



**ADMINISTRATIVE SERVICES AGREEMENT
FOR RETIREE HEALTH PLAN FOR
THE COUNTY OF ORANGE**

Administrative Services Agreement

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**ADMINISTRATIVE SERVICES AGREEMENT
FOR
RETIREE HEALTH PLAN
FOR THE
COUNTY OF ORANGE**

THIS “Contract” is effective January 1, 2016 by and by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and SCAN, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party,” or collectively referred to as “Parties.”

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for offering Retiree health plan benefits to County Retiree enrollees;

WHEREAS, Contractor has been selected to offer such benefits to Retiree enrollees, effective January 1, 2016, through a Group Services Agreement (“GSA”) which may be amended from time to time and which must be approved by the State of California Department of Managed Health Care;

WHEREAS, in consideration of the County allowing Contractor to offer health benefits to County Retiree enrollees, Contractor has agreed to certain performance guarantees in connection with services provided under the GSA;

NOW, THEREFORE, the PARTIES mutually agree as follows:

ARTICLES

1. **Performance Guarantees:** Contractor agrees to provide the County the performance guarantees specified in Attachment A and to pay any penalties incurred in accordance with the terms of Attachment A.
2. **Contract Term:** The ~~initial term of this Contract shall commence~~ ~~is for three (3) years effective~~ January 1, 2016, ~~and shall continue in effect through December 31, 2019~~ ~~continuing for three (3) years~~ ~~from that date~~, unless terminated by County. Contract may be renewed for up to ~~two (2)~~ **one (1)** additional one (1) year terms, upon mutual agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors. The County does not have to give a reason if it elects not to renew this Contract.
3. **Entire Agreement:** This Contract, including the GSA and Attachments A, B, C, and D contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.
4. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties.
5. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or

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- interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.
6. **Appropriation/Contingency of Funds:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the Term of this Contract. If such appropriations are not approved, this Contract will be immediately terminated without penalty to the County.
 7. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
 8. **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.
 9. **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. 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 shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County consents to the subcontractors listed in Attachment D.3. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its Attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents as relates to this Contract may be performed outside the United States of America. Further no participant specific data including but not limited to name, personal health information, social security numbers, addresses, information regarding dependents, or date of birth may be accessed outside the United States of America by Contractor, its affiliates, or their employees, directors, or subcontractors.
 10. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1720 *et seq.*, of the California Labor Code.
 11. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public

authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.

12. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
13. **Patent/Copyright Materials/Proprietary Infringement:** Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 19 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
14. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by 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.
15. **Insurance:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall 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

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

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

Qualified 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:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 limit per occurrence (minimum limit) \$2,000,000 aggregate (minimum limit)
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence (minimum limit)
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 limit per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence
Network Security and Privacy Liability Insurance	\$1,000,00 per claims mad or per occurrence

Required Coverage Forms

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

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

Required Endorsements

The Commercial General Liability policy and the Network Security and Privacy policies shall contain the following endorsements, which shall accompany the Certificate of insurance:

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

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

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

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 policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of 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 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

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insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

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

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

16. **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.
17. **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.
18. **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 project 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.

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

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additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing services to County under this Contract.

20. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
21. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor provided however that the parties agree that all eligibility and claim records are the property of Contractor. Except in regards to eligibility and claim records, 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.
22. **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.
23. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection. The County reserves the right to audit and verify the Contractor's records before final payment is made.

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

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

24. **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.

25. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractor's and third parties associated with accomplishing services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
26. **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, 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.
27. **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. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above; and/or
 - c. Terminate this Contract immediately, without penalty to the County.
28. **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's project manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:
 - a. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.

c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

29. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

At the end of the term of this Contract or in the event of termination of this Contract by either party, the Contractor agrees to provide County with a computer history tape (in a form and format reasonable acceptable to the County) with information necessary to transfer the records of each member's history of Claims within thirty (30) days of the effective date of the termination of this Contract. County may request copies of individual files necessary to reconstruct individual histories on specified members for up to five (5) years after termination of this Contract.

