to Offeror’s Proposal Questionnaire, Proposal Cost/Compensation)

1. Total Pricing Considerations

In accordance with the Plan Document (Exhibit 4 3), all administrative fees relating these services will be borne by the Participants. While it is understood that under the final agreed upon alliance arrangement the Offeror will receive investment management fees and expenses and/or various revenue from outside parties not limited to commissions, reimbursements, sub-transfer agency, 12(b) 1 or broker fees, the County requires all Offerors provide the County with full and complete disclosure of all costs, fees, and revenue received and any and all financial relationships with third-parties that will be involved, directly or indirectly, in connection with the Plans or the County’s account. Please note that there ~~There~~ can be no commissions or any other incentive given regarding any service and/or products that are marketed to Participants.

For each of the investment options proposed, ~~the following table identifies the total expense ratio, including fund house reimbursement revenue (shareholder services) retained by the Contractor. The Contractor shall provide updated information to the County regarding expenses and fund house reimbursement revenue as requested. Funds and fund fees are subject to change with appropriate prior notification~~ identify the information requested in the table below, including the fund house reimbursement your company will receive and the allocation of assets that you have assumed for each category.

Category	Fund Name	Ticker	Total Expense Ratio*	Fund House Reimbursement	Allocation Of Assets

2. Administrative Fees

Each quarter, the following fees will be assessed to participant accounts. These fees will be reflected on participants' quarterly statements.

Account fee: ~~An account fee of \$7.50 per quarter will be charged to the participant's account beginning the quarter after the participant has become benefit eligible. The billing period is for the quarter in which the participant became benefit eligible. This fee will be waived until a participant attains benefit eligibility.~~

Asset fee: ~~An annual asset fee will be assessed to each participant's account on a quarterly basis. Until such time as the Internet Set Up fee of \$9500 specified in section 3 of this Attachment B is paid in its entirety, the annual asset fee will be 0.40% of assets. Once the Internet Set Up fee has been in its entirety, the annual asset fee will be 0.30% of assets.~~

~~These fees are in addition to the fund expenses outlined in the previous table.~~

- a. Fully describe any additional on-going fees and charges. These must include all asset-based charges and per-participant fees as well as mortality and risk or similar charges. Clearly indicate if the fees are applied to both variable and fixed assets.
- b. Describe fully all matters related to the issuance, maintenance, and administration of your proposed services, including fund offerings. Describe any variations based on account size, number of investment options, or charges for transactions such as withdrawals or benefit payments, including any charges for annuitization or payment initiation such as processing or per check charges.
- c. Describe any ongoing fees and charges associated with processing claims. Describe your methodology for recovering these costs from the Participants.

d. Complete the table below:

	Category	Unit of Measure (UOM) (describe)	Cost Per UOM
1.	Asset Based Administrative Fee		
2.	Fixed Dollar Annual Administration Fees		
3.	Claims Processing Administration Fees (expressed on an annual or per claim basis)		
4.	Other Fees, Costs or Expenses (describe in detail)		
	a.		
	b.		
	c.		
	d.		

3. Implementation Costs

One-time implementation costs that are not covered in the fees proposed above are included in the table below and be borne by the Participants:

- a. Using the format below, identify one-time implementation costs that are not covered in the fees proposed above but that you expect to incur. The proposer must provide an itemized breakdown of the various activities to which these implementation costs are attributable. Categories for these activities may include custom programming, record setup, setup of interfaces with the County, the custodian and/or investment providers, design and development of forms, supplemental education materials, and claims administration implementation.

One-Time Implementation Costs	Fee
Toll-free number set-up	None
Interactive voice response set-up	None
Customer service center set-up	None
Internet set-up	\$9500 Initial Set Up Fee
Plan documentation	None
Other charges: List separately and provide details	None

b. Once you have detailed the implementation costs, describe how you propose to amortize these costs. If the Contract is terminated prior to the end of the initial three (3)-year Term for any reason, other than for cause, indicate any amounts that, at the end of each year, will remain unpaid and specify the contract termination terms you require. The amount of these implementation costs should be expressed in a flat dollar amount.

