



CONTRACT NO. 18010501

FOR

**LANGUAGE INTERPRETATION AND TRANSLATION
SERVICES**

BETWEEN

**THE COUNTY OF ORANGE
HEALTH CARE AGENCY**

AND

LANGUAGE LINE SERVICES, INC.

**CONTRACT NO. MA-042-18010501
FOR
LANGUAGE INTERPRETATION AND TRANSLATION SERVICES**

This Contract Number MA-042-18010501 ("Contract"), is made and entered into this November 1st, 2017 2018 ("Effective Date") between Language Line Services Inc. ("Contractor"), with a place of business at 1 Lower Ragsdale Drive, Building Two, Monterey, CA 93940, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency, with a place of business at 200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506. Contractor and County may sometimes be referred to hereinafter individually as "Party", or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this documents and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

- Attachment A – Scope of Work
- Attachment B – Compensation/Invoicing
- Attachment C – Cost Summary/Pricing
- Attachment D – Business Associate Contract

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Language Interpretation and Translation Services; and

WHEREAS, Contractor agrees to provide Language Interpretation and Translation Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, Contractor agrees to render all the necessary skills, knowledge, material and labor to perform the services; and

WHEREAS, County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into Contract with Contractor for obtaining said services; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions

- A. **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.
- B. **Entire Contract:** This Contract contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by 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 County unless accepted in writing by County's Purchasing Agent or designee.

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- C. **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 County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, 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.
- H. **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 "Z" 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, costs and expenses but not including attorney's fees.
- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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.
- J. **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 subcontractors 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 penalties pursuant to Section 1741 of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of 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 obligation.
- L. **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.
- M. **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.
- N. **Performance Warranty:** 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 goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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 work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **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 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 agent's, 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	\$1,000,000 per claims made \$1,000,000 aggregate

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 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 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.

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.

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

Q. ~~**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, and the County agrees to an assignment of the 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 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.

Q. 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, 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.

The Contractor is 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 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.

- R. **Force Majeure:** Contractor shall not be 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 County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **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.
- T. **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 "Z" 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.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **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.

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- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear their own attorney's fees, costs and expenses.
- X. **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 had 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 or 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 effect the purpose of the Parties and this Contract.
- Y. **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.
- Z. **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.
- AA. **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 subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

- BB. **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.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Language Interpretation and Translation Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on November 1, 2017 2018 through and including October 31, 2018 2020, renewable for four two (4) (2) additional periods upon mutual concurrence of both Parties. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties in accordance with Articles 5, 6 and 7.
3. **Precedence:** The Contract documents consist of this Contract and its Attachments and Exhibits. 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 of this Contract, the Attachments and then the Exhibits.
4. **Pricing Increase/Decrease:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
5. **Termination – Orderly:** 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.

6. **Project Manager, County:** 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 project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

7. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project 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 Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days 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 Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

8. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be 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 the Contract immediately, pursuant to Section K herein;
- 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.

9. **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.

10. **Conflict of Interest – Contractor's Personnel:** 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.

11. **Conflict of Interest – County Personnel:** The County of Orange 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.
12. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.
 - a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
 - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
 - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
13. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. 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. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the 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
 - D. 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 to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

14. **Disputes – Contract:**
 - A. The Parties 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:
 1. 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 Parties arising under, related to, or involving this

Contract, unless the County, on its own initiative, has already rendered such a final decision.

2. 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.

- B. 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 K herein.

15. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or

2. The Contractor violates the certification by failing to carry out the requirements as noted above.
16. **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.
17. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.
- Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.
- Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.
18. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
19. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' 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.

For Contractor:	Name:	Language Line Services, Inc.
	Attention:	John Reitano
	Address:	1 Lower Ragsdale Drive, Building Two Monterey, CA 93940
	Telephone:	(800) 752-6096
	E-mail:	JReitano@languageline.com

For County:	Name:	County of Orange Health Care Agency/Purchasing Services
	Attention:	Gloria Horton, Deputy Purchasing Agent
	Address:	200 W. Santa Ana Blvd Ste. 650 Santa Ana, CA 92701
	Telephone:	(714) 834-3175
	E-mail:	ghorton@ochca.com

CC:	Name:	County of Orange Health Care Agency/Purchasing Services
	Attention:	Edith Knott
	Address:	200 W. Santa Ana Blvd Ste. 650 Santa Ana, CA 92701
	Telephone:	(714) 834-5108
	E-mail:	eknott@ochca.com

20. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 *et seq.*
21. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
22. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
23. **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 property 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.
24. **Parking:** The County of Orange shall not provide free parking.
25. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom County pays \$600 or more or with whom 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.

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

26. **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 or agency may result in the bid/proposal being deemed non-responsible.
27. **Security – Youth Detention Facilities/Sheriff’s Facilities:**

Background checks:

All Contractor personnel to be employed in performance of work under this Contract shall be subject to background checks and clearance prior to working in a youth detention facility or a Sheriff’s facility. The Contractor shall prepare and submit an information form to the County’s project manager for all persons who will be working or who will need access to the facility. These information forms shall be submitted at least five County working days prior to the start of work on the Contract or prior to the use of any person subsequent to the Contractor’s start of work. These information forms will be provided by the County’s project manager upon request and will be screened by the County’s Probation Department and/or Sheriff’s Department. These information forms shall be thorough, accurate, and complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance. No person shall be employed under this Contract who has not received prior clearance from the Probation and/or Sheriff’s Department. Neither the County, the Probation Department, nor the Sheriff’s Department need give a reason clearance is denied.