At the end of the term of this Contract or in the event of termination of the Contract by either Party and upon the request of County Contractor agrees to continue the administration of claims incurred prior to the effective ending date of this Contract for a period of six months after the termination date.

30. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

31. **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.

32. **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.

33. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing, except through the course of the County's project manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The

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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, Kim Derrick
Human Resource Services/Employee Benefits
333 W. Santa Ana Blvd., Room 137
Santa Ana, CA 92701

Contractor: SCAN
3800 Kilroy Airport Way, Suite 100
Long Beach, CA 90806

34. **County Child Support Enforcement:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Contract.
35. **Change Of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
36. **Precedence:** The documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the Attachments and Exhibits.
37. **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.
38. **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.
39. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
40. **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.
41. **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.

42. **Third Party Beneficiaries:** This Contract is for the benefit of the County and Contractor and not for any other person. It shall not create any legal relationship between Contractor and any employee, beneficiary or any other party claiming any right, whether legal or equitable, under the terms of this Contract or the GSA.
43. **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.
44. **Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Attachment D hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Attachment D shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.
45. **Payment:** Premium payment will be based upon the number of active subscribers and associated rate as provided by the County to the Contractor on the monthly Premium Report. Payment for the month will be made on or before the 30th day of each month, representing payment for services provided in the current month, i.e. payment for the month of January will be paid by January 30th. In addition to Premium payment, Contractor agrees to pay for Open Enrollment communications costs billed by County based on the number of retiree health plans and the required communication materials needed, up to a maximum of \$16,500 annually.
46. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18, 19, 20 and 21 shall survive the termination of this Contract.
47. **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.
48. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.

Attachment G – Redline Changes to Contract with SCAN

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

50. **Incorporation:** This Contract and its Attachments A through D and Exhibits 1 and 2 are attached hereto and incorporated by reference and made a part of this Contract.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT SIGNATURE PAGE

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

CONTRACTOR*

Print Name Title

Signature Date

Print Name Title

Signature Date

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

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

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

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

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

Print Name Title

Signature Date

Approved by Board of Supervisors on: Date _____

APPROVED AS TO FORM:

Deputy, Office of County Counsel
Orange County, California

Attachment A

PERFORMANCE COMMITMENTS AND PENALITES

PERFORMANCE GUARANTEES ANNUAL SERVICE METRICS

I. Performance Commitments and Penalty Amounts

In connection with the services Contractor will provide to the County with respect to the Plan, Contractor guarantees its performance as follows (A summary of all performance commitments and their associated penalties is attached as Attachment A):

A. Average Speed of Answer Commitment.

The average speed of answer for a phone call to the Service Center(s) during the Term (“ASA”) shall be no longer than the number of seconds designated in Attachment A.

B. Evaluation of Average Speed of Answer.

(a) The ASA will be determined by measuring the sum of the total elapsed time between the moment when a telephone call is queued to the Service Center(s) and the time the caller is responded to, and dividing that number by the total number of telephone calls answered in the Service Center(s) during the Term.

(b) The calculation of ASA is based on all calls received by the Service Center(s) for all customers serviced in the Special Account Queue related to services provided by Contractor to the County Plan.

C. Average Speed of Answer Penalty. The penalty for Contractor's failure to meet the Telephone Average Speed of Answer Performance Commitment shall be the amount shown in Attachment A.

Abandonment Rate

D. Telephone Abandonment Rate Commitment. The percentage of calls received by the Service Center(s) resulting in the caller terminating the call before speaking with a customer service representative (“Abandonment Rate”) shall, on average, be no greater than the percentage designated in Attachment A.

E. Evaluation of Abandonment Rate

(a) Abandonment Rate will be calculated using the total number of calls received during the Term that result in the caller terminating the call after it is queued to a customer service representative, divided by the total number of telephone calls received by the Service Center(s) during the Term, expressed as a percent.

(b) The calculation of Abandonment Rate is based on all calls received by the Service Center(s) for all customers serviced in the Special Account Queue related to services provided by Contractor to the County Plan.

F. Abandonment Rate Penalty. The penalty for Contractor's failure to meet the Telephone

Abandonment Rate Performance Commitment shall be the amount shown in Attachment A.