	Amount, if applicable	Itemized breakdown by activity
Total amount of implementation costs		
Amount remaining at end of Contract year one		
Amount remaining at end of Contract year two		
Amount remaining at end of Contract year three		

c. Confirm that there are no other fees associated with this offering. Identify any exceptions.

4. Pricing Assumptions

The County makes no representations or warranties of any type or kind as part of this RFP. List the assumptions you employed in submitting your Proposal using the table format below:

At End of Agreement Year	Expected Number of Active Participants	Expected Number of Inactive Participants	Expected Number of Participants Receiving Payments	Expected Number of Total Participants	Expected Amount of Assets	Expected Amount of Claims Processed
Year 1						
Year 2						
Year 3						
Year 4						
Year 5						

Note that in evaluating your Proposal, the County will make its own assumptions and that the County makes no guarantees regarding expected assets or participants that you may expect.

5. Advice and Managed Accounts

Identify the applicable fees for advice and managed accounts. Please confirm there are no start-up costs to the County to offer these services.

6. Administrative Funding

The cost of the HRA Plan is intended to be fully funded by the Plan. The County is interested in considering the prospect of receiving administrative funding from the Plan in order to pay for County costs associated with maintaining the Plan. Is your company able to provide administrative funding from the fees collected from participant accounts? If yes, what would be the impact to the fees quoted above if you were to provide \$70,000 per year in administrative funding?

7. Other Compensation

Please note any other compensation not mentioned in this attachment used for administration of the County's HRA program. Please note that compensation not mentioned in this attachment will not be honored by the County. All fees and compensation are outlined in this Attachment B. In the event the County terminates this Contract pursuant to Article 8 or terminates this Contract without cause pursuant to Article 31, any amount outstanding under section 3 of this Attachment B. above shall be payable to Contractor upon such termination and will be borne by the Participants. The Contractor shall receive no other compensation other than the items described in Attachment B.

Attachment C

Proposed Implementation Plan/Project Schedule

(Complete and submit as Response to Offeror's Proposal Questionnaire, Implementation, page 19, # B.1)

The Offeror's Proposal must contain a project schedule (Gantt chart preferred) with time frames for the Offeror's proposed services relative to transitioning, implementing and the administration of the program with a proposed implementation date of April 1, 2014. The Offeror shall demonstrate how the required services as outlined in Section III, Attachment A, Scope of Work, shall be accomplished. The Offeror's plan shall be in terms of elapsed days or weeks from issuance of the notice to proceed and shall minimally identify the task, the number and level of personnel required and an estimate of time for completion. The Offeror's schedule must be approved by the County and may be subject to revision in accordance with the terms of the final Contract.

The approved Implementation Plan and Project Schedule shall be incorporated into the Contract.

Week	Action	Responsible Party
April 1, 2009	Initiate plan adoption process.	ICMA-RC — County
April 1, 2009	An initial implementation meeting is held to: <ul style="list-style-type: none"> • Introduce key ICMA-RC and the County implementation staff • Review a detailed draft of the implementation schedule • Review scope of services document and incorporate tasks into project plan. • Provide a draft of correspondence for the County to announce the plan • Discuss the responsibilities of ICMA-RC and the County • Discuss your requirements for communications and educational materials. Follow-up meetings are conducted as necessary to finalize key decisions. 	ICMA-RC — County
April 10, 2009	Present EZLink/contribution/data layouts for testing.	ICMA-RC
April 10, 2009	Review plan adoption materials and discuss plan design with the County	ICMA-RC
April 27, 2009	Finalize contract, Trust and Fund Lineup [The following dates are applicable provided that the above items have been finalized. In the event of any delay in finalizing the above items, the below dates will be adjusted accordingly.]	ICMA-RC — County
April 27, 2009	Plan adoption materials completed and returned to ICMA-RC	County
April 27, 2009	Update documentation/Investor Services Center online help system.	ICMA-RC
May 11, 2009, 2009	Define/approve communications materials. Includes development of onsite education sessions and ongoing plan communications	ICMA-RC — County
May 11, 2009	Send contribution and maintenance test file to ICMA-RC.	County
May 11, 2009	Provide administration overview including claims processing, forms, etc with account a management team.	ICMA-RC
June 8, 2009	Provide onsite education to plan participants	ICMA-RC
June 10, 2009	Complete EZLink testing, report results, resolve issues.	ICMA-RC — County
June 12, 2009	Receive file of enrollment records for plan participants	ICMA-RC — County

