



**SECTION III**

**MODEL CONTRACT BETWEEN**

**COUNTY OF ORANGE**

**AND**

**HEALTH AND HUMAN RESOURCE CENTER**  
**DBA AETNA RESOURCES FOR LIVING**

**FOR**

**AN EMPLOYEE ASSISTANCE PROGRAM**

**SECTION III: CONTRACT**

**Model Contract  
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**MODEL CONTRACT FOR  
AN EMPLOYEE ASSISTANCE PROGRAM**

THIS AGREEMENT to provide an Employee Assistance Program, (hereinafter referred to as “Contract”), is effective July 1, 2019 by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Health and Human Resource Center dba Aetna Resources for Living, with a place of business at 10260 Meanley Drive, San Diego, CA 92131, (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party” or collectively as “Parties”.

**RECITALS**

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) to provide an Employee Assistance Program as defined herein; and

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

WHEREAS, the County’s Board of Supervisors has authorized the Purchasing Agent or authorized Deputy Purchasing Agent to enter into this Contract with Contractor for an Employee Assistance Program;

NOW, THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

**General Terms and Conditions:**

1. **Scope of Contract:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the County will procure an Employee Assistance Program from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
2. **Compensation:** The Contractor agrees to accept the compensation as set forth in “Attachment B”, Cost/Compensation, identified and incorporated herein by this reference, as full remuneration for (a) performing all Services and furnishing all staffing and materials required, (b) any reasonably unforeseen difficulties which may arise or be encountered in the performance of the Services until acceptance, (c) risks connected with the Services, and (d) performance by the Contractor of all its duties and obligations required herein.
3. **Term of Contract:** The initial term of this Contract is for three (3) years, effective July 1, 2019, continuing for three (3) years from that date, unless earlier terminated by the County. The Contract Term may be renewed for two (2) additional consecutive one (1) year terms, upon the mutual written agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors. Permitted renewals of the Contract provided in this paragraph 3 shall not result in any change in any other term, condition or provision of this Contract.
4. **Entire Contract:** This Contract, including its Attachments A, B, C, D, and E, ~~and F~~ and Exhibits 1, ~~and 2 and 3~~, as they now exist or may hereafter be changed, modified or amended and which are attached hereto and incorporated herein by this reference, contains the entire Contract between the

Parties with respect to the matters herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. No exceptions, alternatives, substitutes, or revisions are valid or binding on the County unless authorized by the County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on the County unless accepted in writing by the County's Purchasing Agent or his authorized designee. 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 recitals and articles), and then the attachments and then the exhibits.

5. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on the County unless authorized by the County in writing.
6. **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. 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 adjudication to another county.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
9. **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.
10. **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.
11. **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 portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County Project Manager, as identified below. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County Project Manager 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. Notwithstanding the preceding provisions of this paragraph, (i) services to be performed for County under this Contract may be performed by personnel of Contractor or of any other entity that is controlling, controlled

by, or under common control with, Contractor and (ii) Contractor may assign this Contract and all rights, duties and obligations hereunder to any other entity that is controlling, controlled by, or under common control with the Contractor that succeeds to the business of Contractor providing the services under this Contract. 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 participant interaction may be performed outside the United States of America, with the exception of core Account Team Members as named in Staffing Plan, Attachment DC, or otherwise approved by County, on an as needed basis. In no case may participant specific data be sent to locations outside the United States of America. To the extent that non-core account team members, special project teams and the like are required to do work for the County outside the United States of America, data will not include participant data that will allow for personal identification either as a standalone data element or in combination, for example, social security number, date of birth, personal health information, and home addresses. In instances where previously identified core Account Team Members are required to access participant specific data, as approved by the County, on an as needed basis while outside the United States of America, data will be accessed and viewed only, and will not be stored, changed, or updated in any fashion.

12. **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 1741 of the California Labor Code.
13. **Performance:** Contractor shall warrant 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.
14. **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 attached hereto, 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.
15. **Warranty:** Contractor expressly warrants that the services covered by this Contract: 1) will be performed in a timely, competent and professional manner, in accordance with highest industry standards, by duly qualified and experienced Contractor personnel possessing all relevant

certifications, licenses and permits; 2) will conform to the specifications set forth herein and 3) are fit for the particular purpose 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 18 below and as more fully described in paragraph 18, 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, faulty work performance, negligent or unlawful acts, 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.

16. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, 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 18 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.
17. **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~~ 18 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 violation of such laws.
18. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold 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") harmless 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 Contractor pursuant to 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.
19. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall maintain the level of insurance coverage which is commensurate with the

~~scope of work provided, be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract.~~ It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. -Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. ~~Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:~~

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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 Insurer**

The policy or policies of insurance must be issued by an insurer with 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**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a 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	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence



Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$5,000,000 per claims made <del>or per occurrence</del>
Network Security & Privacy Liability	\$1,000,000 per claims made
Sexual Misconduct	\$1,000,000 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 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad 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.

