



CONTRACT

BETWEEN

COUNTY OF ORANGE

AND

MERCER HEALTH & BENEFITS LLC

FOR

EMPLOYEE BENEFITS CONSULTING AND

ACTUARIAL SERVICES

Contract
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CONTRACT

THIS “Contract” is effective December 8, 2011, by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and Mercer Health & Benefits LLC, with a place of business at 4695 MacArthur Court, Suite 600, Newport Beach CA 92660, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party,” or collectively referred to as “Parties.”

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for the Provision of Employee Benefits Consulting and Actuarial Services; and

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

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor for the Provision of Employee Benefits Consulting and Actuarial Services.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** The Scope of Work for this Contract is attached hereto as Attachment A.
2. **Pricing:** The Contract, as specified in Attachment B hereto, includes full compensation for providing all services to be provided under this Contract.
3. **Invoicing/Payment:** All invoicing and payment for services performed under this Contract shall be as specified in Attachment B, hereto.
4. **Contract Term:** The Term of this Contract shall be December 8, 2011 through December 7, 2015~~2016~~, upon execution of all necessary signatures and approval by the County Board of Supervisors. ~~The Contract may be renewed thereafter for one (1) additional one year terms upon mutual agreement of both Parties and approval of the County Board of Supervisors if necessary. The County does not have to provide a reason if it elects not to renew this Contract.~~
5. **Entire Agreement:** This Contract, including its Attachments, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.
6. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties.
7. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

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8. **Appropriation/Contingency of Funds:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the Term of this Contract. If such appropriations are not approved, this Contract will be immediately terminated without penalty to the County.
9. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
10. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work; provided that Contractor shall be provided a reasonable opportunity to cure such nonconformity prior to rejection or cancellation.
11. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
12. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents, as relates to call center or direct participant interaction may be performed outside the United States of America. In no case may participant specific data be sent, stored, or accessed outside the United States of America.
13. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1720 *et seq.*, of the California Labor Code.
14. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to conform to the specifications set forth in the Scope of Work. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall

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not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.

16. **Warranty:** Contractor expressly warrants that the services covered by this Contract will be performed in a professional workman-like manner in accordance with the applicable professional standards currently recognized by Contractor's profession. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 34 below and as more fully described in paragraph 34, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

The Contractor does not act on behalf of any insurer or other service provider, is not bound to utilize any particular insurer or service provider, and does not have the authority to make binding commitments on behalf of any insurer or service provider. In addition, the Contractor does not guarantee or make any representation or warranty that coverage or service can be placed on terms acceptable to the County. The Contractor shall not be responsible for the solvency or ability to pay claims of any insurance carrier or for the solvency or ability of any service provider to provide service. Insurance carriers or service providers with which the County's risk or business is placed at the County's direction will be deemed acceptable to the County, in the absence of contrary instructions from the County.

17. **Patent/Copyright Materials/Proprietary Infringement:** Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 34 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, reasonable attorney's fees, costs and expenses. Provided that the foregoing indemnity shall not apply to any claim of infringement to the extent resulting from the acts or omissions of the County including, without limitation, modifications made to the work product.
18. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 34 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.
19. **Insurance:** Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

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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

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

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

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

Required Coverage Forms

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

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

Required Endorsements

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

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

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

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

Insurance Agent shall endeavor to give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium.

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

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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

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

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

20. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees. The foregoing obligations of confidentiality shall not apply to information or data that (a) is already or enters the public domain through no fault of Contractor or (b) is required to be disclosed pursuant to law or legal process, (c) is available to the Contractor from a third party who, to Contractor’s knowledge, is not under any non-disclosure obligation to County, or (d) is independently developed by or for Contractor without reference to any confidential information of County. The receiving party will, unless prohibited by law, give prompt notice to the disclosing party of any disclosure required by law so that the disclosing party may seek a protective order.
21. **Contractor’s Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any

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services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

The contractor's project manager and key personnel shall be assigned to this project for the duration of this contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the contractor's project manager.

22. **County and Contractor Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract ("County's Project Manager"). The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

Contractor shall appoint a project manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract ("Contractor's Project Manager"). Contractor's 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. 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 1 business day after written notice by the County's Project Manager. The County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of Contractor's Project Manager from providing services to the County under this Contract.

23. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
24. **Ownership of Documents:** The County has permanent ownership of all documents, reports and other work or materials produced specifically and exclusively for the County under this Contract by the Contractor ("Work"). All Work so produced shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the Work shall be used by the Contractor without the express written consent of the County.
25. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract; provided that, subject to its continued adherence to its obligations of confidentiality, the Contractor may retain one copy of the foregoing for archival purposes and to defend its work product.
26. **Records:** The Contractor shall keep an accurate record of time expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times upon reasonable prior written notice.
27. **Audits/Inspections:** At County's sole expense 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 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 directly connected with the

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performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable prior written notice of such an audit or inspection. The County reserves the right to audit and verify the Contractor's records before final payment is made.