Performance Requirements:

All Contractor’s vehicles parked on site shall be locked and thoroughly secured at all times. All tools and materials shall remain in Contractor’s possession at all times and shall never be left unattended. All lost or misplaced tools or materials shall be reported immediately to the security staff or Control in youth detention facilities or to the escort or Control in the Sheriff’s facilities. All materials, large or small, from removal operations or flew construction (especially those materials that could be used to inflict injury, such as nails, wire, wood, etc.) shall be continuously cleaned up as work progresses. All work areas shall be secured prior to the end of each work period. Workers shall have no contact, either verbal or physical, with inmates in the facilities.

Contractor’s employees shall NOT:

1. Give names or addresses to inmates;
2. Receive any names or addresses from inmates (including materials to be passed to another individual or inmate);
3. Disclose the identity of any inmate to anyone outside the facility;
4. Give any materials to inmates; or
5. Receive any materials from inmates (including materials to be passed to another individual or inmate).

Failure to comply with these requirements is a criminal act and can result in prosecution.

Contractor's employees shall not smoke or use profanity or other inappropriate language while on site. Contractor's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. Contractor's employees shall plan their activities to minimize the number of times they must enter and exit a facility. They should transport all tools, equipment and materials needed for the day at the start of the work period and restrict all breaks to the absolute minimum.

Contractor's personnel shall:

1. Comply with the written schedule provided by the County which shall clearly show the specific start and end times for each work day;
2. Arrive at the site no more than fifteen (15) minutes prior to the scheduled time or no more than fifteen (15) minutes after the scheduled time; and
3. Report to the control desk upon arrival at the job site.

Control will ensure that the work area is clear and ready for work to begin. If a contractor's employee is delayed or cancellation is necessary, the designated on-site coordinator or the County's project manager should be contacted immediately. Repeat problems will be grounds for remedial action which may include Contract termination.

(SIGNATURE PAGE FOLLOWS)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-18010501 the date set forth opposite their signatures. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: Language Line Services, Inc.

_____	_____
Print Name	Title
_____	_____
Signature	Date
_____	_____
Print Name	Title
_____	_____
Signature	Date

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

Purchasing Agent/Designee Authorized Signature:

<u>Ana Figueroa</u>	<u>Deputy Purchasing Agent</u>
Print Name	Title
_____	_____
Signature	Date

ATTACHMENT A
SCOPE OF WORK

I. INTRODUCTION

This Contract is established for the Contractor to provide professional Language Interpretation and Translation Services to HCA. Language interpretation services shall include In-Person Verbal Language Interpretation, Over-The-Telephone Language Interpretation, Reformatting of Translated Forms/Documents and Audio Recording Translations. Translation services shall include written translation of medical records, forms and other various documents.

CONTRACTOR RESPONSIBILITIES

A. In-Person Verbal Language Interpretation (Consecutive)

1. In-Person Verbal Language Interpretation services shall be provided to various HCA departments/programs/clinics (Programs), and HCA Clients (Clients) that are non-English proficient.
2. Contractor shall assist HCA staff and Clients "In-Person" with verbal language interpretation, by traveling to various Programs as instructed by HCA staff.
3. Contractor shall assist Clients to obtain general information, schedule appointments, communicate and complete required paper work associated with client's eligibility for various Programs, and explain rules, regulations and Client expectations as instructed by HCA staff.
4. Contractor shall interpret and translate, if requested, all communication, medical and non-medical between HCA staff and Clients.
5. Contractor shall provide services as requested at various Programs within Orange County. Parking may be available at no charge at some locations, however County shall not be held responsible for providing or making parking arrangements for the Contractor. County shall not reimburse the Contractor for any parking or travel expenses.
6. Contractor shall provide services in a variety of settings, such as group meetings and doctor's appointments.
7. Contractor may request meeting handouts such as PowerPoint Presentations and Meeting Agendas relating to the In-Person Verbal Language Interpretation from the HCA Program requesting service. The HCA Program, at its best, will try to provide the appropriate material to the Contractor to help in their preparation.
8. Contractor shall be available for In-Person Verbal Language Interpretation services Monday through Friday from 7:00am to 8:00pm Pacific Time (PT), excluding County observed holidays.
9. Emergency/Rush interpretation services may require no more than one (1) hour response time by the Contractor from the time of the contact by the County to the interpreter's arrival at the designated site.
10. Contractor shall be responsible for ensuring the accuracy of its language interpretation as well as its cultural sensitivity services during the In-Person Verbal Language Interpretation. The HCA Program which requested the services may provide feedback to the Contractor of services provided.

B. Over-The-Telephone Verbal Language Interpretation

1. Over-The-Telephone Verbal Language Interpretation services shall be provided to various HCA Programs, Clients, and contract providers that are non-English proficient.
2. Contractor shall assist HCA staff, Clients, and contract providers with “Over-The- Telephone” Verbal Language Interpretation.
3. Contractor shall assist Clients to obtain general information, schedule appointments, communicate, and explain rules, regulations and Client expectations as instructed by HCA staff or contract providers.
4. Contractor shall interpret and translate, if requested, all communication, medical and non-medical, between HCA staff and Clients or contract providers and Clients.
5. Contractor shall be capable of providing 4-way calls at no extra cost. The definition of 4-way call: HCA staff or contract provider calls the Contractor, the Contractor transfers the call to the interpreter, and the interpreter dials out to the Client (HCA staff/Contractor/interpreter/Client).
6. Contractor shall be available for services twenty four (24) hours per day Monday through Sunday, including weekends and holidays.