First Call Resolution

G. First Call Resolution Performance Commitment.

The percentage of inquiries related to the Plan that are closed on the first inquiry, meaning that Contractor determines that no inquiries involving the same matter are received during the 45 Day timeframe preceding and following the inquiry, shall be the percentage designated in Attachment A.

H. Evaluation of First Call Resolution.

(a) First Call Resolution will be calculated based on the inquiries received by Contractor related to services provided by Contractor to the County Plan.

(b) The First Call Resolution rate will be calculated using the number of inquiries received from the County that were closed during the first inquiry, divided by the total number of inquiries received from the County, expressed as a percent.

(c) An inquiry will be considered closed when Contractor gives it a closed status on the Inquiry Tracking System(s) and no inquiries involving the same matter are received during the 45 Day timeframe preceding and following the inquiry.

I. First Call Resolution Penalty.

The penalty for Contractor's failure to meet the First Call Resolution Performance Commitment shall be the amount shown in Attachment A.

Customer Service Associate (CSA) Quality

J. CSA Quality Performance Commitment.

A designated percentage of inquiries received by the Service Center(s) servicing the County (the "Service Center(s)" and randomly monitored, shall achieve Contractor's quality standards for issue resolution, ownership and professionalism. The designated percentage is shown in Attachment A.

K. CSA Quality Evaluation.

(a) CSA Quality will be based on a random sample of all inquiries received from the County related to services provided by Contractor to the County plan.

(b) The CSA Quality rate will be calculated using the number of inquiries that achieved Contractor's quality standards, divided by the total number of inquiries audited, expressed as a percent.

L. CSA Quality Penalty.

The penalty for Contractor's failure to meet the CSA Quality Performance Commitment shall be the amount shown in Attachment A.

Eligibility Processing –Maintenance (Ongoing) Automated Eligibility Time-to-Process

- N. **Maintenance (Ongoing) Automated Eligibility Time-to-Process Performance Commitment.** A designated percentage of the file(s) received from the County after the effective date and during the Term shall be loaded onto the eligibility system within the number of Business Days, as designated in Attachment A, of the receipt of a complete and valid eligibility file. The designated percentage is shown in Attachment A.
- O. **Evaluation of Maintenance (Ongoing) Automated Eligibility Time-to-Process.**
- (a) Maintenance (On-going) Automated Eligibility Time-to-Process will be calculated by counting the number of Business Days from the Business Day that the file is received by Contractor to and including the Business Day the file is loaded onto the eligibility system. The Business Day the file is received will not be included in this calculation.
 - (b) “Business Days” will mean the days of the week that the responsible eligibility unit is conducting business, which excludes Saturdays, Sundays and holidays observed by Contractor.
 - (c) This Commitment will be contingent on the County submitting full files in which no more than two percent (2%) of the member records are erroneous. An “erroneous member record” will be defined as any member record lacking accurate information regarding the spelling of the participant’s name, the Social Security number, account, branch, benefit option, network ID, effective date of coverage, termination date, address and any other demographic data.
- P. **Maintenance (Ongoing) Automated Eligibility Time-to-Process Penalty.** The penalty for Contractor’s failure to meet the Maintenance (Ongoing) Automated Eligibility Time-to-Process Performance Commitment shall be the amount shown in Attachment A.

ID Card Maintenance (On-going) Performance

- Q. **ID Card Maintenance (Ongoing) Performance Commitment.** A designated percentage of the ID cards issued to the County’s participants in the Plan will be mailed within specified Business Days of the date that the eligibility information necessary to issue that card is released to the ID card vendor. The designated percentage is shown in Attachment A.
- R. **Evaluation ID Card Maintenance (Ongoing) Performance.**
- (a) ID Card Maintenance (Ongoing) Performance will be calculated by counting the number of Business Days from the Business Day that eligibility information necessary to issue that card is released to the ID card vendor, to and including the Business Day the ID card is issued to the Plan participant. The Business Day the eligibility information is received by the vendor will not be included in this calculation.
 - (b) “Business Days” will mean the days of the week that the responsible unit is conducting business, which excludes Saturdays, Sundays and holidays observed by Contractor.
- S. **ID Card Maintenance (Ongoing) Performance Penalty.** The penalty for Contractor's failure to

meet ID Card Maintenance (Ongoing) Performance Commitment shall be the amount shown in Attachment A.