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

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

28. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
29. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County under this Contract. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractor's and third parties associated with accomplishing services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
30. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract, which is not cured within ten (10) business days of the Contractor's receipt of written notice thereof, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. Upon termination, County shall pay the Contractor for all services acceptably performed prior to the effective date of termination.
31. **Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above; and/or
 - c. Terminate this Contract immediately, without penalty to the County if such breach is not cured within the ten (10) business day period provided in clause (a) above
32. **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a

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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 Purchasing Agent by way of the following process:

- a. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.
- c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.
- d. Notwithstanding the foregoing, any "final" or other decision that is reached or deemed to have been reached pursuant to the foregoing process shall not be binding, shall have no legal effect on either party, and shall be without prejudice to either party, in each case, unless agreed to in writing, and after such non-binding "final" decision is reached or deemed to have been reached, the following terms shall apply. Each party to this Contract, on behalf of itself and its affiliates, agrees that any dispute, claim or controversy arising out of or relating to this Contract or the provision of Services by Contractor, its affiliates and any officer, director or employee of its and its affiliates (a "Claim") shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") then in effect. The arbitration shall be conducted by a panel of three arbitrators, with each party selecting one arbitrator and the two arbitrators selecting the third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. Each of the arbitrators shall have at least fifteen years of relevant industry experience. The arbitrator(s) shall render a reasoned opinion, and neither party shall object to the other party's request for such an opinion. The arbitrators shall have no authority to award loss of profit, incidental, consequential, special, indirect, punitive or similar damages or any damages not measured by the prevailing party's actual direct damages, and may not make any ruling, finding or award that does not conform to the terms and conditions of this Contract including, without limitation, the terms and conditions relating to the exclusion or limitation of damages. All fees and expenses of the arbitration shall be borne by the parties equally; except that each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of the arbitration matter. Judgment upon any award rendered by the arbitrators may be entered in any court of competent jurisdiction; provided, however, neither party shall seek to enforce any judgment which does not conform to the terms and conditions of this Contract, including, the terms and conditions relating to the exclusion or limitation of damages. No demand for arbitration may be made on any date on or after which the institution of legal or equitable proceedings based on the applicable claim would be barred by the applicable statute of limitations or by any provision of this Contract. Notwithstanding the foregoing, nothing in this Section 33 prohibits either party from seeking equitable relief from a court of competent jurisdiction to the extent that irreparable harm may occur and damages would not be a sufficient remedy. The arbitrators shall not amend, modify, nullify, ignore or add to the provisions of this Contract and in the event the arbitrators do so or attempt to do so, such act by the arbitrators shall be null and void and have no effect, and either party may seek to enforce this sentence and the immediately proceeding sentence in a court of competent jurisdiction notwithstanding this Section 32.

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33. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract, subject to the Contractor's right to retain a copy of materials as provided in Section 25 and 26 hereof. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party, provided that the Contractor shall be compensated for such transition services at its specified rates.
34. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, (which approval shall not be unreasonably withheld) 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, to the extent directly arising from or related to the negligent acts or omissions or intentional misconduct of Contractor in its performance of the services 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.
35. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
36. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
37. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
38. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Human Resources/Employee Benefits
Attn: Diana Banzet, Program Manager
333 W. Santa Ana Blvd., 2nd Floor
Santa Ana, Ca 92701

cc: Human Resources/Employee Benefits
Attn: Diana Banzet, Deputy Purchasing Agent
333 W. Santa Ana Blvd., 2nd Floor
Santa Ana, Ca 92701

Contractor: Mercer Health & Benefits LLC
Attn: Mike Wilson, Partner

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4695 MacArthur Court, Suite 600
Newport Beach, CA 92660

39. **County Child Support Enforcement:** In order to comply with the County child support enforcement requirements, Contractor has provided to the Program Manager a fully completed and executed certification in the form of Exhibit I and upon request of the County, Contractor agrees to also furnish to the Program Manager a fully completed and executed certification in the form of Exhibit 2. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Contract.
40. **Change Of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
41. **Precedence:** The documents herein consist of this Contract and its Attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the Attachments and Exhibits.
42. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
43. **Severability:** It is the intent of the parties that the provisions of this Contract shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Contract or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Contract as modified, enforceable and the balance of this Contract shall not be affected thereby, the balance being construed as severable and independent.
44. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
45. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
46. **Waiver Of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
47. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including

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California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.

48. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
49. **Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Attachment E hereto are incorporated herein and shall be operative and control the Business Associate relationship of the parties. Nothing in Attachment E shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.
50. **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.
51. **Bills and Liens** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 34 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
52. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
53. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18, 19, 32, 34, 43 and 56 shall survive the termination of this Contract.
54. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
55. **Incorporation:** This Contract and its Attachments A through E and Exhibit 1 are attached hereto and incorporated by reference and made a part of this Contract.
56. **Limitation of Liability:** Notwithstanding anything to the contrary contained in this Contract, the aggregate liability of Contractor, its affiliates and any officer, director or employee of Contractor and its affiliates ("Contractor Parties") to County, its affiliates, its officers, directors or employees, or those of its affiliates, and any third party (including any benefit, its fiduciaries or any plan sponsor, acting in that capacity) for any and all Losses arising out of or relating to the provision of services by any of the Contractor Parties shall not exceed the greater of one times the compensation for the services provided pursuant to the Contract and

Attachment B – Redline Contract with Mercer Health & Benefits LLC

\$3,000,000. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors).

In no event shall either Party or its affiliates be liable in connection with this Contract or the services for any loss of profit or incidental, consequential, special, indirect, punitive or similar damages. The provisions of this Section 56 shall apply to the fullest extent permitted by law.

Nothing in this Section 56 limiting the liability of a Party shall apply to any liability that has been finally determined by a court to have been caused by the fraud of such Party.

For purposes of this Contract “Loss” means damages, claims, liabilities, losses, awards, judgments, penalties, interest, costs and expenses, including reasonable attorneys’ fees, whether arising in tort, contract or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss.

57. **Information:** Contractor will assume that all information supplied by or on behalf of County is accurate and complete. Contractor’s responsibilities (and the associated compensation) do not include independent verification of required information. Problems with information quality and/or delays in providing such information may result in a delay in the performance of services hereunder or an increase in fees.
58. **Scope of Service:** The parties do not intend Contractor to perform any fiduciary duty hereunder or be a fiduciary with respect to any plan or party for which it may provide service. Moreover Contractor is not engaged in the practice of law, and the services provided hereunder are not intended as a substitute for legal advice. Accordingly, Contractor recommends that the County secure the advice of competent legal counsel with respect to any legal matters related to this engagement.
59. **No Third Party Beneficiaries:** Neither this Contract nor the provision of the services is intended to confer any right or benefit on any third party except with respect to affiliates of the Parties as specifically set forth in this Contract.
60. **Title V of the Gramm-Leach-Bliley Act** and related state laws and regulations establish limitations on the use and distribution of non-public information collected by financial institutions from their customers and consumers. Contractor’s insurance-related work qualifies Contractor as a financial institution under this Act. Contractor’s Privacy Policy Notice is available at www.mercer.com/transparency. At this web address, County will also find information regarding Marsh & McLennan Companies, Inc. and its subsidiaries’ equity interests in certain insurers and contractual arrangements with certain insurers and wholesale brokers.

CONTRACT SIGNATURE PAGE

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

Mercer Health & Benefits LLC

Print Name Title

Signature Date

Print Name Title

Signature Date

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

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

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

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

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

Print Name Title

Signature Date

Approved by Board of Supervisors on: Date_____

APPROVED AS TO FORM:

Deputy, Office of County Counsel
Orange County, California

ATTACHMENT A

SCOPE OF WORK

I. Definitions

- a. *The Board.* The Board of Supervisors for the County of Orange is the legislative and policy making body of the County and is responsible for the review and approval of all service agreements and/or contracts with the County.
- b. *Benefits Center.* County participants receive benefits information, make all benefit elections, and direct all benefits customer services inquiries to the County of Orange Benefits Center (Benefits Center). The Benefits Center services are currently provided to the County by Affiliated Computer Services (“ACS”). Participants can make their elections on the County of Orange Benefits Center website or by calling the toll free Benefits Resource Line and speaking with a Benefits Specialist. The Benefits Center is the only authorized source of eligibility changes/enrollments on behalf of the County and therefore maintains and distributes all eligibility and coverage information to vendors for all County benefit programs and provides full customer service for benefits enrollment and eligibility to plan participants.
- c. *Employee Benefits Division.* A Division of the Human Resource Department of the County responsible for the design, implementation and on-going administration of the County’s various employee benefit plans and programs.
- d. *Human Resources (HR) Department.* The County’s HR Department is comprised of various divisions and sections that provide a wide array of personnel and employee services to County departments and agencies. The Department Director reports directly to the County Executive Officer (CEO).
- e. *TPA.* Third Party Administrator(s) for the County’s self-insured employee benefits plans.