June 19, 2009	Welcome enrollment letter mailed to participants	ICMA-RC
July 1, 2009	Participants can access voice response unit and web site. Fund transfer, investment allocation, and live balance inquiry transaction capabilities available.	ICMA-RC
July 1, 2009	ICMA-RC begins receiving contributions.	ICMA-RC
July 13, 2009	Post mortem to discuss ongoing plan service and strategic goals	ICMA-RC - County

Attachment D

Staffing Plan

(Complete and submit as Response to Offeror's Proposal Questionnaire, page 17, # A.1)

1. Provide an Organizational Chart for the staff listed below.
2. Complete the tables with information regarding the account service team proposed for the County. A short description of the responsibilities of that role is provided to guide your organization in the assignment of the account team.

Account Director	
Name	Lori Riley, Territory Manager
Responsibilities	Ultimately responsible for the overall satisfaction of the account. This individual shall analyze utilization reports, benchmark plan efficiency and assess the County's needs to identify strategic opportunities and recommendations.
Education	Ms. Riley received a bachelor's degree in 1983 from Occidental College. She is an FINRA Series 7 and 63 Registered Representative, and a NASAA Series 65 Registered Investment Adviser Representative.
Experience	Before joining ICMA RC in 1997, Ms. Riley was employed as a Marketing Representative for 15 years with Great Western Bank, where she was the Southern California Deferred Compensation Marketing Representative. She also has experience in retail securities.
Years with company	11
Years in current position	Less than 1
Office location	San Jose, CA
Number of clients	Ms. Riley manages clients in the Southern California area

Account Manager	
Name	Anthony Gatumo, Client Services Manager and National Client Services Team
Responsibilities	Day-to-day operations manager that is in regular contact with the County regarding topics such as eligibility, plan design and Participant issues. This individual ensures proper administration of the program.
Education	Mr. Gatumo earned an M.B.A. in International Management with a Minor in Finance from Morgan State University, Baltimore, Maryland and a B.A. in Finance and Economics from the University of the District of Columbia, Washington, D.C. He is a FINRA Series 6, 7, 63, 24 and 26 Registered Principal.
Experience	Before joining ICMA RC in 2000, Mr. Gatumo's financial services experience was as an Account Relationship/Loan Officer for Standard Chartered Bank. He served as the primary contact for prospective corporate and private customers, and was also responsible for credit analysis, reporting, site visits, loan administration, cash management, and cross-selling of bank products and services.
Years with company	8
Years in current position	7
Office location	Washington DC
Number of clients	Mr. Gatumo is supported by a team of 12 Associates, who service a pool of 357 RHS plans with

Account Manager	
	assets similar in size to the County ¹ .

Investment Manager	
Name	William Roland, CFA – Vice President, Investment Communications & Portfolio Services
Responsibilities	Responsible for oversight of all investments for the County in regular contact with the County regarding any investment or trust issues.
Education	Mr. Roland received his Bachelor degree in Finance and his MBA from Northern Illinois University. He also holds the Chartered Financial Analyst designation and is a Certified Financial Planner.
Experience	Mr. Roland has more than 13 years of experience in the investment industry. Prior to joining ICMA-RC in May 2005, Mr. Roland served in senior roles at various financial institutions, including Senior Vice President and Manager of Retirement Plan Services with National City Corporation, Vice President and Manager of Retirement Plan Services with The First National Bank of Chicago, and Senior Vice President and Manager of the Business Services Group at Bank IV.
Years with company	3 Years
Years in current position	3 Years
Office locations	Washington-DC
Number of clients	Mr. Roland services 30 clients.