C. Written Translation of Documents

1. Contractor shall perform written translation of medical records, forms and other various documents for HCA Programs.
2. As requested by HCA Program, Contractor shall provide the total cost estimation for a translation service prior to the translation process. HCA Program that requested the service will respond within twenty four (24) hours on whether or not to process that specific requested translation service.
3. Delivery times for translation services shall be within an appropriate agreed upon time. The determination of “appropriate agreed upon time” shall be reasonable and agreed upon between HCA and Contractor at the time of requesting services and shall depend on the quantity of translation services needed.
4. HCA may require Contractor to “Rush” the requested translation services. Written translations of documents that are requested by HCA to be “Rush” delivered shall be delivered by the Contractor to HCA within seventy-two (72) hours or on rare occasions by the same day of Contractor’s receipt of documents. Applicable “Rush” charges may apply.
5. Contractor shall use culturally sensitive, current behavioral health terminology. The use of solely Google Translation is unacceptable.
6. Contractor shall be responsible for ensuring the quality and accuracy of its products and services, including making any requested corrections or changes, at no cost to the County.
7. Contractor shall performs its own quality assurance and conduct a review of translated documents before delivering them to the requested Program in an editable format. HCA staff and contract providers are responsible for informing the Contractor of all errors, omissions or other required changes within thirty (30) days of delivery of product.

D. Audio Recording of Translated Documents

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1. Contractor shall perform audio recording of selected translated Behavioral Health forms and other various documents for HCA Programs.
 2. As requested by the HCA, Contractor shall provide the total cost estimation for an audio recording service prior to the audio recording process. After receiving the estimate, HCA Program requesting the service will respond within twenty four (24) hours on whether or not to process that specific requested audio recording service.
 3. Delivery times for audio recording services shall be within an appropriate agreed upon time. The determination of "appropriate agreed upon time" shall be determined between HCA and Contractor at the time of requesting services and shall depend on the quantity of audio recording services requested.
 4. HCA may require Contractor to "Rush" the requested audio recording services. Audio recording of translated documents that are requested by HCA to be "Rush" shall be delivered by the Contractor to HCA within seventy-two (72) hours of Contractor's receipt of documents. Applicable "Rush" charges may apply.
 5. Contractor shall be responsible for ensuring the quality and accuracy of its products and services, including making any requested corrections or changes at no cost to the County. HCA staff and contract providers are responsible for informing the Contractor of all errors, omissions or other required changes within thirty (30) days of delivery of product.

E. Reformatting of Translated Forms/Documents:

1. Contractor shall perform Reformatting of Translated Forms/Documents services to various HCA Programs upon request.
2. Contractor shall update/revise/reformat previous translated forms/documents to new versions, which may include translation of newly added information provided by HCA Programs.
3. As requested by the HCA Program, Contractor shall provide the total cost estimation for Reformatting Services prior to the translation process. After receiving the estimate, the HCA Program that requested the service will respond within twenty four (24) hours on whether or not to process that specific requested translation service.
4. Delivery times for reformatting services shall be within an appropriate agreed upon time. The determination of "appropriate agreed upon time" shall be determined between the HCA and Contractor at the time of requesting services and shall depend on the quantity of translation services requested.
5. HCA may require Contractor to "Rush" the reformatting services. Written translations of documents that are requested by HCA to be "Rush" shall be delivered by the Contractor to HCA within seventy-two (72) hours of Contractor's receipt of documents. Applicable "Rush" charges may apply.
6. Contractor shall be responsible for ensuring the quality and accuracy of its products and services, including making any requested corrections or changes at no cost to the County. Contractor shall performs its own quality assurance and conduct a review of translated documents before delivering them to the requested Program in an editable format.
7. HCA staff and contract providers are responsible for informing the Contractor of all errors, omissions or other required changes within thirty (30) days of delivery of product.

F. Video Remote Language Interpretation

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1. Video Remote Language Interpretation services shall be provided to various HCA Programs, Clients, and contract providers that are non-English proficient.
 2. Contractor shall assist HCA staff, Clients, and contract providers with "Video Remote" Language Interpretation.
 3. Contractor shall assist Clients to obtain general information, schedule appointments, communicate, and explain rules, regulations and Client expectations as instructed by HCA staff or contract providers.
 4. Contractor shall interpret and translate, if requested, all communication, medical and non-medical, between HCA staff and Clients or contract providers and Clients.
 5. Contractor shall be capable of providing video remote conferencing at no extra cost. The definition of video remote conferencing call: HCA staff or contract provider calls the Contractor, the Contractor calls the interpreter, and the interpreter dials out to the Client (HCA staff/Contractor/interpreter/Client).
 6. Contractor shall be available for services twenty four (24) hours per day Monday through Sunday, including weekends and holidays.

G. Braille Translation of Documents

1. Contractor shall perform translation of medical records, forms and other various documents for HCA Programs.
2. As requested by HCA Program, Contractor shall provide the total cost estimation for a translation service prior to the translation process. HCA Program that requested the service will respond within twenty four (24) hours on whether or not to process that specific requested translation service.
3. Delivery times for translation services shall be within an appropriate agreed upon time. The determination of "appropriate agreed upon time" shall be reasonable and agreed upon between HCA and Contractor at the time of requesting services and shall depend on the quantity of translation services needed.
4. HCA may require Contractor to "Rush" the requested translation services. Written translations of documents that are requested by HCA to be "Rush" delivered shall be delivered by the Contractor to HCA within seventy-two (72) hours or on rare occasions by the same day of Contractor's receipt of documents. Applicable "Rush" charges may apply.
5. Contractor shall use culturally sensitive, current behavioral health terminology. The use of solely Google Translation is unacceptable.
6. Contractor shall be responsible for ensuring the quality and accuracy of its products and services, including making any requested corrections or changes, at no cost to the County.
7. Contractor shall perform its own quality assurance and conduct a review of translated documents before delivering them to the requested Program in an editable format. HCA staff and contract providers are responsible for informing the Contractor of all errors, omissions or other required changes within thirty (30) days of delivery of product.