Account Management

T. **Account Management Commitment.** Contractor’s Account Management Sales Team commits to provide services to the County of such quality as will result in Contractor's achieving the Account Management Composite Score, designated in Attachment B, on the Account Management Report Card. The Account Management Report Card is attached as Attachment B to this Agreement and must be completed, signed and dated by the County and returned to Contractor on a quarterly basis.

U. **Evaluation of Account Management**

- (a) At the beginning of the Term, the County shall designate individuals on its benefits staff who will receive and complete the Account Management Report Card (Attachment B) on a quarterly basis.
- (b) The Account Management Report Card will be distributed to the Company’s designated staff members on a quarterly basis and shall be completed, signed and dated by the County and returned to Contractor within six (6) weeks of its distribution date.

If any quarterly Account Management Report Card is not received within six (6) weeks of its distribution by Contractor, that Account Management Report Card will not be included in the calculation of the Composite Score; and if any quarterly Account Management Report Card is not received within six 6 weeks of its distribution by Contractor, the Account Management Performance Guarantee Penalty Amount will be reduced. The amount Account Management Performance Guarantee Penalty Amount will be reduced as follows:

One (1) Account Management Report Card not received within 6 weeks of distribution: 25% reduction in Account Management Performance Guarantee Penalty Amount.

Two (2) Account Management Report Cards not received within 6 weeks of distribution: 50% reduction in Account Management Performance Guarantee Penalty Amount.

Three (3) Account Management Report Cards not received within 6 weeks of distribution: 75% reduction in Account Management Performance Guarantee Penalty Amount.

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

Account Management Penalty. The penalty for Contractor's failure to meet the Account Management Commitment shall be the amount shown in Attachment A.

Weighting of Performance Results

W. **Weighting of Results for Telephone Services.** Results for Telephone Services from each assigned Service Center will be weighted by call volume in order to calculate the overall result unless membership by site is made available.

X. **Evaluation of Services and Payment of Penalties**

- (a) Within four (4) months after the end of each calendar year during the Term, Contractor shall compile the necessary documentation and perform the necessary calculations to evaluate its fulfillment of each performance commitment set forth in this Agreement and make this information available to the County.
- (b) Any dispute concerning the amount Contractor determines to be owed under this Agreement must be raised in writing within sixty (60) days of the date that Contractor notifies the County in writing of its determination.
- (c) If Contractor fails to meet any of the performance commitments set forth in herein, Contractor shall pay to the Company the appropriate penalty set forth in Attachment A.
- (d) If the GSA under which Contractor provides insurance and/or administrative services to the Plan is terminated prior to the end of the Term of this Agreement, any penalties owed by Contractor shall be prorated for that portion of the year for which the contract was in force, except that Contractor shall owe no penalties for partial quarters and Contractor shall owe no penalties if the contract is terminated by the County with notice and without cause.
- (e) In the event that the period during which performance is measured is less than twelve (12) consecutive months, the penalty amounts set forth in Attachment A shall be pro-rated for that portion of the year for which performance measurements are in force.
- (f) The penalty amounts in Attachment A have been established in relationship to the actual annual premium that the County pays for each calendar year of the Term.
- (g) The total amount payable by Contractor during each calendar year of the Term for failure to meet the performance commitments set forth in this Contract Attachment 1, Part III shall not exceed the sum of the maximum penalties identified in Attachment A.