Benefits Analyst	
Name	Patricia Chavez, Retirement Plans Specialist
Responsibilities	Available for quarterly meetings as well as ongoing ad hoc discussions with the County staff.
Education	Ms. Chavez received the Degree of Bachelor of Science in Business from the University of Phoenix. She is an FINRA Series 6 and 63 Registered Representative.
Experience	Prior to joining ICMA-RC, Ms. Chavez was a public sector employee assisting in the administration of the Deferred Compensation and Retirement Health Savings Plans for the City of Anaheim.
Years with company	3
Years in current position	3
Office locations	San Jose, CA
Number of clients	Ms. Chavez services 13 clients in Orange County

Participant Service Liaison	
Name	Patricia Chavez, Retirement Plans Specialist
Responsibilities	Responsible for the daily operation and oversight of the customer service team. Responsible for ensuring proper training of staff and ultimately responsible for overall customer satisfaction regarding Participant services.
Education	Ms. Chavez received the Degree of Bachelor of Science in Business from the University of Phoenix. She is an FINRA Series 6 and 63 Registered Representative.
Experience	Prior to joining ICMA-RC, Ms. Chavez was a public sector employee assisting in the administration of the Deferred Compensation and Retirement Health Savings Plans for the City of Anaheim.
Years with company	3

¹ Data represents plans with assets under \$250 million.

Participant Service Liaison	
Years in current position	3
Office locations	San Jose, CA
Number of clients	Ms. Chavez services 13 clients in Orange County

Account Director	
Name	
Responsibilities	Ultimately responsible for the overall satisfaction of the account. This individual shall analyze utilization reports, benchmark plan efficiency and assess the County's needs to identify strategic opportunities and recommendations.
Education	
Experience	
Years with company	
Years in current position	
Office location	
Number of clients	

Account Manager	
Name	
Responsibilities	Day-to-day operations manager that is in regular contact with the County regarding topics such as eligibility, plan design and Participant issues. This individual ensures proper administration of the program.
Education	
Experience	
Years with company	
Years in current position	
Office location	
Number of clients	

Investment Manager	
Name	
Responsibilities	Responsible for oversight of all investments for the County in regular contact with the County regarding any investment or trust issues.
Education	
Experience	
Years with company	
Years in current position	
Office locations	
Number of clients	

Benefits Analyst	
Name	
Responsibilities	Available for quarterly meetings as well as ongoing ad hoc discussions with the County staff.
Education	
Experience	
Years with company	
Years in current position	
Office locations	
Number of clients	

Participant Service Liaison	
Name	
Responsibilities	Responsible for the daily operation and oversight of the customer service team. Responsible for ensuring proper training of staff and ultimately responsible for overall customer satisfaction regarding Participant services.
Education	
Experience	
Years with company	
Years in current position	
Office locations	
Number of clients	

Attachment E

Performance Guarantees

Contractor shall report to the County quarterly upon other frequency if noted below, within 45 days after the close of the reporting period, on its satisfaction of each of the following performance standards.

