



Contract Between

County of Orange

And

**International City Management Association
Retirement Corporation**

For

**Administration of a Health
Reimbursement Arrangement Program**

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**CONTRACT FOR
ADMINISTRATION OF A HEALTH REIMBURSEMENT
ARRANGEMENT PROGRAM**

THIS AGREEMENT to provide for Administration of a Health Reimbursement Arrangement Program, (hereinafter referred to as "Contract") is effective April 1, 2019, by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and International City Management Association – Retirement Corporation (ICMA-RC), with a place of business at 777 North Capitol Street, N.E., Washington, D.C., 2002, 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 to provide Administration of a Health Reimbursement Arrangement (HRA) Program

WHEREAS, the Contractor represents that its proposed services shall meet or exceed the requirements and specifications of the RFP except for those exceptions and clarifications agreed to by the Parties in this Agreement; and

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

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the County will procure services for Administration of a Health Reimbursement Arrangement program from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Fees and Investment Options:** The Contractor agrees to accept the compensation as set forth in "Attachment B", Fees and Investment Options, identified and incorporated herein by this reference, as full remuneration for (a) performing all Services and furnishing all staffing and materials required, (b) any reasonably unforeseen difficulties which may arise or be encountered in the performance of the Services until acceptance, (c) risks connected with the Services, and (d) performance by the Contractor of all its duties and obligations required herein. The parties acknowledge that participant fees and expenses shall be payable from assets of the HRA plan and that asset-based fees may be included in the daily unit value of the HRA plan's investments.
3. **Term of Contract:** The initial term of this Contract is for three (3) years, effective on the date execution is completed by the Parties or April 1, 2019, whichever date is later in time, and continuing for three (3) years from that date, unless earlier terminated by the County. The Contract Term may be renewed for up to two (2) additional consecutive one (1) year terms, upon the mutual written agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors. Permitted renewals of the Contract provided in this paragraph 3 shall not result in any change in any other term, condition or provision of this Contract.
4. **Entire Agreement:** This Contract, including its Attachments A, B, C, D, E, and F, and Exhibits 1 and 2, as they now exist or may hereafter be changed, modified, or amended, and which are attached hereto and incorporated herein by this reference, constitutes the entire Contract between the Parties with

respect to the matters herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. No exceptions, alternatives, substitutes, understandings, agreements or revisions, whether oral or written, are valid or binding on the County unless authorized by the County in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on the County unless accepted in writing by the County's Purchasing Agent or his authorized designee. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract (i.e., those provisions set forth in the recitals and articles), and then the attachments and then the exhibits.

5. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on the County unless authorized by the County in writing. Notwithstanding the foregoing, the parties agree that a reduction in compensation or an adjustment to administrative services under this Contract may be implemented by Contractor through a proposal to the County via correspondence or Contractor's quarterly communication, the Employer Bulletin. The County will be given at least 60 days to review the proposal before the effective date of the reduction or adjustment. Such reduction or adjustment shall become effective unless, within the 60-day period, the County notifies Contractor in writing that it does not accept such adjustment or reduction, in which event the parties will negotiate with respect to the adjustment.
6. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, 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.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
9. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
10. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
11. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County Program Manager, as identified below, to the extent such

sub-contractor is retained to provide custom services unique to County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of custom services unique to County of this Contract without the express written consent of County Program Manager shall be invalid and shall constitute a breach of this Contract. Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all services required herein. Notwithstanding the preceding provisions of this paragraph, (i) services to be performed for County under this Contract may be performed by personnel of Contractor or of any other entity that is controlling, controlled by, or under common control with, Contractor and (ii) Contractor may assign this Contract and all rights, duties and obligations hereunder to any other entity that is controlling, controlled by, or under common control with the Contractor that succeeds to the business of Contractor providing the services under this Contract. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents as relates participant interaction may be performed outside the United States of America, with the exception of core Account Team Members as named in Staffing Plan, Attachment D, or otherwise approved by County, on an as needed basis. In no case may participant specific data be sent to locations outside the United States of America. To the extent that non-core account team members, special project teams and the like are required to do work for the County outside the United States of America, data will not include participant data that will allow for personal identification either as a standalone data element or in combination, for example, social security number, date of birth, personal health information, and home addresses. In instances where previously identified core Account Team Members are required to access participant specific data, as approved by the County, on an as needed basis while outside the United States of America, data will be accessed and viewed only, and will not be stored, changed, or updated in any fashion. By executing this Contract, County expressly consents to the use of Contractor's sub-contractors in existence as of the date of execution of this Contract.

12. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1741 of the California Labor Code.
13. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
14. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action

between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County. Notwithstanding the foregoing, Contractor relies upon the accuracy of any information furnished to it by a responsible official of the County or any information furnished to it by an individual participant (or the participant's survivor under the HRA plan), and Contractor should not be responsible for any error arising from its reliance on such information.

- 15. Warranty:** Contractor expressly warrants that the services covered by this Contract: 1) will be performed in a timely, competent and professional manner, in accordance with highest industry standards, by duly qualified and experienced Contractor personnel possessing all relevant certifications, licenses and permits; 2) will conform to the specifications set forth herein and 3) are fit for the particular purpose intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify and hold County and its indemnitees, as identified in paragraph 18 below and as more fully described in paragraph 19, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- 16. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 18 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- 17. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 18 below, Contractor agrees that it shall 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. Notwithstanding the foregoing or Section 15, the County is responsible for determining that there are no state or local laws that would prohibit it from establishing the HRA program. The County is also responsible for determining that the investments selected for the HRA plan fall within state or local requirements. The Contractor shall not be responsible for monitoring state or local law or for administering the HRA Plan in compliance with local or state requirements applicable to such plans unless the County notifies the Contractor of any such local or state requirements.
- 18. Indemnification:** Contractor agrees to indemnify and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, directly arising from or related to the willful misconduct, negligent acts or failure of Contractor to perform services in accordance with the terms of this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. The parties agree that "County Indemnitees" shall not

include any appointed officials, officers, employees, or agents acting in the capacity of a holder of an account administered by Contractor.