II. Scope of Employee Benefits Consulting and Actuarial Services for the County of Orange Health and Welfare Benefit Plans and Programs

Contractor will provide, on an as-needed basis, the following services to the County’s health and welfare benefit plans and programs:

a. Financial

- 1. Contractor will evaluate and negotiate annual renewals for the Insured Benefit Plans and coordinate carrier information necessary for Board approval.
- 2. Contractor will analyze financial/plan performance for the Benefit Plans.
- 3. Contractor will provide actuary services as needed for the County’s self-insured employee benefit plans including but not limited to tracking historic claims data and calculating County specific trend factors, and recommend appropriate premium rates and reserves to maintain the viability of the plans, insuring quality and cost-effective benefits are provided by the plans.
- 4. Contractor will prepare report for Board on self-insured Employee Benefit plans rate requirements.
- 5. Contractor will provide short and long term forecasts for County budget process.

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6. Contractor will assist with the development, negotiation and implementation and year-end performance review of performance standards and guarantees with the County's various benefits plan providers.
7. Contractor will evaluate vendors and report compliance with performance standards to the County. Review and prepare analysis of plan utilization reports submitted by plan providers and TPA's. Recommend additional reports as needed.
8. Contractor will provide financial and/or performance reviews of self-insured and fully insured plans and programs, as well as the County's TPA.

b. Legal Compliance

1. Contractor will regularly and timely communicate changes and proposed changes in federal statutes and regulations that may impact the County's employee benefit plans and programs. Contractor will recommend procedures and/or policies the County should implement to comply with federal and state statutes and regulations.
2. Contractor will provide legislative education.
3. Contractor will assist in the development, design and review of provider contracts. Contractor will ensure contract compliance with current federal and state laws or regulations.
4. Contractor will respond to specific compliance questions (e.g., COBRA, FMLA, HIPAA, PPACA, Internal Revenue Code and other applicable state and federal laws).
5. Contractor will provide guidance on welfare non-discrimination issues.
6. Contractor will provide advice and legal opinions pertaining to the County's employee benefit plans and programs including interpretation and application of all relevant laws, statutes, and regulations. If the Contractor contracts its legal services to another firm or law practice, this must be indicated in the Contractor's response identifying the law firm or practice accompanied by a complete resume of the experience and training of the firm's partners and associates who would be providing legal services to the County.
7. Contractor will perform welfare non-discrimination testing and provide results/recommendations (e.g. IRC Sections 105(h), 125, 129).
8. Contractor will assist the County in the preparation and/or review and updating of benefit plan documents and assist in developing benefit summary plan descriptions for all plans, if requested by the County.
9. Contractor will apprise the County of any pending or new legislation that may affect its benefit programs.
10. Contractor will provide actuarial costing, new administrative requirements, and/or required plan design changes for legislative proposals for mandated benefit programs.

c. General

1. Contractor will assist in the development and review of various employee communication materials.
2. Contractor will meet monthly with County to provide updates on all ongoing activities.

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3. Contractor will be a liaison with insurers/claims administrators.
4. Contractor will assist with claims/administrative issues and facilitate resolution.
5. Contractor will be a liaison with senior management on benefit-related issues.
6. Contractor will assist with labor-management negotiations, as requested.
7. Contractor will provide consulting support around some of the County's unique benefit programs.
8. Contractor will provide clinical second opinions on select disputed self-funded claims.
9. Contractor will conduct demographic analysis of all programs.
10. Contractor will assist in developing and implementing contracts with selected health, welfare, and TPA providers in accordance with County timelines and requirements.
11. Contractor will review and prepare an analysis of all reports submitted by plan providers and TPAs, make recommendations regarding the format and content of the reports, and recommend additional reports as needed.
12. Contractor will provide research and responses to technical questions posed by Employee Benefits staff, and provide assistance, technically and creatively, in the on-going development and preparation of various employee communication materials.
13. Contractor will provide day to day consultation on matters such as, but not limited to, plan interpretation and problem resolution, including attendance at periodic meetings to facilitate and assist in the management of the County's health and welfare plans and programs.
14. Contractor will direct negotiations with health and welfare providers on matters such as, but not limited to, premium rates, benefit levels, performance standards and guarantees, contractual terms and conditions, quality assurance standards, utilization and performance reports, statistical and/or financial reports, and plan specific data such as medical conditions, prescription drugs, high cost procedures, in-patient data, etc.
15. Contractor will provide such other services as requested by the Employee Benefits for which the consultant has the technical capability and capacity to render.
16. Contractor will work with the County's Benefits Administrator for all matters dealing with the County of Orange Benefits Center.
17. Contractor will maintain full and accurate records with respect to all matters and services provided to the County's benefit plans and programs. At the request of County staff or County officials, provide all spreadsheets, assumptions, and calculations upon completion of any project performed on behalf of the County's benefit plans and programs.
18. Contractor will work collaboratively with any other consultants or consulting firms and/or legal firms the County has contracted with for consulting and/or legal services.
19. Contractor will work collaboratively with the County's in-house legal department, County Counsel, providing County Counsel with any and all requested information pertaining to the County's employee benefit plans and programs.
20. Contractor agrees to give the County the right to approve the Account Management Team assigned to this account.