II. CONTRACTOR QUALIFICATIONS/REQUIREMENTS

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- A. Contractor and Contractor's employees (interpreters/translators) shall meet the following minimum requirements:
1. Interpreter/translator shall be able to communicate fluently and effectively in both English and the language of which interpretation/translation services are being provided.
 2. Interpreters/translators shall be competent not only with medical terminology but also current behavioral health terminology, which includes mental health and substance use, in a non-stigmatizing language interpretation.
 3. Interpreter/translator shall be capable and diligent in following directions provided by the HCA staff or contract provider.
 4. Interpreter/translators shall be physically and emotionally capable and diligent in performing HCA's assigned tasks and services. Interpreter/translators must be capable of and willing to communicate sensitive health related issues as directed regardless of personal beliefs.
 5. Interpreters/translators shall be culturally competent.
 6. Interpreters shall wear appropriate professional attire during the performance of In-Person Verbal Language Interpretation Services in performance of this Contract.
 7. Contractor and Contractor's interpreters/translators shall maintain if applicable, appropriate certification and receive on-going training as needed during the term of this Contract.
 8. Contractor's interpreters/translators shall be professionally recruited/hired by Contractor.
 9. Contractor shall conduct professional reference checks for all interpreters/translators recruited/hired by Contractor.
 10. Contractor shall be responsible for obtaining current computer software to read and edit documents in a variety of languages and fonts.
 11. Contractor shall provide reports on a monthly basis and upon request the following: monthly and/or year to date reports itemizing, by type of service, account or facility name, name of language in which the service was provided, number of minutes interpreted, number of documents translated and total dollar expenditure.

III. LANGUAGES REQUIRED

- a) The Contractor's interpretation and translation services shall be readily available for, but not limited to, the following languages:

Acholi, Afrikaans, Akan, Albanian, Amharic, Arabic, Armenian, Asamese, Assyrian, Azerbaijani, Bambara, Basque, Behdini, Belorussian, Bengali, Berber, Bosnian, Bulgarian, Burmese, Burmese dialects, Cantonese, Catalan, Chaldean, Chaochow, Chamorro, Chavacano, Cherokee, Chinese Simplified (for written translation services), Chuukese, Croatian, Czech, Danish, Dari, Dinka, Dutch, English, Estonian, Ewe, Farsi, Fijian Hindi, Finnish, Flemish, French, French Canadian, Fukienese, Fula, Fulani, Fuzhou, Ga, Gaddang, Gaelic, Georgian, German, Greek, Gujarati, Haitian Creole, Hakka, Hakka-China, Hakka-Taiwan, Hausa, Hebrew/Yiddish, Hindi, Hmong, Hungarian, Ibanag, Ibo, Icelandic, Igbo, Ilocano, Indonesian, Italian, Jakartanese, Japanese, Javanese, Karen, Kashmiri, Khmer (Cambodian), Korean, Kosovan, Krio, Kurdish, Kurmanji, Lakota, Laotian, Latvian, Lingala, Lithuanian, Luganda, Luxembourgish, Maay, Macedonian, Malagasy, Malay, Malayalam, Malaysian, Maltese, Mandarin, Mandingo, Mandinka, Mankon, Marathi, Marshallese, Maori, Mien, Mina, Mixteco, Mongolian, Navajo, Neapolitan, Nepalese, Nepali, Nigerian Pidgin

English, Norwegian, Nuer, Oromo, Pampangan, Papiamiento, Pashto, Patois, Pidgin English, Polish, Portuguese, Portuguese Creole, Punjabi, Romanian, Russian, Samoan Serbian,, Sanskrit, Shanghainese, Spanish, Sicilian, Sinhalese, Sindhi, Slovak, Slovenian, Somali, Sorani, Spanish, Swahili, Swedish, Sylhetti, Szechuan, Tagalog, Taiwanese, Tamil, Telugu, Thai, Tibetan, Tigre, Tigrinya, Toishanese, Tongan, Tshiluba, Turkish, Twi, Ukrainian, Urdu, Vietnamese, Visayan, Welsh, Wolof, Yiddish, Yoruba, Yupik, Zulu.

IV. SCHEDULING SERVICES/APPOINTMENTS

- a) Standard (next day) In-Person Verbal Language interpretation appointments shall be scheduled with the Contractor, twenty-four (24) hours (minimum) in advance of requested appointment time.
- b) Emergency (same day) In-Person Verbal Language interpretation appointments shall be scheduled with the Contractor, four (4) hours (minimum) in advance of requested appointment time (Applicable "Emergency" charges may apply).
- c) If for any reason, Contractor cannot meet the County's required schedule, Contractor shall notify the requesting HCA staff or contract provider within one (1) hour of receiving the service request.
- d) Contractor shall establish an account for each Program for billing purposes.

V. DAYS AND HOURS OF CONTRACTOR AVAILABILITY

- a) Contractor shall be available for service Monday through Sunday, twenty four (24) hours, seven (7) days a week.
- b) Normal business hours shall be: 7:00 am to 5:00 pm PT.
- c) After normal business hours ("After Hours") shall be: any time after 5:00pm PT and any time before 7:00am PT (Applicable "After Hours" charges may apply).

VI. MINIMUM CHARGES

- a. In-Person Verbal Language Interpretation:
The minimum charge for In-Person Verbal Language Interpretation services shall be billed at two (2) hours. This (2) hour minimum charge shall be billed by the Contractor as a "2-Hour Minimum Charge for in-Person Verbal Language Interpretation Services". Subsequent charges shall be per fifteen (15) minute increments
- b. Over-The Telephone Verbal Language Interpretation:
The minimum charge for over-the-telephone verbal language interpretation services shall be billed at five (5) minutes. This five (5) minute minimum charge shall be billed by the Contractor as a "5 minute Minimum Charge for Over-The-Telephone Verbal Language Interpretation Services". Subsequent charges shall be per minute increments.
- c. Written Translation of Documents:
The minimum charge for written translation of documents shall be billed at 100 words. This 100 word minimum charge shall be billed by the Contractor as a "100-word Minimum Charge for Written Translation of Documents". Subsequent charges shall be per word increments.
- d. Audio Recording of Translated Documents:
The minimum charge for audio recording translation services shall be billed at two (2) hours. This two-hour minimum charge shall be billed by the Contractor as a "2-Hour Minimum Charge for Audio Recording Services". Subsequent charges shall be per 15-minute increments.