The Network Security and Privacy Liability policy shall contain the following coverage or endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement or policy coverage page(s) naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.
- 2) ~~A primary and non-contributing endorsement evidencing that the Contractor's~~ Contractor agrees that it's insurance or self-insurance is primary and any insurance or self-insurance maintained by the County of Orange ~~shall will be in~~ excess and non-contributing except for the County's sole negligence.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

~~All insurance~~ The Commercial General Liability, Automobile Liability, and Workers' Compensation policies ~~required by this Contract~~ shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting

within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability and Network Security and Privacy Liability are "Claims-Made" policies, Contractor shall agree to maintain coverage for two (2) years following completion of the Contract.

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

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 (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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 (30) 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.

**20. Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

~~20.~~**21. 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-~~22. **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-~~23. **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. This Account Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Program Manager, which consent shall not be unreasonably withheld.

The Contractor's Account Manager and key personnel 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.

~~23-~~24. **Program Manager:** The County shall appoint a Program Manager to act as liaison between the County and the Contractor during the Term of this Contract. The County's Program Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Program 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 Program Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within three (3) day after written notice by the County's Program Manager. The County's Program 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 further services under this Contract.

~~24-~~25. **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 Program 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-~~26. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder 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 furnished materials shall be used by the Contractor without the express written consent of the County.

~~26-~~27. **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.~~28. **Records:** The Contractor shall keep an accurate record of time expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.

~~28.~~29. **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 County's Program Manager.

~~29.~~30. **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.~~31. **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 subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

~~31.~~32. **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 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract or 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.

~~32.~~33. **Breach of Contract:** The failure of the Contractor to comply with any of the 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. Terminate this Contract immediately, without penalty to the County;
- b. 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;
- c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

~~33.~~34. **Disputes - Contract:** The ~~p~~pParties shall deal in good faith and attempt to resolve potential disputes informally. If the 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 Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

- a. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the ~~p~~pParties 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 the 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 Contract adjustment for which the Contractor believes the County is liable.

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 this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy 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. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section 31 herein.

~~34.~~35. **Orderly Termination:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.

~~35-36.~~ **Force Majeure:** Contractor shall not be in breach of this Contract and assessed with liquidated damages or unsatisfactory performance penalties 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 the County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

~~36-37.~~ **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.

~~37-38.~~ **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.

~~38-39.~~ **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the County’s Program 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 (4) 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: Program Manager, Kellie Aumond  
Human Resource Services/Employee Benefits  
333 W. Santa Ana Blvd., 1st Floor, Room 137  
Santa Ana, CA 92701

Cc: Human Resource Services/Employee Benefits  
Attn: Diana Banzet, Program Manager  
333 W. Santa Ana Blvd., 1st Floor, Room 137  
Santa Ana, CA 92701

Contractor: TBD Aetna Resources for Living  
Attn: Gigi Kaney  
10260 Meanley Drive  
San Diego, CA 92131

~~39-40.~~ **County of Orange Child Support Enforcement Certification Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of notification of selection of award of contract, the selected Contractor agrees to furnish to the Contract Administrator, County Purchasing Agent or the agency/department Deputy Purchasing Agent:

- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and 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;
- C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply. Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, 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 the Contract.

**40.41. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

**42. EDD Independent Contractor Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code 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 Contractors. 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.

41.43. **Precedence:** The Contract 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.

42.44. **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.

43.45. **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.

44.46. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

45.47. **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.

46.48. **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.

47.49. **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.

48.50. **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 Exhibit 1 hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Exhibit 1 shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.

~~49.~~51. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18, 19 and 20 shall survive the termination of this Contract.

~~50.~~52. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

~~51.~~53. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.

~~52.~~54. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with the bid/proposal. Debarment pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department of agency may result in the bid/proposal being deemed non-responsible.

~~53.~~55. **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.

~~54.~~56. **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 18 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.

~~55.~~57. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.

~~56.~~58. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

~~57.~~59. **Incorporation:** This Contract and its Attachments A through ~~F~~E and Exhibits 1 through ~~and 23~~ are attached hereto and incorporated herein by this reference and made a part of this Contract.

**Signature Page to Follow**

**CONTRACT SIGNATURE PAGE**

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

**CONTRACTOR\* Health and Human Resource Center dba Aetna Resources for Living:**

\_\_\_\_\_  
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 contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

*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 the Board of Supervisors on: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy, Office of County Counsel  
Orange County, California

## Attachment A

### Employee Assistance Program Scope of Work

#### I. Background

The County of Orange has approximately 18,500 employees in a multi-disciplinary organization made up of a variety of agencies, representing various occupations and professions, including, but not limited to, law enforcement, legal, engineering, health care, computer services, financial services, social services, public facilities and resource management, planning, transportation, and the administrative functions which support these services.