	Activity	Performance Standard/Activity Requirement
<i>Standard Accounting Activity</i>		
1	Contribution monitoring	Monitor contributions to ensure that all contributions are properly credited to participant accounts and periodically checked for compliance with all IRS and State rules.
2	Contribution posting	Post contribution remissions the next business day, and notify the County the same business day of all contributions that cannot be posted.
3	Changes in investment elections	Process on the next calendar day 100% of all changes in investment elections requested by participants that are received by 4 pm ET/1 pm PT.
4	Transfers/reallocations (daily traded funds)	Execute 100% of all fund transfers (purchases and redemptions) requested by participants within the investments at that day's closing NAV or price, providing the request was entered by close of NYSE and all of the investment option providers associated with the Plan meet the "late day" trading requirements.
5	Speed in correcting transaction errors	Rectify transaction errors within five (5) business days of a participant's notification of such error if received at the home office within 180 days after the statement date. However, should errors not be identified within 180 days of the statement date, or the errors have been made by the participant, the County, or other third party, the error(s) will be corrected within the five (5) business day period, but not made effective retroactively.
<i>Claims Processing</i>		
6	Distributions paid following receipt of request (forms)	Mail or electronically deposit all claims payments no later than fifteen (15) calendar days following the receipt of completed claim form and sufficient materials to substantiate the claim.
7	Claims processing accuracy	Process and pay accurately 99.9% of claims based on the plan requirements. Calculated as the number of claims audited and found to be processed and paid without error divided by the total number of claims paid.
8	Written denial notice	Provide participants with written denial notice for any claim denied for payment within fifteen (15) calendar days of receipt of the claim.
9	Appeal response	Make determination and notify participant of decision regarding any claim denial appeal within 60 days after receipt of the appeal request.
<i>Automated Communications</i>		
10	Confirmation of transactions	Send confirmation to participant for any transfers (including dollar cost averaging and rebalancing), allocation changes, and claims payments. Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. None shall be mailed any later than five (5) days after the transaction.
11	Confirmation of demographic data changes	Send confirmation to participant of the initial participant account establishment and indicative data (including name and address changes). Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. None shall be mailed any later than five (5) days after the transaction.

12	Statements on demand	Produce and mail statements on demand within two (2) business days after participant request is made.
13	Employer Plan Summary Report	Make the Employer Plan Summary Report available within 30 business days from quarter end.
14	PIN mailings	Produce and mail PIN requests within two (2) business days after the participant request is made.
<i>Controls for Manual & Systems Processes & Procedures</i>		
15	Transaction accuracy (participant requested transactions)	Maintain 99% accuracy on transaction processing rate, measured by calculating as the total number of transactions processed without errors by the total number of transactions processed; errors defined through audit and as reported.
16	Distribution of enrollment materials	Mail 100% of enrollment materials to new participants within two (2) business days after request is made.
17	Distribution upon request of generic documents (including administrative forms, prospectuses, plan documents, etc.)	Mail 95% of the documents made available within two (2) business days of the request; 100% of the documents to be faxed or emailed shall be sent the day of the request.
18	Excess system capacity requirements – web	Maintain an average of 25% excess capacity.
19	Excess system capacity requirements – processing	Maintain an average of 25% excess potential/flexibility capacity.
20	Maximum lead time for adding a new fund (for systems changes)	For alliance funds: 20 business days after approval by the County of the new fund implementation plan. For funds that are not part of the Contractor's alliance: 20 days after the fund company agrees to appropriate operational agreements. Contractor must notify County within 15 days if the fund company appears to be unable or unwilling to execute the appropriate operational agreements.
21	Maximum black-out period for adding new fund	Three (3) business days, if two-step fund transition process is not used.
22	Response time for resolving issue when research is required (contact initiated through service reps)	Respond to written complaints within ten (10) business days. Report unresolved complaints to the County after 30 calendar days.
23	System recovery following disaster	72 hours
<i>Participant Education and Outreach</i>		
24	Dedicated staffing	Maintain the contractual level of (# TBD) dedicated, local, in-person educators (or its full-time equivalent). Report any lack of required staffing levels for a period of more than two (2) consecutive weeks or more than three (3) cumulative weeks over a period of three (3) months to County accompanied by an action plan for rectifying the staffing deficiency.
25	Consistency of dedicated staff	Within ten (10) days of the loss of one of the required core dedicated staff members (other than scheduled vacation or approved leaves of absence), notify County of the loss and present a preliminary action plan for remedying the staffing deficiency.
26	Participant survey	Conduct participant survey annually as requested by the County via web, email and phone. Paper survey distribution will be mutually agreed upon between the Parties. Tabulate and share results with County. Present annual results to County no later than 60 days after