- e. Reformatting of Translated Forms/Documents:
The minimum charge for reformatting of various forms/documents shall be billed at one (1) page. This (1) page minimum charge shall be billed by the Contractor as a "1-Page Minimum Charge for Reformatting of Translated Forms/Documents". Subsequent charges shall be per page increments.

- f. No Show Charge:
If a Client is a "No Show" for a scheduled In-Person verbal language interpretation appointment, the Contractor shall be compensated the minimum charge of two hours for the appointment time.

- g. Non-Applicable Charges:
The translation of all documents during In-Person Verbal Language Interpretation services or Over-The-Telephone Verbal Language Interpretation services appointments shall be included in the hourly rate or per-minute rate of the interpretation appointment or telephone call. Charges for written translation shall not be billed during In-Person or Over-The-Telephone Language Interpretation services.

ATTACHMENT B
COMPENSATION/INVOICING**I. COMPENSATION**

This is a fixed price Contract not to exceed the amount of ~~\$82,500~~ **\$300,000**. County shall pay Contractor in accordance with the Cost Table in Attachment C. Contractor agrees to accept the specified compensation as full remuneration for performing all services and furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the responsibility of Contractor which may arise or be encountered in the execution of the services until their acceptance; for risks connected with the services; and for performance by Contractor of all of its duties and obligations hereunder. The fixed price shall include the fee and all expenses related to the performance of work and services required to meet the tasks and deliverables in the Scope of Work of Attachment A.

II. PAYMENT TERMS

Contractor shall submit invoices to the address below. Payment of invoices shall be net thirty (30) days after the receipt of an acceptable invoice submitted in accordance with the terms set forth herein. The invoice shall be verified and approved by County's Project Manager, and shall be subject to routine processing requirements of County. Invoices shall not be paid if services have not been appropriately provided as determined by County's Project Manager.

Billing shall cover only those services not previously invoiced. Contractor shall reimburse County for any monies paid to Contractor for services not provided or when services do not meet the Contract requirements. Payment made by County shall not preclude the right of 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 services.

III. PAYMENT (ELECTRONIC FUNDS TRANSFER) - INVOICING INSTRUCTIONS

County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.

1. Invoices and all supporting documentation shall be submitted to County's Project Manager as follows:
 - Orange County Health Care Agency/Accounts Payable
 - PO Box 689
 - Santa Ana, CA 92702
- 2 Contractor shall provide a two-part invoice on Contractor's letterhead for services rendered. Each invoice shall have a number and shall include the following information:
 - a. Contractor's name and address, and remittance address (if different)
 - b. Contractor's Tax Identification Number or Employer's Identification Number
 - c. County agency name and service address
 - d. Contract Number
 - e. Description and date services provided
 - f. Amount of Payment Requested

The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.

ATTACHMENT C

COST SUMMARY/PRICING

The rate shall include all costs, travel expenses, mileage, materials, and all other services fees for the completion of the services in accordance with Attachment A, SOW.

I. Service fees for In-Person Verbal Language Interpretation Services:

LINE ITEM	LANGUAGE	STANDARD HOURLY RATE (7:00AM – 5:00PM PT)	EMERGENCY HOURLY RATE	AFTER-HOURS RATE
1	Spanish	\$83.00	\$103.75	\$95.45
2	Vietnamese	\$83.00	\$103.75	\$95.45
3	Hindi	\$83.00	\$103.75	\$95.45
4	Arabic	\$83.00	\$103.75	\$95.45
5	<p>General Language Group <u>Language for this group shall include the following:</u> Acholi, Afrikaans, Akan, Albanian, Amharic, Armenian, Asamese, Assyrian, Azerbaijani, Bambara, Basque, Behdini, Belorussian, Bengali, Berber, Bosnian, Bulgarian, Burmese, Burmese dialects, Cambodian, Cantonese, Catalan, Chaldean, Chaochow, Chamorro, Chavacano, Cherokee, Chinese Simplified (for written translation services), Chuukese, Croatian, Czech, Danish, Dari, Dinka, Dutch, English, Estonian, Ewe, Farsi, Fijian Hindi, Finnish, Flemish, French, French Canadian, Fukienese, Fula, Fulani, Fuzhou, Ga, Gaddang, Gaelic, Georgian, German, Greek, Gujarati, Haitian Creole, Hakka, Hakka–China, Hakka-Taiwan, Hausa, Hebrew/Yiddish, Hmong, Hungarian, Ibanag, Ibo, Icelandic, Igbo, Ilocano, Indonesian, Italian, Jakartanese, Japanese, Javanese, Karen, Kashmiri, Khmer (Cambodian), Korean, Kosovan, Krio, Kurdish, Kurmanji, Lakota, Laotian, Latvian, Lingala, Lithuanian, Luganda, Luxembourgish, Maay, Macedonian, Malagasy, Malay, Malayalam, Malaysian, Maltese, Mandarin, Mandingo, Mandinka, Mankon, Marathi, Marshallese, Maori, Mien, Mina, Mixteco, Mongolian, Navajo, Neapolitan, Nepalese, Nepali, Nigerian Pidgin English, Norwegian, Nuer, Oromo, Pampangan, Papiamiento, Pashto,</p>	\$83.00	\$103.75	\$95.45