These agencies are independently administered under the direction of the County Board of Supervisors and the County Executive Office. The majority of these employees are represented by various employee organizations. Employees work in many different locations at various facilities throughout the County. The County's work population is multi-ethnic and multi-cultural.

Employees may be referred to the Employee Assistance Program (EAP) by the County, Employee Organization Representatives, or members of the employee's family. Employees have certain Mental Health and Substance Abuse Benefits under the existing County provided health plans: Cigna, Kaiser, and two self-funded County PPO Health Plans. Blue Shield is the claims administrator for the County's PPO Plans.

The County currently contracts with Aetna Resources for Living. The current EAP has been in place since 2004 and guarantees an annualized utilization rate of 5%. Utilization for FY 2016/17 and FY 2017/18 were 6.9% and 7.0% respectively. The County provides the Contractor with the employee count at the beginning of the contract year. All County employees and their eligible dependents are eligible for the Employee Assistance Program.

Additional historical utilization data:

	<b>FY 2016/17</b>	<b>FY 2017/18</b>
<del>CISDs Conducted</del>	<del>14 sessions (55 hours)</del>	<del>23 sessions (75.5 hours)</del>
<del>Management Consultations</del>	<del>2</del>	<del>10</del>
<del>General Training Hours</del>	<del>53</del>	<del>36.5</del>

County policy requires that the contract go out for competitive bid at this time. The resulting contract will be for the three year period effective 7/1/2019 through 6/30/2022 with an option to renew for two consecutive one-year terms.

The Contractor shall provide an Employee Assistance Program for employees and their families who are experiencing problems, which affect job performance and overall well-being. These problems include but are not limited to:

~~Marital, Family, and Relationship Conflicts  
Alcohol and/or Substance Abuse  
Co-dependency Issues~~

~~Financial/Budgeting Difficulties  
Legal Problems  
Stress, Behavioral, or Emotional Problems  
Child and Elder Care Issues/Provider Referrals  
Work-related Issues~~

**Definitions**

~~*The Board.* The Board of Supervisors for the County of Orange is the legislative and policy making body of the County and is responsible for the review and approval of all service agreements and/or contracts with the County.~~

~~*Employee Benefits Division.* A division of Human Resource Services of the County responsible for the design, implementation and on-going administration of the County's various employee benefit plans and programs.~~

~~*Human Resource Services. (HRS)* The County's HRS department is comprised of various divisions and sections that provide a wide array of personnel and employee services to County departments and agencies. The Chief Human Resource Officer reports directly to the County Executive Officer (CEO).~~

**Scope of Services**

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

**a. Facilities and Staffing**

Contractor shall:

1. Provide EAP services in Contractor's offices or offices of County approved Providers. Service locations shall be mutually agreed upon, in writing, and approved by County Project Manager. Normal services shall be delivered within five days of a request by a participant. Emergency services will be available on a 24-hour-per-day, 7 day-per-week basis. Emergencies will be handled on an immediate basis.
2. Make accommodations for handicapped clients at Contractor or Provider service locations and any future service sites that may be required.
3. Maintain 24 hour, seven days a week access including holidays, to a toll free telephone number with live answer and immediate access to a clinician so that employees, dependents, and County supervisors have immediate access to EAP services when needed, particularly during crisis. Answering services or message machines are not acceptable. Any changes or additions to existing phone numbers during the term of the contract shall be submitted in writing to County 90 days prior to the proposed change and shall be added to existing literature, cards, or other information provided to the employees or agencies, at the Contractor's cost.
4. Maintain a sufficient professional staff that meet all necessary qualifications and licenses required but not limited to California State and Federal law and regulations to provide the subject services in a timely manner, including a minimum of one professional interviewer with at least a Master's Degree in Counseling, Psychology or Social Work and knowledge of community resources or any equivalent combination of education training and experience. Identify qualification of Contractor's staff. Contractor should supply adequately trained personnel to accommodate the County's multi-lingual population.

~~Offeror's proposal should indicate, item by item, how your company intends to meet the above~~

~~requirements.~~

**b. Employees and Their Families**

Contractor shall:

1. Through the toll free line, EAP office locations and/or website, provide assessment and referral to EAP services for necessary mental health and substance abuse treatment services to appropriate community resources. Such assessment and referral to services shall be provided to employees and their family members recognizing language and cultural differences, as well as other potential barriers to effective counseling.
2. At no charge to the employee or family member, provide up to three free, face-to-face sessions for diagnostic assessment, referral and, brief private counseling sessions per incident each year with either counselor who hold one or more of the following credentials: FCC, LCSW, MFCC, Ph.D., Certified Alcohol and Drug Abuse Counselor (CADAC) or Certified Employee Assistance Professional (CEAP) counselors.
3. Hold a valid Knox Keen license or demonstrate compliance with California Knox Keene requirements for any counseling visits.
4. Counseling shall be provided for the full range of common short term counseling needs, such as, but not limited to; family problems, marital problems, drug/alcohol abuse and dependency, depression, anxiety, stress/tension/grief, child and adolescent problems, job performance problems, job attendance problems, inter-personal problems with co-workers and supervisors, and single presenting problems. Intake assessment and referral for medical and referral for medical, debt and legal problems shall be provided by Contractor's certified EAP personnel, with appropriate support counseling to resolve any problems contributing to the medical, debt or legal problems.
5. Provide referral services, when deemed to be warranted, to certified EAP personnel and/or designated health care providers or utilize community resources and providers, which give the best quality care at most reasonable cost.
6. Provide written compliance letter to County Drug Test Administrator in cases of positive alcohol or drug test referrals.
7. Track employee participation and monitor the effectiveness of referral programs for 100% of all referrals (including 100% of all emergent referrals within 24 hours and all urgent referrals within 48 hours and all substance abuse referrals within 7 days).
8. Maintain office hours that accommodate diverse work shifts by having day, evening, and Saturday office hours. Specify if services will be available at one and/or multiple office locations and specify the office hours for each location.
9. Provide timely appointments for assessment and referral within the following standards: emergent callers 0 to 6 hours, as clinically appropriate, urgent appointments 48 hours, routine appointments 5 business days.
10. Maintain confidentiality according to all State and Federal laws.
11. Develop and provide monthly "Lunch Time" seminars at various County locations on topics of health, financial, legal, or other topics as appropriate depending on the time of year and the current issues facing County employees.
12. Coordinate the necessary referral for mental health and substance abuse in conjunction with the employee's possible health plan benefits.
13. Maintain a website for employees and families to obtain relevant information regarding EAP topics.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

**c. County Management/Supervisory Training and Educational Material**

Contractor shall:

1. In the event of a mandatory supervisory referral the Contractor shall develop and execute written "Return to Work Contracts" with EAP participants to establish the stipulations under which the employee may return to work following hospitalization and/or treatment for an addiction, dependency or form of mental illness that may directly interfere with the employee's work if the treatment plan is not followed.
2. In the event of a mandatory supervisory referral the Contractor shall coordinate with the employees' supervisors, including providing information regarding:
  - Whether the employee made and /or kept the EAP appointment
  - Whether the employee accepted or rejected the Employee Assistance Program's recommendation.
  - The employee's progress and status
3. Provide, as needed by agency/departments, training and orientation sessions to County management and supervisory personnel on the program, goals, benefits, and how to refer, including handouts and/or reference materials.
4. Provide educational and promotional material online ~~DVD's and CD-ROMs~~ to the County for use in employee orientations.
5. Provide unlimited 24/7 management consultation and support to managers, supervisors, and departments, which will enhance the use of the EAP as a management resource.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

**d. Program Promotion**

Contractor shall:

1. Enhance the visibility of the EAP services by marketing the program through a publicity plan including EAP educational materials such as emails, newsletters, brochures, magnets, ~~key chains~~, pamphlets for all County employees. Text must be prepared and printed by Contractor, subject to review and approval by the County Project Manager.
2. Provide a quarterly EAP Newsletter email. Text must be prepared by Contractor, subject to review and approval by the County Project Manager.
3. Provide articles for the newsletter that are appropriate for the issues facing County employees and their families, including articles, which upon request, will be customized to the County.
4. Upon request, provide additional informational articles and/or fliers, including those customized to the County employees.
5. Design, produce, and distribute brochures, posters, pocket cards, and other promotional materials for use in all County facilities, made available in Spanish, Vietnamese, Japanese, Farsi, Tagalog, Thai, Laotian, Chinese and Cambodian. As well as some professionals who can provide services in sign language.
6. Materials to be distributed by Contractor, to County agency/departments on request.
7. Participate, upon request, in Health Fairs and/or Wellness activities organized for County employees. Provide Annual Management training on EAP, EAP Orientation for Employees, and provide two (2) EAP staff persons to participate in annual OCEA Health Fair booth.
8. Inform the various employee organizations about the EAP and work with them to facilitate referrals to the EAP.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements~~

#### e. Critical Incident Stress Debriefings (CISD's)

Contractor shall:

1. Provide on-site group and individual counseling for employees/supervisors who have experienced trauma/crisis in the workplace. If there are time or scheduling constraints, multiple sessions are to be scheduled, and alternative meeting places are to be arranged. For purposes of this contract, a Critical Incident Stress Debriefing is defined as a traumatic incident occurring at the worksite, or to an employee, which can create the risk of significant disruption in the performance of the workgroup.
2. Provide CISD services to one or more employees, co-workers, supervisors, and family members, when appropriate, within 24 – 48 hours, of the request or incident. CISD shall be available 7 days a week, including post CISD follow up and referral coordination.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

#### f. Management Information Reports

Contractor shall:

1. Provide on a quarterly basis, reports to aid management in evaluating the effectiveness of the EAP as an Employee Benefit and a Management tool. Reports are to include the following:
  - Quarterly, YTD and annual program utilization including:
    - the number of unique callers to the EAP line (or to the EAP office location) ~~as a percent of eligible employees,~~
    - the total number of referrals including breakdown by type of case, and type of unique cases with at least 1 face to face counseling visit,
    - the total number ~~and type of~~ face-to-face counseling visits,
    - the number of telephone assessments,
    - the number and type of EAP cases resolved within the EAP,
    - the number and type of EAP callers referred directly to Behavioral Health treatment under their medical plan benefits,
    - the total number and title of training sessions provided and attendance,
    - the total number of CISD hours or sessions provided,
    - the total number and type of web-hits
  - ~~Client wait time, including initial call to assessment, assessment to referral, or initial call to referral, if no assessment is required.~~
  - Total number of EAP sessions given during the period
  - Client breakdown by primary problem, including graph table and change since last period
  - Client breakdown by age, group, and sex, including change since last period
  - ~~Client breakdown by ethnic origin~~
  - Client breakdown by referral type, including change since last period
  - Supervisory referral, breakdown by problem type, including change since last period
  - ~~Client breakdown by job category, including change since last period~~
  - Client breakdown by agency, ~~including change since last period~~
  - ~~Client breakdown by marital status~~
  - Status of closed cases



- Promotional activities
  - CISD's performed during the reporting period.
2. Contractor shall additionally provide the following:
- Quarterly program summary showing number of new cases
  - Annual program summary letter and promotion plan for the upcoming year

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

#### **g. Records Retention and Audit**

Contractor shall:

1. Maintain an individual chart for each referral for whom assessment is provided to employee and/or employee's family. The chart shall include but not be limited to the following:
  - Employee face sheet documentation for the type of problem identified, nature of the referral, demographic and departmental information on the participating employee
  - Assessment and clinical evaluation of client status and treatment needs
  - Summary of referral action including prognosis
  - Consent to refer form
  - All charts shall have a unique means of identification
2. Maintain written policies and procedure in the program office available for County review to include at least the following:
  - Specific goals and measurable objectives supportive of the program's stated philosophy
  - Referral procedures and resources
  - Program activities, goals, and objectives including hours and locations of services
  - Procedures for dealing with special needs of non-English speaking or disabled clients
  - Job descriptions for all staff positions
  - Current organizational chart showing all staff and positions
  - Follow up procedures
  - Procedures for internal evaluation and record review
  - Emergency Medical procedure

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

#### **h. Notification of Death and Special Incidents**

Contractor shall:

1. Notify the County of the death of any person serviced under the Contract including written notification.
2. Notify the County within twenty-four hours when becoming aware of any occurrence of a serious nature which may expose the County to liability, including, but not limited to, Accident, injury, negligence, or loss or damage to County property in possession of the Offeror.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

**i. Other**

## Contractor Shall:

1. Assist the County in containing or reducing the cost of benefits without affecting the quality of care provided by:
  - Consulting with Employee Benefits personnel on methods by which the EAP contractor identifies cost effective substance abuse and mental health treatments within the medical plan network.
  - Easing members into behavioral health benefits in order to resolve issues before they require treatment that is more extensive
  - Using self-help groups appropriately as an integral part of treatment planning where appropriate.
2. Publicize the Contractor's participation in Substance Abuse PPO's which provide treatment through existing programs at reduced fees, and communicate these discounted rates to County health plans when applicable.
3. Encourage outpatient treatment whenever appropriate.
4. Assist in the substance abuse education program. Program objectives would include:
  - Inform employees
  - Furnish information to supervisors on how to deal with employees experiencing performance problems as a result of alcohol and/or drug abuse.
  - Provide information regarding drug/alcohol abuse for new employee orientation when requested.
  - Contribute articles regarding drug and/or alcohol abuse for County publications, where appropriate.
  - Assist Human Resource Services and/or individual County agencies in the development and presentation of a supervisory training program on alcohol and substance abuse.
5. Promote a positive workforce environment by providing the following:
  - Employee Orientation
  - Drug-Free Workplace
  - Stress Management
  - Time Management
  - Workplace Violence
  - Cultural Diversity
  - Health Promotion
6. Provide a broad array of preventive-focused services:
  - Web-based educational materials
  - Weight loss programs
  - Smoking-cessation programs
  - Guidance to community and self-help resources
7. Develop work/life services that help the County address strategic issues:
  - Productivity
  - Recruitment
  - Retention
  - Employee commitment
8. Serve as the "Trusted Advisor" to the County in term of the following:
  - Benefits modification
  - Necessary training interventions
  - Program offerings
  - Specialized interventions for problems areas

9. Provide a website for participants to obtain articles and information regarding relevant EAP topics.

~~Offeror's proposal shall indicate, item by item, how your company intends to meet the above requirements.~~

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## Attachment B

### Cost/Compensation for Contractor Services

~~(Complete and submit as Response to Offeror's Proposal Questionnaire, Proposed Cost/Compensation, page 26, 1)~~

This is a fixed fee Contract between the County and Contractor for services provided in Attachment A, Scope of Work.