		the end of the contract year.
27	Targeted communication campaigns	Prepare an annual target communication plan within 45 days of the beginning of the contract year. Present the results of these campaigns to County within 30 days of the close of each targeted communication campaign.
	<i>Other</i>	
28	Plan sponsor status meetings	Schedule and conduct plan sponsor status meetings and telephone conferences as requested by the County that shall document plan activity for the prior period, plan and participant level service issues, and updated on legislative and industry developments.
29	Attend quarterly advisory committee meetings	One of more representatives of Contractor shall attend the quarterly advisory committee meetings.
30	Prepare agenda for quarterly advisory committee meetings	Prepare and deliver to County the meeting agenda two (2) weeks before the scheduled meeting date.
31	Prepare minutes of quarterly advisory committee meetings	Prepare and deliver to County the meeting minutes four (4) weeks after the meeting date.
33	SSAE 16 and financial audit reports	Annually provide a copy of Contractor's SSAE 16 and financial audit reports within 180 days of the end of the Contractor's fiscal year. Audits shall be prepared by an independent certified public accountant.
34	Administrative manual	Produce and distribute administrative manual and any necessary updates.

Attachment E

Financial Performance Guarantees

Complete the table below indicating the amounts(s) you are willing to place at risk (per year) to meet performance guarantees for the County. Confirm that your company will provide appropriate reporting for these performance metrics. If there are additional performance standards you will offer, please identify them below.

Contractor shall report to the County and make the appropriate penalty payments to the Plan as indicated below.

Standard	Measurement	Financial Penalty for Non-Performance
Implementations Performance Guarantees		
Plan Implementation	Implementation shall be effective on the date agreed to by the County and Contractor, and shall not be delayed due to circumstances which are under the Contractors control.	\$_____ per day in which standard is not met
Client Satisfaction with Implementation	An account management satisfaction score of “3” or better on a “1-5” scoring system	Performance Fee of \$_____
Service & Administrative Performance Guarantees		
Participant phone service	100% of calls will be answered within an average of less than 45 seconds annualized and in aggregate for Call Center.	\$_____ per year in which standard is not met
Participant statement delivery	100% of quarterly statements in aggregate mailed within 12 business days, unless performance returns received late due to factors beyond Contractor control.	\$_____ for each quarter in which less than 99% of statements in aggregate meet deadline
Claims processing	Process 99% of all claims received in good order within 10 business days of receipt	\$_____ for each claims reimbursement received in good order and not processed within benchmark
Contribution posting	100% of Contribution Posting same evening at the price as of the close of business that day, if received in good order by 4:00 p.m. Eastern Standard Time	\$_____ per year in which at least 26 payrolls are submitted and in which two or more payrolls received in good order are not processed within benchmark
Employer reports	100% of Plan level quarterly statements will be mailed to Orange County within 12 business days	\$_____ for each quarter in which plan level statements are not mailed within deadline
Account Management Satisfaction (See Attachment F)	An account management satisfaction composite score of “3” or better on a “1-5” scoring system on based on the Account Management Report Card based on four (4) quarterly assessments	\$_____ per year

ATTACHMENT F

ACCOUNT MANAGEMENT REPORT CARD

Rating Methodology:

- 5 = Completely Satisfied
- 4 = Very Satisfied
- 3 = Satisfied
- 2 = Somewhat Satisfied
- 1 = Dissatisfied

Client/Company Name: County of Orange

Completed By (please print): _____

Client Signature _____

Date completed: _____

Telephone #: _____

County will complete the box with the score that most closely reflects the level of satisfaction with the local account management team with respect to the following service categories. A separate quarterly report card will be completed, signed and dated each quarter.