LINE ITEM	LANGUAGE	STANDARD HOURLY RATE (7:00AM – 5:00PM PT)	EMERGENCY HOURLY RATE	AFTER-HOURS RATE
	Patois, Pidgin English, Polish, Portuguese, Portuguese Creole, Punjabi, Romanian, Russian, Samoan Serbian,, Sanskrit, Shanghainese, Sicilian, Sinhalese, Sindhi, Slovak, Slovenian, Somali, Sorani, Swahili, Swedish, Sylhetti, Szechuan, Tagalog, Taiwanese, Tamil, Telugu, Thai, Tibetan, Tigre, Tigrinya, Toishanese, Tongan, Tshiluba, Turkish, Twi, Ukrainian, Urdu, Visayan, Welsh, Wolof, Yiddish, Yoruba, Yupik, Zulu.			
6	All other languages And Dialects Group <u>Languages for this group shall include the following:</u> All other Languages and Dialects not listed on Line Items 1-5 above.	\$83.00	\$103.75	\$95.45

1. **Emergency Hourly Rate: (Scheduling “Emergency” Appointments)**

The “Emergency Hourly Rate” shall be billed by the Contractor as an “*Emergency Scheduled In-Person Verbal Language Interpretation Services Rate*”, and it shall not exceed 25% from the “Standard Hourly Rate”.

This emergency hourly rate shall only be applicable to emergency (same day) in-person verbal language interpretation appointments that are scheduled with the Contractor, four (4) hours in advance of requested appointment time. Contractor shall inform HCA staff at the time of scheduling the appointment if this charge will apply.

2. **After-Hours Rate: (Services Provided After or Before Normal Business Hours)**

The “After-Hours Rate” shall be billed by the Contractor as an “*After-Hours Rate for In-Person Verbal Language Interpretation Services*”. This after-hours rate shall only be applicable to in-person verbal language interpretation services that are performed after normal business hours (after 5pm PT and before 7am PT), and it shall not exceed 15% from the “Standard Hourly Rate”. Contractor shall inform HCA staff at the time of scheduling the appointment if this charge will apply.

3. **Billing Increments: (In-person verbal language interpretation services)**

Billing increments over the two-hour minimum shall be per fifteen (15) minute increments.

II. **Service fees for Over-The-Telephone Verbal Language Interpretation Services:**

LINE ITEM	LANGUAGE	PER-MINUTE RATE (7:00AM- 5:00PM PT)	AFTER-HOURS PER-MINUTE RATE
7	Spanish	\$0.90	\$0.90
8	Vietnamese	\$0.90	\$0.90
9	Korean	\$0.90	\$0.90
10	Mandarin	\$0.90	\$0.90
11	Arabic	\$0.90	\$0.90
12	General Language Group	\$0.90	\$0.90

LINE ITEM	LANGUAGE	PER-MINUTE RATE (7:00AM-5:00PM PT)	AFTER-HOURS PER-MINUTE RATE
	<u>Languages for this group shall include the following:</u> Acholi, Afrikaans, Akan, Albanian, Amharic, Armenian, Asamese, Assyrian, Azerbaijani, Bambara, Basque, Behdini, Belorussian, Bengali, Berber, Bosnian, Bulgarian, Burmese, Burmese dialects, Cambodian Cantonese, Catalan, Chaldean, Chaochow, Chamorro, Chavacano, Cherokee, Chinese Simplified (for written translation services), Chuukese, Croatian, Czech, Danish, Dari, Dinka, Dutch, English, Estonian, Ewe, Farsi, Fijian Hindi, Finnish, Flemish, French, French Canadian, Fukienese, Fula, Fulani, Fuzhou, Ga, Gaddang, Gaelic, Georgian, German, Greek, Gujarati, Haitian Creole, Hakka, Hakka–China, Hakka-Taiwan, Hausa, Hebrew/Yiddish, Hindi, Hmong, Hungarian, Ibanag, Ibo, Icelandic, Igbo, Ilocano, Indonesian, Italian, Jakartanese, Japanese, Javanese, Karen, Kashmiri, Khmer (Cambodian), Kosovan, Krio, Kurdish, Kurmanji, Lakota, Laotian, Latvian, Lingala, Lithuanian, Luganda, Luxembourggeois, Maay, Macedonian, Malagasy, Malay, Malayalam, Malaysian, Maltese, Mandingo, Mandinka, Mankon, Marathi, Marshallese, Maori, Mien, Mina, Mixteco, Mongolian, Navajo, Neapolitan, Nepalese, Nepali, Nigerian Pidgin English, Norwegian, Nuer, Oromo, Pampangan, Papiamiento, Pashto, Patois, Pidgin English, Polish, Portuguese, Portuguese Creole, Punjabi, Romanian, Russian, Samoan Serbian, Sanskrit, Shanghainese, Sicilian, Sinhalese, Sindhi, Slovak, Slovenian, Solami, Sorani, Swahili, Swedish, Sylhetti, Szechuan, Tagalog, Taiwanese, Tamil, Telugu, Thai, Tibetan, Tigre, Tigrinya, Toishanese, Tongan, Tshiluba, Turkish, Twi, Ukrainian, Urdu, Visayan, Welsh, Wolof, Yiddish, Yoruba, Yupik, Zulu.		
13	All Other Languages And Dialects Group <u>Languages for this group shall include the following:</u> All other Languages and Dialects not listed on Line items 7-12 above	\$0.90	\$0.90

1. **After-Hours Rate for Over-The-Telephone Verbal Language Interpretation Services:**

The "After-Hours Rate" shall be billed by the Contractor as an "After-Hours Rate for Over-The-Telephone Verbal Language Interpretation Services", and it shall not exceed 15% from the "Standard Hourly Rate". This after-hours rate shall only be applicable to Over-The-Telephone verbal language interpretation services that are performed after normal business hours (after 5pm PT and before 7am PT).