In accordance with the provisions of Article 2 of the General Terms and Conditions, the Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work.

#### 1. Compensation

~~The County of Orange contemplates award of a~~ This is a firm fixed price contract ~~resulting from this solicitation~~ between the County and Contractor for professional services for an Employee Assistance Program. The annual firm fixed price ~~should include~~ unlimited standard crisis response services up to ten (10) hours per incident ~~thirty five (35) CISD full sessions,~~ and unlimited training and orientation sessions. County agrees to compensate the Contractor per firm fixed price contract as set forth below. Contractor agrees to accept the same as full compensation for performing all services and furnishings all staffing and materials called for; and for risks connected with the services; and for performance by Contractor of all its duties and obligations hereunder.

#### 2. Contractor -Expense

The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking during the performance of work and services under this Contract.

a. The total cost for Year 1, July 1, 2019 through June 30, 2020, ~~Year 2, and Year 3~~  
\$119,911.20

b. The total cost for Year 2, July 1, 2020 through June 30, 2021  
\$143,893.20

c. The total cost for Year 3, July 1, 2021 through June 30, 2022  
\$171,552.00

~~b.d.~~ The total cost for option Year 4, if exercised, July 1, 2022 through June 30, 2023:  
\$171,552.00

~~e.e.~~ The total cost for option Year 5, if exercised, July 1, 2023 through June 30, 2024:  
\$171,552.00

The annual amount will be prorated by 12 months to determine the monthly billings. The annual fee shall include all expenses related to the performance of work and services required to meet the requirements of this Scope of Work.

#### Services Included in EAP Fee

- Marital, Family, and Relationship conflicts
- Alcohol and/or substance abuse
- Co-dependency Issues
- Financial/Budgeting Difficulties
- Legal Problems

- Stress, Behavioral, or Emotional Problems
- Child and Elder Care Issues
- Workplace Issues
- Lunchtime Seminars
- Management Training
- CISDs (Unlimited up to 10 hours per incident for Standard service-response time greater than 2 hours)
- Business Cards with Logo (Available on as needed basis)
- Fliers, Newsletters, Distribution (Available on as needed basis)
- Refrigerator Magnets (Available on as needed basis)

<b>EAP Services</b>	<b>Included in Proposal?</b>
<del>Marital, Family, and Relationship conflicts</del>	
<del>Alcohol and/or substance abuse</del>	
<del>Co-dependency Issues</del>	
<del>Financial/Budgeting Difficulties</del>	
<del>Legal Problems</del>	
<del>Stress, Behavioral, or Emotional Problems</del>	
<del>Child and Elder Care Issues</del>	
<del>Workplace Issues</del>	
<del>Lunch Time Seminars</del>	
<del>Management Training</del>	
<del>CISDs (up to 35 full sessions)</del>	

**Price schedule for additional services not included in fixed price:**

CISDs for immediate service and standard services beyond the ten (10) hour cap are subject to the hourly rates below:

- Standard services exceeding 10 hour cap: On-site attendance response time in greater than two hours. \$250 per hour plus travel fee
- Immediate services: On-site attendance response time in less than two hours. \$350 per hour plus travel fee
- Travel and preparation expenses reimbursed at a flat rate of \$150 per location

**Year 1-3 of Contract**

Item	Description	Unit	Price	Annual Price
1	EAP	Fee		
2	CISD Half Day (1-19)	Each		
3	CISD Full Day (1-19)	Each		
4	CISD Half Day (20-39)	Each		
5	CISD Full Day (20-39)	Each		
6	CISD Half Day (40 and over)	Each		

7	CISD Full Day (40 and over)	Each		
8	Business Cards with Logo	Each		
9	Fliers, Newsletters, Distribution	Per Sheet		
10	Refrigerator Magnets, 3 colors	Each		

**Option Year 4**

Item	Description	Unit	Price	Annual Price
1	EAP	Fee		
2	CISD Half Day (1-19)	Each		
3	CISD Full Day (1-19)	Each		
4	CISD Half Day (20-39)	Each		
5	CISD Full Day (20-39)	Each		
6	CISD Half Day (40 and over)	Each		
7	CISD Full Day (40 and over)	Each		
8	Business Cards with Logo	Each		
9	Fliers, Newsletters, Distribution	Per Sheet		
10	Refrigerator Magnets, 3 colors	Each		

**Option Year 5**

Item	Description	Unit	Price	Annual Price
1	EAP	Fee		
2	CISD Half Day (1-19)	Each		
3	CISD Full Day (1-19)	Each		
4	CISD Half Day (20-39)	Each		
5	CISD Full Day (20-39)	Each		
6	CISD Half Day (40 and over)	Each		
7	CISD Full Day (40 and over)	Each		
8	Business Cards with Logo	Each		
9	Fliers, Newsletters, Distribution	Per Sheet		
10	Refrigerator Magnets, 3 colors	Each		

The annual amount will be prorated by twelve months to determine the monthly billings. The annual fee shall include all expenses related to the performance of work and services required to meet the requirements of this Scope of Work.