Measurable Need	1 st Q	2 nd Q	3 rd Q	4 th Q	Composite to be completed by PG Unit
1. Provides client with timely notification of issues impacting Plan and/or Participants.					
2. Responds to Participant issues & questions in a timely, comprehensive manner.					
3. Develops, follows through on action plans; effective coordination to resolve open issues.					
4. Is accessible and attends scheduled meetings.					
5. Delivers agreed upon reports and communication of Contractor results on time.					
Account Management Composite Score (All Categories)	N/A	N/A	N/A	N/A	

Fill in for each quarterly period:

Date Sent to Client: _____ / ____ / ____

Date Returned by Client: _____ / ____ / ____

At the end of each quarterly period, Contractor forward Account Management Report Card to County for completion.

Following the end of the Term and receipt of the fourth (4th) quarterly survey from the County, Contractor will calculate the Composite Score in each performance assessment category by averaging the scores for the four (4) quarters of the Term. The assessments of each of the performance assessment categories will be weighted equally. The Account Management Commitment will be deemed as fulfilled if the average of the Composite Scores in each category (“Account Management Composite Score”) is equal to or greater than the Account Management Composite Score indicated on Attachment E.

EXHIBIT 1

HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT

This Contract is entered into this ___ day of _____, 200_, between the County of Orange (the "County") acting on behalf of the County of Orange Health Reimbursement Arrangement Plan (the "Plan(s)"), and _____ ("Business Associate"). The parties intend to use this Amendment to satisfy the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "the Plan" shall mean County of Orange Health Reimbursement Arrangement Plan; "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by Section 3.0 of this Agreement, or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Plan any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, the Plan agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Plan or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a Designated Record Set, to the Plan as directed, or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526 at the request of Plan or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Plan available, or at the request of the Plan or the Secretary, to the Plan or to the Secretary in a time and manner, which shall be

designated by the Plan or the Secretary, for purposes of the Secretary determining Plan's compliance with the Privacy Rule.

- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to the Plan or an Individual in a prompt and reasonable manner consistent with the HIPAA regulations as designated by the Plan, information collected in accordance with Section 2.0 (i) of this Agreement, to permit Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162. Business Associate further agrees to ensure that any agent, including a subcontractor that conducts standard transactions on its behalf will comply with the EDI Standards.
- (l) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d).

3.0 Permitted or Required Uses and Disclosures by Business Associate

- (a) General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Plan as specified in the Contract referenced above, or in this Agreement, provided that such use or disclosure of Protected Health Information would not violate the Privacy Rule. Business Associate, its agents or subcontractors shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.
- (b) Additional use and disclosure.
 - (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (ii) To the extent that Business Associate uses one or more subcontractors or agents to provider services under this Agreement, and such subcontractors or agents receive or have access to PHI, of the Plan or Business Associate each such subcontractor or agent shall sign an agreement with Business Associate containing the same provisions as this Agreement.
 - (iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
 - (iv) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.

- (a) The Plan shall provide Business Associate with the notice of privacy practices that the Plan produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

- (b) The Plan shall provide Business Associate with any changes in, or revocation of, a specific Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) The Plan shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the Plan has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Permissible Requests by the Plan.

The Plan shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Plan with exception of data aggregation or management and administrative activities of Business Associate.

6.0 Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective as of _____ subject to the Privacy Rule effective April 14, 2003, and any modifications thereof, and shall terminate on _____ or as of renewal date set forth in contract when all of the Protected Health Information provided by the Plan to Business Associate, or created or received by Business Associate on behalf of the Plan, is destroyed or returned to the Plan, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section, which ever occurs first.
- (b) *Termination for Cause.* Without limiting any other of the termination rights of the parties pursuant to the Contract, and upon the Plan's knowledge of a material breach by Business Associate or its subcontractor of a provision under this Agreement or the subcontractor agreement, the Plan shall provide an opportunity for Business Associate or its subcontractor to cure the breach or end the violation and terminate the Contract if Business Associate or its subcontractor does not cure the breach, or end the violation within the time specified by the Plan, or immediately terminate the Contract if Business Associate or its subcontractor has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, the Plan shall report the violation to the Secretary.
- (c) *Effect of Termination.*
 - (i) Except as provided in paragraph (ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from the Plan, or created or received by Business Associate on behalf of the Plan. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plan notification of the conditions that make return or destruction infeasible. If infeasible as agreed to by the parties herein, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7.0 Security of Electronic Protected Health Information