III. **Service fees for Written Translation of Documents:**

LINE ITEM	LANGUAGE	PER-WORD RATE	RUSH PER-WORD RATE
14	Arabic	\$0.16	\$0.18
15	Vietnamese	\$0.17	\$0.19
16	Spanish	\$0.13	\$0.14

LINE ITEM	LANGUAGE	PER-WORD RATE	RUSH PER-WORD RATE
17	Farsi	\$0.17	\$0.19
18	Korean	\$0.19	\$0.21
19	<p>General Language Group <u>Languages for this group shall include the following:</u> Acholi, Afrikaans, Akan, Albanian, Amharic, Armenian, Asamese, Assyrian, Azerbaijani, Bambara, Basque, Behdini, Belorussian, Bengali, Berber, Bosnian, Bulgarian, Burmese, Burmese dialects, Cantonese, Catalan, Chaldean, Chaochow, Chamorro, Chavacano, Cherokee, Chinese Simplified (for written translation services), Chuukese, Croatian, Czech, Danish, Dari, Dinka, Dutch, English, Estonian, Ewe, Fijian Hindi, Finnish, Flemish, French, French Canadian, Fukienese, Fula, Fulani, Fuzhou, Ga, Gaddang, Gaelic, Georgian, German, Greek, Gujarati, Haitian Creole, Hakka, Hakka–China, Hakka-Taiwan, Hausa, Hebrew/Yiddish, Hindi, Hmong, Hungarian, Ibanag, Ibo, Icelandic, Igbo, Ilocano, Indonesian, Italian, Jakartanese, Japanese, Javanese, Karen, Kashmiri, Khmer (Cambodian), Kosovan, Krio, Kurdish, Kurmanji, Lakota, Laotian, Latvian, Lingala, Lithuanian, Luganda, Luxembourgish, Maay, Macedonian, Malagasy, Malay, Malayalam, Malaysian, Maltese, Mandarin, Mandingo, Mandinka, Mankon, Marathi, Marshallese, Maori, Mien, Mina, Mixteco, Mongolian, Navajo, Neapolitan, Nepalese, Nepali, Nigerian Pidgin English, Norwegian, Nuer, Oromo, Pampangan, Papiamentu, Pashto, Patois, Pidgin English, Polish, Portuguese, Portuguese Creole, Punjabi, Romanian, Russian, Samoan Serbian,, Sanskrit, Shanghainese, Sicilian, Sinhalese, Sindhi, Slovak, Slovenian, Somali, Sorani, Swahili, Swedish, Sylheti, Szechuan, Tagalog, Taiwanese, Tamil, Telugu, Thai, Tibetan, Tigre, Tigrinya, Toishanese, Tongan, Tshiluba, Turkish, Twi, Ukrainian, Urdu, Visayan, Welsh, Wolof, Yiddish, Yoruba, Yupik, Zulu.</p>	\$0.26	\$0.29
20	<p>All Other Languages And Dialects Group <u>Languages for this group shall include the following:</u> All other Languages and Dialects not listed on Line Items 14-19 above</p>	\$0.28	\$0.30
21	<p>Audio Recording of Translated Documents (In regards to Translation Services) Audio Recording shall include (but not limited to): Any blank document, including medical records, forms, brochures, fliers, and other various written documentation needing translating. This line item shall be priced as a 2-Hour Minimum and subsequent charges per 15-minute increments.</p>	\$	\$
22	<p>Reformatting of Translated Forms/Documents (In regards to Translation Services) Blank Forms/Documents shall include (but not limited to): Any blank document, including medical records, forms, brochures, fliers, and other various written documentation needing translating, revisions and formatting. This line item shall be priced as a Rate-Per-Page.</p>	\$6.50/page	\$8.00/page

1. Rush Rate: (Rush Services for Written Translation of Documents)

The "Rush" rate shall be billed by the Contractor as a "*Rush Rate for Written Translation Services*". This rush rate shall only be applicable to written translations of documents that are requested to be rushed delivered to the County within seventy two (72) hours of Contractor's receipt of documents, and it shall not exceed 10% from the "*Rate-Per-Word*" fee. Contractor shall inform HCA staff at the time of request if this charge will apply.

LINE ITEM	LANGUAGE	PER-WORD RATE	RUSH PER-WORD RATE
23	Video Remote Interpreting Video remote interpreting shall include (but not limited to): Thirty five (35) video languages and 240 telephonic languages with the application. All telephonic calls made from the system are billed at telephonic interpreting rate (.90/minute). Materials included: Reference badges, Quick Reference Cards, Language ID Cards, Posters and Easels.	\$1.50	

2. Video Remote Interpreting:

Implementation Training and How to Effectively Work with an Interpreter Trainings are included. Resource and training materials shall be customized with telephonic interpreting information included.

LINE ITEM	LANGUAGE	PER-PAGE RATE	RUSH PER-PAGE RATE
24	Braille Translated Forms/Documents Braille translated forms/documents shall include (but not limited to): Any blank document, including medical records, forms, brochures, fliers, and other various written documentation needing translating, revisions and formatting. This line item shall be priced as a Rate-Per-Page.		

3. Braille Translated Forms/Documents:

Implementation Training and How to Effectively Work with an Interpreter Trainings are included. Resource and training materials shall be customized with telephonic interpreting information included.