If there are any additional charges associated with the requirements of the Scope of Work, other than the flat rate per year, note them below.

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**3. Firm Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

**4. Payment Terms:** Invoices are to be submitted in arrears to the Program Manager, unless otherwise directed in this contract. Vendor shall reference contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor. Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the contractor for goods or services not provided or when goods or services do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.

**5. Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor’s letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor’s name and address
2. Contractor’s remittance address, if different from 1 above
3. Name of County agency/department
4. Delivery/service address
5. Contractor/Subordinate contract or number
6. Date of order
7. Type of fees/service
  - a. Sales tax, if applicable
  - b. Dates of fees/service
  - c. Brief description of fees/service
  - d. Contractor’s Federal I.D. Number

The Contractor shall be fully responsible for providing an acceptable invoice to the County. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

The County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Invoices and support documentation are to be forwarded to:

Kellie Aumond, Program Manager

Human Resource Services/Employee Benefits  
Hall of Administration  
333 W. Santa Ana Blvd., Room 137  
Santa Ana, CA 92701

The County's Program Manager at HR/Employee Benefits in conjunction with Employee Benefits Finance is responsible for approval of invoices and subsequent submittal of invoices to the County Auditor-Controller for payment processing.

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## **ATTACHMENT C**

### **Proposed Implementation Plan/Project Schedule**

~~(Complete and submit as Response to Offeror's Proposal Questionnaire, Implementation, page 25, F.1)~~

~~The Offeror's Proposal must contain a project schedule with time frames for the administration of an Employee Assistance Program implementation date of July 1, 2019. The Offeror shall demonstrate how the required services as outlined in 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.~~

## ATTACHMENT DC Staffing Plan

(Complete and submit as Response to Offeror’s Proposal Questionnaire, Staffing Plan, page 22, C.2)

**1. Primary Staff to perform Contract duties**

Name	Classification/Title	Experience/Qualifications
<u>Gigi Kaney</u>	<u>Account Executive</u>	<u>Over 14 years of EAP experience and 18 years of HR/Management experience</u>

**2. Alternate staff (for use only if primary staff are not available)**

Name	Classification/Title	Experience/Qualifications
<u>Cheryl Rhoads</u>	<u>Account Executive</u>	<u>27 Years HR/EAP experience; Bachelor’s degree in Behavioral Science; Master’s degree in Counseling Psychology; Certified Employee Assistance Professional (CEAP); and Certified Substance Abuse Professional (SAP)</u>
<u>Peggy Wagner</u>	<u>President/Director of California Services</u>	<u>29 years EAP/Behavioral Health experience; Bachelor’s degree in Social Work; Master’s degree in Social Certified Employee Assistance Professional (CEAP) Licensed Clinical Social Worker (LCSW)</u>

Substitution or addition of Contractor’s key personnel in any given category or classification shall be allowed only with prior written approval of the County’s Project Manager.

The Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/class required. Assignment of additional key personnel shall be subject to County’s Project Manager approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

**3. Sub-contractor(s)**

In accordance with Article 11 “Assignment or Sub-Contracting”, listed below are Sub-contractor(s) anticipated by Contractor to perform services specified in Attachment A, Scope of Work.

<b>Company Name</b>	<b>Staff Name</b>
<u>CLC, Inc.</u>	<u>Designated staffing not involved. Warm transfer used for services. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>R3 Continuum</u>	<u>Designated staffing not involved. Warm transfer used for services. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>Esteemed Human Development International</u>	<u>Designated staffing not involved. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>American Substance Abuse Professionals</u>	<u>Designated staffing not involved. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>The National Behavioral Health Council</u>	<u>Designated staffing not involved. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>LifeCare</u>	<u>Designated staffing not involved. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>
<u>Balancing Life's Issues</u>	<u>Designated staffing not involved. Account Executive Gigi Kaney will address any account-specific issues as Single Point of Contact.</u>

## ATTACHMENT ~~E~~ Performance Guarantees

~~(Complete and submit as Response to Offeror’s Proposal Questionnaire, Performance Guarantees page 25, H)~~

Following the end of each quarter the County shall complete the **Account Management Report Card** and submit to Contractor. ~~(See Attachment F)~~ At the end of the term, 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 the Account Management Report Card.