7.1 Security. Business Associate will establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic protected health information. Business Associate will follow generally accepted system security principles and

the requirements of the final HIPAA rule pertaining to the security of health information (“the Security Rule”, published at 45 CFR Parts 160 – 164) as soon as practicable, but no later than April 21, 2005.

7.2 Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides electronic protected health information, agrees to implement reasonable and appropriate safeguards to protect that information.

7.3 Security Incidents. Business Associate will report any security incident of which it becomes aware to Client. For purposes of this agreement, a “security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempt to penetrate computer networks or servers maintained by Business Associate.

8.0 Rights of Individuals

Business Associate recognizes that HIPAA and state law grant individuals rights related to protected health information about them. Business Associate agrees to the following provisions for the protection of those individual rights.

8.1 Procedure. Business Associate will cooperate with Covered Entity in responding to requests by individuals who wish to exercise their rights under HIPAA. Any requests made directly to Business Associate will be referred to the Covered Entity. Covered Entity will be solely responsible for responding to the individual as required by HIPAA or other applicable law. Covered Entity will inform Business Associate in writing of any actions Business Associate is required to take with regard to records of individuals who exercise their rights under HIPAA. Business Associate will follow the direction of the Covered Entity regarding these records, and use commercially reasonable efforts to respond in a timely manner to enable Covered Entity to comply with deadlines established by HIPAA.

8.2 Confidential communications. Business Associate will provide confidential communications to individuals consistent with the requirements of 45 CFR 164.522.

8.3 Access to records. As directed by Covered Entity, Business Associate will provide Covered Entity with an electronic copy (or if an electronic copy is not available, a paper copy) of the “designated record set” of an individual to enable the Covered Entity to grant the individual access to the “designated record set” in accordance with 45 CFR 164.524. Business Associate may charge a reasonable fee for copying or preparing a summary of the designated record set. The fee schedule will be subject to the approval of Covered Entity.

8.4 “Amendment” of record. As directed by Covered Entity, Business Associate will add information to the designated record set of an individual, and forward the additional information to third parties when that information could have a material impact on a decision about the individual, all as required by 45 CFR 164.526.

8.5 Accounting of certain disclosures. Business Associate will make available to Covered Entity the information required to provide individuals an accounting of disclosures in accordance with 45 CFR 164.528.

9.0 Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L No. 104-191.

- (c) *Survival.* The respective rights and obligations of Business Associate under Section 6.0 of this Agreement shall survive the termination of this Addendum.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (e) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state of California to the extent not preempted by the Privacy Rules or other applicable federal law.
- (f) *Indemnification and performance guarantees.* The indemnification and performance guarantee provisions contained in the Contract shall also apply to this Amendment.

EXHIBIT 12

**County of Orange Child Support Enforcement
Certifications Requirements**

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

(Additional sheets may be used if necessary)

"I certify that _____ Company name is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

Authorized Signature	Name	Title	Date
----------------------	------	-------	------

EXHIBIT 23

EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Offerors. An independent contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that...government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for contracting with independent Offerors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of contract
- Amount of contract

First Name _____	Middle Initial _____	Last Name _____
SSN _____		
Contract Number _____		Dollar value of contract _____
Start Date _____		Expiration Date _____

EXHIBIT 34

County of Orange Health Reimbursement Arrangement Plan Document

Any conflict between the Plan document and any other provisions in this Contract and/or its Attachments are resolved in favor of the Plan Document.