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-042-18010501 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-042-18010501, 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-042-18010501.~~

~~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-042-18010501 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-042-18010501.~~

~~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 MA-042-18010501, 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 MA-042-18010501, 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 Privacy Officer at:

CEO OCIT Security County Privacy Officer	HCA Information Technology Security Officer
Linda Le, CHPC, CHC, CHP 1501 E. St. Andrews Place Santa Ana, CA 92705 Office: (714) 834-4082 E-Mail: linda.le@ceoit.ocgov.com privacyofficerinbox@ceoit.ocgov.com	David Castellanos 200 W. Santa Ana Blvd., 10 th Floor Santa Ana, CA 92701 Office: (714) 834-3433 E-Mail: dcastellanos@ochca.com

a. Contractor's notification may be oral, but shall be followed by written notification within twenty-four (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 MA-042-18010501, 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 MA-042-18010501, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-18010501 is feasible.~~

~~2. Upon termination of the Contract MA-042-18010501, 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-042-18010501.~~

ATTACHMENT D-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 Agreement 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 Agreement, 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 Agreement.

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 Agreement 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 Agreement.

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 Agreement, 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. If CONTRACTOR maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall provide such information in an electronic format.

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 Agreement, 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. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all employees, subcontractors and agents who have access to the Social Security data, including employees, agents, subcontractors and agents of its subcontractors.

14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined. COUNTY will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee or agent is a named adverse party.

16. The Parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY concerning an amendment to this Business Associate Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the event:

- a. CONTRACTOR does not promptly enter into negotiations to amend this Business Associate Contract when requested by COUNTY pursuant to this Paragraph C; or
- b. CONTRACTOR does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY deems are necessary to satisfy

the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

17. 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, and § 164.312, with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities.

2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and updated policies upon request.

3. CONTRACTOR shall ensure the continuous security of all computerized data systems containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

- a. Complying with all of the data system security precautions listed under Paragraphs E, below;
- b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of COUNTY;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies;

4. 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.

5. 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.

6. CONTRACTOR shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this paragraph and for communicating on security matters with COUNTY.

E. DATA SECURITY REQUIREMENTS

1. Personal Controls

a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, must complete information privacy and security training, at least annually, at CONTRACTOR's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following the termination of Agreement.

b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with any provisions of CONTRACTOR's privacy policies and procedures, including termination of employment where appropriate.

c. Confidentiality Statement. All persons that will be working with PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to such PHI. The statement must be renewed annually. The CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for a period of six (6) years following the termination of the Agreement.

d. Background Check. Before a member of the workforce may access PHI

COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the COUNTY.

b. Server Security. Servers containing unencrypted PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY required to perform necessary business functions may be copied, downloaded, or exported.

d. Removable media devices. All electronic files that contain PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered "removed from the premises" if it is only being transported from one of CONTRACTOR's locations to another of CONTRACTOR's locations.

e. Antivirus software. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

f. Patch Management. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,

maintains, or transmits on behalf of COUNTY must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched due to operational reasons must have compensatory controls implemented to minimize risk, where possible.

g. User IDs and Password Controls. All users must be issued a unique user name for accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.

i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log

off the system if they do not agree with these requirements.

k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.

m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a routine procedure in place to review system logs for unauthorized access.

c. Change Control. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Control

a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.

b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data. Business Continuity Plan (BCP) for contractor and COUNTY (e.g. the application owner) must merge with the DRP.

5. Paper Document Controls

a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Such PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of through confidential means, such as cross cut shredding and pulverizing.

d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.

e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include 500 or more individually identifiable records containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of COUNTY to use another method is obtained.

F. 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 Privacy Officer.

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 F 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 F.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. If the Breach is the fault of CONTRACTOR, 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.

G. 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 Agreement, 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.

H. PROHIBITED USES AND DISCLOSURES

1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC § 17935(d)(2).

I. 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.

J. 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 Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

2. Upon termination of the Agreement, 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 Agreement.

APPENDIX No.1

PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code § 1798.29(d).

3. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).

4. "DHCS PI" shall mean Personal Information, as defined below, accessed in a

database maintained by the COUNTY or California Department of Health Care Services (DHCS), received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and DHCS.

6. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29(e) whose unauthorized access may trigger notification requirements under Civil Code § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.

7. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

8. "Personal Information" (PI) shall have the meaning given to such term in California Civil Code § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

B. TERMS OF AGREEMENT

1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as otherwise indicated in this Appendix, CONTRACTOR may use or disclose DHCS PI only to perform functions, activities, or services for or on behalf of the COUNTY pursuant to the terms

of the Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the COUNTY.

2. Responsibilities of CONTRACTOR

CONTRACTOR agrees:

a) Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or required by this Personal Information Privacy and Security Contract or as required by applicable state and federal law.

b) Safeguards. To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and Security Contract. CONTRACTOR shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, which incorporate the requirements of Paragraph (c), below. CONTRACTOR will provide COUNTY with its current policies upon request.

c) Security. CONTRACTOR shall ensure the continuous security of all computerized data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing DHCS PI and PII. These steps shall include, at a minimum:

i. Complying with all of the data system security precautions listed in Paragraph E of the Business Associate Contract, Attachment D-1 to the Agreement; and

ii. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III-Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.

iii. If the data obtained by CONTRACTOR from COUNTY includes PII, CONTRACTOR shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement (IEA). The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with

the SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

d) Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its subcontractors in violation of this Personal Information Privacy and Security Contract.

e) CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and conditions set forth in this Personal Information and Security Contract on any subcontractors or other agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the disclosure of DHCS PI or PII to such subcontractors or other agents.

f) Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.

g) Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI, production of DHCS PI, disclosure of a security breach involving DHCS PI and notice of such breach to the affected individual(s).

h) Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR agrees to implement reasonable systems for the discovery of any breach of unsecured DHCS PI and PII or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI and PII or security incident in accordance with Paragraph F, of the Business Associate Contract, Attachment D-1 to the Agreement.

i) Designation of Individual Responsible for Security. CONTRACTOR shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Personal Information Privacy and Security Contract and for communicating on security matters with the COUNTY.