Contractor shall report to the County on a quarterly basis within 45 days after close of the reporting period. **Complete the table below indicating the amount/percentage at risk per quarter if the stated standards are not met. If there are additional performance standards you will offer, please identify them below.**

Performance Standard	Financial Amount at Risk
Standard Timely Production of Monthly Newsletter- Contractor guarantees that monthly newsletters will be produced and provided to the County’s Project Manager for electronic distribution and/or posting on the County’s EAP website by the <del>1<sup>st</sup>-7<sup>th</sup></del> of each month. <u>This standard shall be measured and reported quarterly to County’s Project Manager.</u>	<u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u>
Standard Timely Production of Management Reports- Contractor guarantees that EAP usage reports shall be provided to County Management within 45 calendar days after the end of a quarterly reporting period. This standard shall be measured and reported on a quarterly basis to County’s <del>P</del> project <del>m</del> Manager.	<u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u>
Standard Frequency of Account Management Meetings to Review Results - Contractor guarantees it will meet with County as needed and requested through the implementation process and a minimum of quarterly thereafter. This standard shall be measured and reported quarterly to County’s Project Manager.	<u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u>
<del>Standard Wait Time- Contractor guarantees the client wait times as noted below. This standard shall be measured and reported quarterly to County's Project Manager.</del>	
<ul style="list-style-type: none"> <li>• <del>Upon initial call, assessment appointment with EAP counselor will be offered/made within 24-96 hours, depending on the urgency of the problem</del></li> </ul>	
<ul style="list-style-type: none"> <li>• <del>Upon assessment, referral appointment will be offered/made within 24-96 hours, depending on the urgency of the problem</del></li> </ul>	
<ul style="list-style-type: none"> <li>• <del>Initial call to referral; Appointment/referral offered/made within 1-8 calendar days</del></li> </ul>	
<u>Average Speed to Answer – Contractor guarantees that &gt; 90% of calls will be answered within 30 seconds or less. This standard shall be measured and reported on a quarterly basis to County’s Project Manager.</u>	<u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u>

Performance Standard	Financial Amount at Risk
<p><u>Abandonment Rate-</u>  <u>Contractor guarantees that the average rate of telephone abandonment will not exceed 3%. This standard shall be measured and reported on a quarterly basis to County's Project Manager.</u></p>	<p><u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u></p>
<p><u>Utilization:-</u>  <u>Contractor guarantees an EAP utilization rate of 5%. Utilization will be calculated using the number of full-time and part-time employees as of the beginning of the Contract year provided by the County. This standard shall be measured and reported on a quarterly basis to County's Project Manager</u></p>	<p><u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u></p>
<p><u>Member Satisfaction-</u>  <u>Contractor shall conduct a member satisfaction survey. Members shall rate "agree" or "strongly agree" on the survey for an overall positive response rate of 85% or better. The rating method shall be balanced so that there are an equal number of "agree" and "disagree" response options. If the survey return rate is less than 10%, then Book of Business satisfaction rates will be used. This standard shall be measured and reported on a quarterly basis to County's Project Manager</u></p>	<p><u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u></p>
<p><u>Account Management Satisfaction (See Attachment <del>FE</del>)</u>  <u>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.</u></p>	<p><u>\$1,500 per quarter. No individual performance standard penalty shall exceed \$3,000 per year.</u></p>

Penalties will be paid annually within 60 days after 4<sup>th</sup> quarter reporting. Total penalties at risk shall not exceed \$15,000 per year.

**ATTACHMENT FE**  
 (See attachment E, page 57-58)

**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 <sup>st</sup> Q	2 <sup>nd</sup> Q	3 <sup>rd</sup> Q	4 <sup>th</sup> Q	Composite Score
1. Provides County with timely notification of issues impacting program and/or participants					
2. Responds to issues and questions in a timely, comprehensive manner.					
3. Develops, follows through on action plans; effective coordination to resolve open issues.					
4. Attends regularly scheduled meetings – quarterly.					
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:                  /    /          /    /          /    /          /    /   

Following the end of each quarter the County shall complete the Account Management Report Card and submit to Contractor. At the end of the term, 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 the on Attachment D.

**EXHIBIT 1**  
**BUSINESS ASSOCIATE CONTRACT**

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract # that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract #, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract #.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract # in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract, as it exists now or may hereafter be updated with notice to the Contractor and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract #.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under

the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. "The HIPAA 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.

10. "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA



regulations in 45 CFR § 160.103.

11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

#### C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract #, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request

by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract #, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

#### D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

#### E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach,

however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

**ICSO/OCIT Enterprise Privacy & Cybersecurity**  
Attn: Linda Le  
Address 1501 E St Andrews Place  
Santa Ana, CA 92705  
Phone Number: 714-834-4082  
Email Address: [Linda.Le@ocit.ocgov.com](mailto:Linda.Le@ocit.ocgov.com)  
[privacyofficerinbox@ocit.ocgov.vcom](mailto:privacyofficerinbox@ocit.ocgov.vcom)

a. Contractor's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor's notification shall include, to the extent possible:

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

(1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

(4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

(5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

#### F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract #, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

#### G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

#### H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract #, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract # is feasible.

2. Upon termination of the Contract #, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

b. Contractor shall retain no copies of the PHI.

c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.



**EXHIBIT 3**

**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/txier.htm](http://www.edd.ca.gov/txier.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 _____