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21. Contractor will provide a monthly statement to the County of services performed during the reporting period.
22. Contractor will provide, at a minimum, four (4) annual on-site training programs regarding legislation updates or best practice seminars for Employee Benefits and associated staff.

d. Program Design

1. Contractor will assist with long-term and short-term benefits strategy development.
2. Contractor will coordinate semi-annual benefit strategy meetings.
3. Contractor will compare features of County benefit programs against those of other public sector and private industry institutions.
4. Contractor will apprise the County of benefit developments at other California counties, to the extent doing so does not violate any confidentiality obligations of Contractor.
5. Contractor will advise about health care marketplace developments/changes.
6. Contractor will advise about industry developments/changes.
7. Contractor will propose plan design changes and enhancements.
8. Contractor will facilitate discussions on emerging trends and potential impact to the County.
9. Contractor will help assess employee benefit priorities/needs.
10. Contractor will provide benchmark financial comparisons.
11. Contractor will participate in labor/management meetings, Retirement Association committee meetings and the Health Plans Rate Committee meetings, as appropriate.
12. Contractor will provide support materials for labor negotiations.
13. Contractor will advise on proposed plan design changes for retirement health programs.
14. Contractor will assist and coordinate the implementation of new vendors.
15. Contractor will review and make recommendations to the County's Employee Benefits Division (Employee Benefits) for value added benefit plans and programs as well as modifications to the design, cost (rates), and quality of current employee benefit plans and programs.
16. Contractor will project value of proposed plan design changes
17. Contractor will develop RFPs for review by Employee Benefits and/or approval by the Board, including assisting in the development of the RFP and evaluation criteria, answering written questions from offerors, participating on the Evaluation Committee and preparing a comprehensive report of the proposals received in response to the RFP. Contractor will assist Employee Benefits in developing responses to protests from the RFP process.
18. Contractor will assist in the design, implementation and administration of new and existing programs.

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19. Contractor will make recommendations for items of negotiation with benefit plan providers including, but not limited to, plan design, cost (rates), and quality of services.
20. Contractor will assist with the development, negotiation and implementation of performance standards and guarantees with the County's various benefit plan providers.
21. Contractor will at designated intervals, evaluate and report the performance of plan providers to Employee Benefits.
22. Contractor will provide Employee Benefits with general guidance on items such as trends in benefit plans, methods for improving cost containment, financial arrangements, and administration.
23. Contractor will provide supporting backup and testimony to Board and Board staff, as needed.
24. Contractor will develop and/or assist in developing and evaluating employee needs and satisfaction surveys.
25. Contractor will as requested by Employee Benefits, provide comparison reports of other employers benefit plans and programs to determine competitiveness.
26. Contractor will evaluate impact of cost control approaches such as disease management.
27. Contractor will assist with contribution modeling and setting for alternative contribution approaches.
28. Contractor will assist the County with the process of Medicare Retiree Drug Subsidy (RDS) program. This includes performing actuarial equivalence test for Medicare prescription drug coverage subsidy, reviewing and reconciling cost reports for the County's contracted vendors before submission for reimbursement of payments to Centers of Medicare & Medicaid Services (CMS) quarterly and annually. Contractor will also provide on an as needed basis the estimated amount of subsidies to be acquired in future years based on pharmacy trends and County demographics.
29. Contractor will assist the County with the Early Retiree Reinsurance Program (ERRP). This includes reviewing and reconciling cost reports from the County's contracted vendors before submission of reimbursement requests to the Department of Health and Human Services (HHS) as well as any additional ERRP reconciliation requirements or additional information that may be requested by HHS. Contractor will also provide on an as needed basis the estimated amount of subsidies to be acquired in future years based on claim trends.

e. Retiree Medical Insurance Program

1. Contractor will work with the County upon request develop a retiree medical redesign work plan. The work plan will include:
 - a) Statement of objectives for the retiree medical redesign project.
 - b) Evaluation of retiree plan design alternatives for both the health insurance and Retiree Medical insurance programs with respect to the stated objectives.
 - c) Evaluation with the County of funding alternatives for the Retiree Medical Insurance program with respect to the objectives.