Attachment G – Redline Changes to Contract with SCAN

**ATTACHMENT A
PERFORMANCE COMMITMENTS AND PENALTIES – MEDICAL/HMO BENEFITS PLAN**

Performance Category	Performance Commitment	Results Measured At	Penalty Amount
Claim Readiness Performance Commitment	<ul style="list-style-type: none"> Benefit profile and eligibility information loaded on claims processing system within three business days of receipt from County’s vendor. This assumes that SCAN receives the eligibility file with no missing information. 	Account Level	0.40% of actual annual premium
Call/Inquiry	Measured for the Term of the Agreement, results will not exceed:		
- Average Speed of Answer (ASA)	<ul style="list-style-type: none"> 80% of calls answered in 30 seconds 	Account Level	0.20% of actual annual premium
- Call Abandonment Rate	<ul style="list-style-type: none"> 3% of calls received by Call Center(s) terminated 	Account Level	0.20% of actual annual premium
- First Call Resolution - SCAN request to delete this element as per CMS not required to monitor.	<ul style="list-style-type: none"> 90% of calls resolved on first call, 45 day look back/forward 	Account Level	0.15% of actual annual premium
- CSA Quality	<ul style="list-style-type: none"> 90% meet quality standards 	Account Level	0.15% of actual annual premium
Employer Services	Measured for the Term of the Agreement , results will meet or exceed:		
- Ongoing Automated Eligibility Processing	<ul style="list-style-type: none"> 100% files processed in 3 Business Days 	Account Level	0.15% of actual annual premium
- Ongoing ID Card Processing	<ul style="list-style-type: none"> 98.5% of ID cards mailed in 5 Business Days 	Account Level	0.15% of actual annual premium
Account Management	Account Management Composite Score (all categories) of 3.0 or better on the Account Management Report Card based on four (4) quarterly assessments.	Account Level	0.6% of actual annual premium
		Total Financial Commitment	2.0% of actual annual premium

Client Name: County of Orange

Account and/or SOC Number: _____

Lead Claim Office: _____

Agreement Term: Projected # of Enrolled Employee Lives: _____

Sales Representative: _____

Sales Office/Routing #: _____

Underwriter Approval By: _____

Attachment B

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 #: _____

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

Measurable Need	1 st Q	2 nd Q	3 rd Q	4 th Q	Composite to be completed by PG Unit
1. Provides effective support in preparing for, and conducting open enrollment events/sessions.					
2. Provides client with timely notification of issues impacting members.					
3. Responds to client’s issues & questions in a timely, comprehensive manner.					
4. Develops, follows through on action plans; effective coordination to resolve open issues.					
5. Is accessible and attends scheduled meetings.					
6. 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: / / / / / / / /

If you rated any of the above categories less than “Satisfied” (3), please tell us why:

- X 1st Q:
- X 2nd Q:
- X 3rd Q:
- X 4th Q:

End of Year Comments:

Please return this form to: _____

Attachment C

Staffing Plan

Complete and submit as response to Instructions in Section II, Part A, Number 3.

1. Primary Staff to perform Contract duties

Name	Classification/Title
Edith Monge	Manager Employer Group Sales
Diana Tedja	Sr. Enrollment Coordinator/Account Support

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

Name	Classification/Title
Doug Buseck	Sales Operations/Director
Grace Mayeda	Member Services/Director

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 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 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 9, “Assignment or Sub-Contracting”, listed below are Sub-contractor(s) anticipated by Contractor to perform services specified in this Contract.

Company Name	Staff Name
No subcontractors	

Attachment D

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 MA-017-16011390 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 MA-017-16011390, 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 MA-017-16011390.

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 MA-017-16011390 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 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 MA-017-16011390.

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:

Attachment G – Redline Changes to Contract with SCAN

- 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.

Attachment G – Redline Changes to Contract with SCAN

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 MA-016-16011390, 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.

Attachment G – Redline Changes to Contract with SCAN

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 MA-017-16011390, 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

Attachment G – Redline Changes to Contract with SCAN

determined by federal common law of agency.

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

Thea Bullock, County Privacy Officer 405 W. 5 th Street Santa Ana, CA 92701 (714) 834-3154 tbullock@ochca.com privacyofficer@ocgov.com	Or Linda Le, Deputy County Privacy Officer 405 W. 5 th Street Santa Ana, CA 92701 (714) 834-4082 lile@ochca.com HIPAA@ochca.com
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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.

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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 MA-017-16011390, 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

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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 MA-017-16011390, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-16011390 is feasible.

2. Upon termination of the Contract MA-017-16011390, 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 MA-017-16011390.