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- d) Projections of funding and accounting costs for options being considered, excluding post employment valuation work.
- 2. Contractor will provide other services for the Retiree Medical Insurance program as requested by the County.
- 3. Contractor will provide services for Health Reimbursement Arrangement that will include but not be limited to plan design, plan document development and review.

f. Prescription Drug Plan Administrator Audit:

- 1. Contractor will conduct at the request of the County an audit of the County's current prescription drug plan administrator which shall meet the following primary objectives: Ensure that prescription drug plan administrator administering and reporting claims with plan provisions and evaluate effectiveness of the transition in claims administrators from prior vendor to current prescription drug plan administrator. Obtain independent measurement of prescription drug plan administrator's performance under existing contractual performance guarantees, and determine how these guarantees can be enhanced in the future to motivate prescription drug plan administrator to perform at a high level. Determine whether program specifications and pricing are implemented correctly in the system, claims are adjudicating properly, and the members are receiving correct and complete information from the customer service area.
- 2. Contractor will prepare an audit work plan and timeline that will include but not limited to the following:
 - a) Provide a data request to the County and collect information on benefit design, Contract terms and account structure,
 - b) Request from prescription drug plan administrator the specifications sheet that they used to input the pricing, benefit design, and account structure into the system,
 - c) Compare the prescription drug plan administrator specifications to the County's understanding of the benefit design, contract terms, and account structure and identify any differences,
 - d) Develop a set of test claims to run through prescription drug plan administrator's adjudication system. These test claims are designed to validate features such as coverages/exclusions, coinsurance, prior authorizations, out of network benefits, discounts, dispensing fees, and lower of usual and customary pricing,
 - e) Conduct an electronic claim review to:
 - 1. Review test claims to identify potential errors
 - 2. Review process for measuring and reporting key service performance standards
 - f) Discuss potential errors with the County and prescription drug plan administrator to determine appropriate corrective actions, and work with prescription drug plan administrator to correct errors and retest the system to ensure that corrections have been properly made. Prepare an Action Matrix to enable the County, prescription drug plan administrator, and the Contractor to monitor prescription drug plan administrator's progress in implementing agreed-to-actions in response to audit findings.

ATTACHMENT B

COMPENSATION/PAYMENT

1. **Compensation:** This is a fixed price Contract between the County and Contractor for the Provision of Employee Benefits Consulting and Actuarial Services as provided in Attachment A, Scope of Work. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. If the actual hourly rate incurred for the services provided result in a lower fee in any given contract term than the total contract amount designated below as applicable for that term, then the County will only be responsible to pay the lower cost of the actual hourly rate incurred. If the actual hourly rate incurred for the services provided result in a higher fee in any given term than the total contract amount designated below as applicable for that term, then the County will only be responsible to pay the total contract amount for that term. Such payment shall constitute full remuneration as described above

The Total Contract amount for this Contract Term (years 1, 2, and 3 as specified below) will not exceed: \$1,230,000.

There is an option to renew the contract for two additional one year periods (year 4 and 5) at a total of ~~\$765,000~~974,450.

The County shall have no obligation to pay any sum in excess of total Contract amount specified unless authorized by amendment.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required.

2. **Payment Schedule**

- A. Consulting Services - Hourly Rate for each level of staff shall increase by 2.25% per year for Year 4 and Year 5 of the contract.

<u>Classification/Title</u>	<u>Hourly Rates</u>		
	Years 1-3	Year 4	Year 5
Senior Actuary	\$461.49	471.87	482.49
Senior Consultant	\$440.27	450.18	460.31
Attorney	\$424.36	433.91	443.67
Consultant	\$291.75	298.31	305.03
Actuarial Analyst	\$212.18	216.95	221.83
Analyst	\$196.27	200.69	205.21
Support Staff	\$95.48	97.63	99.83

3. **Firm Pricing Structure:** Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
4. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
5. **Payment Terms:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this contract. Vendor shall reference contract number on invoice.

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Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the contractor. Billing shall cover services and/or goods not previously invoiced. The contractor shall reimburse the County of Orange for any monies paid to the contractor for goods or services not provided or when goods or services do not meet the contract requirements.

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

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

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

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

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

Invoices and support documentation are to be forwarded to:

Diana Banzet, Program Manager
Human Resources/Employee Benefits
Hall of Administration
333 W. Santa Ana Blvd., 2nd Floor
Santa Ana, CA 92701

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

ATTACHMENT C**PROPOSED PERFORMANCE STANDARDS**

<u>Performance Standard Description</u>	<u>County Specific Performance Standard</u>	<u>Financial Amount at Risk</u>
Timely response to verbal inquiries	County to receive verbal response within two (2) County business days of verbal inquiry. A responsiveness score of “3” or better on a 1-5 scoring system.	4%
Timely response to written inquiries	County to receive written response within two (2) County business days of receipt of inquiry. A responsiveness score of “3” or better on a 1-5 scoring system.	4%
Projects completed by predetermined deadline*	Consultant shall meet all mutually agreed upon deadlines. If the service is delayed by the County or external vendor, the number of days the project or project phase is delayed will be added to the original due date. A responsiveness score of “3” or better on a 1-5 scoring system.	4%
*Penalties will be waived or reduced if project delays are due to extenuating circumstances outside the control of the Consultant. These situations will be reviewed on a 'case by-case' basis.		
Account management satisfaction	An account management satisfaction score of ‘3’ or better on a “1-5” scoring system	4%
Consulting Team Continuity	If a key personnel is no longer employed by Consultant, Consultant shall notify the County within 24 hours of the person leaving and shall promptly replace such person with a reasonably acceptable replacement. County shall have the option to interview up to 3 employees of the Consultant before selecting a replacement. The replacement shall be assigned to the County within one week of either the notification date if no interviews are conducted or one week from the County selecting from interviewed employees. A County “key personnel transition” satisfaction score of “3” or better on a 1-5 scoring system.	4%
Total Financial Liability per Plan Year Not to Exceed		20% of total cost of services per plan year

Assessment will be performed each quarter and within 60 days of the quarter end by County HR/Personnel staff who primarily work with Mercer team. Penalties will be applied on a quarterly basis to total billed invoices for the respective quarter. Mercer has the right to provide a written response to any negative County ratings resulting in penalty payments and receive a written response from the County prior to any payment of penalties.

ATTACHMENT D**STAFFING PLAN****1. Primary Staff to perform Contract duties**

Name	Classification/Title
<u>Mike Wilson</u>	<u>Senior Consultant/Partner</u>
<u>Tim Upson</u>	<u>Senior Actuary/Partner</u>
<u>Mike Sinkeldam</u>	<u>Attorney/Principal</u>
<u>Garrett Sullivan</u>	<u>Analyst/Analyst</u>
<u>Scott Maccarone</u>	<u>Actuarial Analyst/Analyst</u>
<u>Kris Dopera</u>	<u>Consultant/Principal</u>
<u>J. Carmelina Rivera</u>	<u>Senior Consultant/Principal</u>
<u>Kathy Slothour</u>	<u>Senior Consultant/Principal</u>
<u>Dana Keller</u>	<u>Support Staff/Administrative Assistant</u>
<u>Sherilyn Thurman</u>	<u>Support Staff/Administrative Assistant</u>

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

Name	Classification/Title
N/A	

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

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

3. Sub-contractor(s)

In accordance with Article 12 "Assignment or Sub-Contracting", listed below are Sub-contractor(s) anticipated by Contractor to perform services specified in Attachment A, Scope of Work.

Company Name	Staff Name
N/A	

ATTACHMENT E

HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT

The parties intend to use this Agreement to satisfy the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined below, shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as it may exist now or be hereafter amended.

2. It is agreed by both parties that CONTRACTOR is a Business Associate of COUNTY for the purposes of this Agreement.

3. It is understood by both parties that the HIPAA Security and Privacy Rules apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY). CONTRACTOR shall therefore at all times be in compliance with the applicable provisions of both the Privacy and the Security Rules as are described in Sections B.4 and B.5. below, and is responsible for complying with the issued regulations for said rules, as they currently exist or are hereafter amended, for purposes of safeguarding any Protected Health Information (PHI) used or generated by CONTRACTOR consistent with the terms of this agreement.

4. It is understood by both parties that the Privacy Rule does not pre-empt any state statutes, rules or regulations that impose more stringent requirements with respect to confidentiality of PHI.

5. COUNTY wishes to disclose certain information to CONTRACTOR pursuant to the terms of this Agreement, some of which may constitute PHI as defined in Section B.6. below.

6. COUNTY and CONTRACTOR intend to protect the privacy and provide for the security of PHI disclosed to the CONTRACTOR pursuant to this Agreement, in compliance with HIPAA and the regulations promulgated thereunder by the U.S. Department of Health and Human Services as they may now exist or be hereafter amended.

B. DEFINITIONS

1. “Breach” means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information.

a. For purposes of this definition, compromises the security or privacy of the Protected Health Information means poses a significant risk of financial, reputational, or other harm to the Individual.

b. A use or disclosure of Protected Health Information that does not include the identifiers listed at §164.514 (e) (2), date of birth, and zip code does not compromise the security or privacy of protected health information

c. Breach excludes:

1) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition,

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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.

2) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at a covered entity or business associate to another person authorized to access Protected Health Information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.

3) A disclosure of Protected Health Information where a covered entity or business associate 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.

2. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

3. “Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

4. “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.

5. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.”

6. “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103, as applied to the information created or received by Business Associate from or on behalf of Covered Entity.

7. “Required by Law” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.103.

8. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

9. “Unsecured Protected Health Information” means Protected Health Information 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.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. CONTRACTOR agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.

2. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.

3. 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 Agreement.

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4. CONTRACTOR agrees to report to COUNTY within five (5) business days any use or disclosure of PHI not provided for by this Agreement of which CONTRACTOR becomes aware.

5. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from COUNTY, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such information.

6. 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 Section 164.524.

7. CONTRACTOR agrees to make any amendment(s) to PHI in a Designated Record Set that COUNTY directs or agrees to pursuant to 45 CFR Section 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.

8. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and PHI, 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 Privacy Rule.

9. CONTRACTOR agrees to document any disclosures of PHI 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 Section 164.528.

10. 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 this 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 Section 164.528.

11. 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 Section B.1.c. above.

D. SECURITY RULE

1. Security. CONTRACTOR shall establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI. CONTRACTOR shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of PHI.

2. Agents and Subcontractors. CONTRACTOR shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI, agrees to implement reasonable and appropriate safeguards to protect the PHI.

3. Security Incidents. CONTRACTOR shall report any "security incident" of which it becomes aware to COUNTY. For purposes of this agreement, a security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to

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penetrate computer networks or servers maintained by CONTRACTOR.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured Protected Health Information, 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.

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

3. 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 the CONTRACTOR, as determined by federal common law of agency.

4. CONTRACTOR shall provide the notification of the Breach without unreasonable delay, and in no case later than five (5) business days after a Breach.

5. CONTRACTOR'S notification may be oral, but shall be followed by written notification within 24 hours of the oral notification. Thereafter, CONTRACTOR shall provide written notification containing the contents stated below, within five (5) business days. CONTRACTOR shall be required to provide any other information relevant to the Breach in writing, as soon as discovered, or as soon as the information is available.

6. CONTRACTOR'S notification shall include, to the extent possible:

a. The identification of each Individual whose unsecured protected health information 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 it must provide pursuant to 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 Protected Health Information 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.

7. 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.

8. In the event that CONTRACTOR is responsible for, or suffers a Breach of Unsecured Protected Health

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Information, in violation of the Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY as required by the Breach Notification regulations, or in the alternative, that the use or disclosure did not constitute a Breach as defined in 45 CFR § 164.402.

9. CONTRACTOR shall maintain documentation of all required notifications required pursuant to this Agreement in the event of an impermissible use or disclosure of Unsecured Protected Health Information, or its risk assessment of the application of an exception to demonstrate that the notification was not required.

10. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach to permit COUNTY to meet its notification obligations under the HITECH Act, as soon as practicable, but in no event later than fifteen (15) calendar days after reporting the initial Breach to the COUNTY.

11. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of fifteen (15) calendar 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.

12. 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. Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose PHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

2. CONTRACTOR is permitted to use PHI as necessary for the proper management and administration of CONTRACTOR or to carry out legal responsibilities of CONTRACTOR. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

3. CONTRACTOR is permitted to disclose PHI received from COUNTY for the proper management and administration of CONTRACTOR or to carry out legal responsibilities of CONTRACTOR, provided:

- a. The disclosure is required by law; or
- b. 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, the person will use appropriate safeguards to prevent unauthorized use or disclosure of the PHI, and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the Information has been Breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).

4. CONTRACTOR is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of COUNTY.

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 Section 164.520, to the extent that such limitation may affect CONTRACTOR'S

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use or disclosure of PHI.

2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by an Individual to use or disclose 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 Section 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 Privacy Rule if done by COUNTY.

H. BUSINESS ASSOCIATE TERMINATION

1. Notwithstanding the Termination provisions set forth in this Agreement, the Agreement shall only terminate when all of the PHI provided by COUNTY to CONTRACTOR, or created or received by CONTRACTOR on behalf of COUNTY, is destroyed or returned to COUNTY, or if infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.

2. In addition to the rights and remedies provided in the Termination paragraph of this Agreement, upon COUNTY'S knowledge of a material breach by CONTRACTOR of the requirements of this Paragraph, COUNTY shall either:

a. Provide an opportunity for CONTRACTOR to cure the material breach or end the violation and terminate this Agreement if CONTRACTOR does not cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate this Agreement if CONTRACTOR has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cure is feasible, COUNTY shall report the violation to the Secretary of the Department of Health and Human Services.

3. Upon termination of this Agreement, all PHI provided by COUNTY to CONTRACTOR, or created or received by CONTRACTOR on behalf of COUNTY, shall either be destroyed or returned to COUNTY as provided in the Termination paragraph of this Agreement, and in conformity with the Privacy Rule.

a. This provision shall apply to 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 infeasible, 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 Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such PHI.

EXHIBIT 1

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

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

Name: Not Applicable
D.O.B: _____
Social Security No: _____
Residence Address: _____

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

Name: None
D.O.B: _____
Social Security No: _____
Residence Address: _____

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

(Additional sheets may be used if necessary)

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

Authorized Signature	Name	Title	Date
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