19. Insurance Provisions:

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

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

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

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

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

Qualified Insurers

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 combined single \$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 or per occurrence	\$5,000,000 per claims made
Network Security and Privacy Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.
- 2) A primary non-contributing endorsement using ISO CG 20 01 04 13, or a form at least as broad evidencing that the Contractor’s insurance is primary and any insurance or self- insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy policy shall contain the following:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
- 2) A primary non-contributing endorsement evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

and employees or provide blanket coverage, which will state “As Required by Written Contract”.

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

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

If Contractor's Professional Liability policy is a "Claims-Made" policy, Contractor shall agree to maintain coverage for two (2) years following completion of the Contract.

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

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

If the contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies. The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- 20) Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
- 21) Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the Term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees. County authorizes Contractor to share such information with the third-party claims

administrator for reimbursement of claims under the HRA Plan.

22) **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

23) **Contractor's Account Manager and Key Personnel:** Contractor shall provide the staffing set forth in Attachment D of this Contract for the performance of Contractor's obligations under this Contract. The staffing plan for this Contract shall be subject to approval by the County and shall not be changed without the written consent of the County's Program Manager, which consent shall not be unreasonably withheld.

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

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

The County's Program Manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's Program Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within three (3) day after written notice by the County's Program Manager. The County's Program Manager shall review and approve the appointment of the replacement for the Contractor's Account Manager. The County is not required to provide any additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing further services under this Contract.

25) **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Program Manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

26) **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced specifically for the County, including but not limited to all participant data, under this Contract by the Contractor. All such documents, reports and other incidental or derivative work or materials developed hereunder specifically for County alone shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials developed specifically for the County shall be used by the Contractor without the express written consent of the County. Notwithstanding the foregoing, Contractor may retain copies of such materials to satisfy its regulatory obligations to maintain records.

- 27) **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. Notwithstanding the foregoing, Contractor may disclose County's materials without County's express consent if required by law, judicial order or regulatory request. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract, except that Contractor may retain copies of such materials, documents, data or information necessary to satisfy its regulatory obligations to maintain records.
- 28) **Records:** The Contractor shall keep and maintain such records, including but not limited to participant transactions, interaction with participants and participant logins, as may be necessary to document or support its provisions of services or products under this Contract. Such records shall be available for periodic inspection by the County at reasonable times.
- 29) **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor specifically related to its services for County solely, for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's Program Manager.

- 30) **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract or as may be required by law, court order or regulatory request. 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.
- 31) **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in an undisclosed conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and subcontractors associated with accomplishing work and services hereunder, for such agents and subcontractors retained to provide custom services unique to the County. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, such agents and such subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best

interests of the County.

- 32) **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of this Contract or any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. County understands and acknowledges that, in the event County terminates this Contract (or replaces the Vantagepoint PLUS Fund, offered by VantageTrust II, as an investment option in its investment line-up), Contractor retains full discretion to release HRA plan assets invested in the Vantagepoint PLUS Fund in an orderly manner over a period of up to 12 months from the date Contractor receives written notification from County that it has made a final and binding selection of a replacement for Contractor as administrator of the Plan (or a replacement investment option for the Vantagepoint PLUS Fund).
- 33) **Breach of Contract:** The failure of the Contractor to comply with any of the material terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Terminate this Contract immediately, without penalty to the County;
 - b. Afford the Contractor written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- 34) **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's Program 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.

- 35) **Orderly Termination:** Upon ending of the Term, termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in

orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract.

- 36) **Force Majeure:** Contractor shall not be in breach of this Contract and assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to the County within 36 hours of the start of the delay and Contractor avails himself of any reasonably available remedies.
- 37) **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- 38) **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- 39) **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the County’s Program Manager and Contractor’s Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Program Manager, ~~Duane Bankey~~ Susie Kim
 Human Resource Services/Employee Benefits
 333 W. Santa Ana Blvd., 1st Floor Room 137
 Santa Ana, CA 92701

cc: Human Resource Services/Employee Benefits
 Attn: Kim Derrick
 333 W. Santa Ana Blvd., 1st Floor, Room 137
 Santa Ana, Ca 92701

Contractor: International City Management Association – Retirement
 Corporation ~~(ICMA-RC)~~ dba MissionSquare Retirement
 777 North Capitol Street, N.E.,
 Washington, D.C., 2002
 Attn: Tom Axline

- 40) County of Orange Child Support Enforcement Certification Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of notification of selection of award of contract, the selected Contractor agrees to furnish to the Contract Administrator, County Purchasing Agent or the agency/department Deputy Purchasing Agent:
- a. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - b. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
 - c. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply. Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 41) EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

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

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

- 42) Change Of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.

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

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

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

- 43) **Precedence:** The Contract documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the attachments and exhibits.
- 44) **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- 45) **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 46) **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- 47) **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
- 48) **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- 49) **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization

or entity, enforceable in accordance with its terms.

- 50) Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it or its subcontractor providing reimbursement services is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Exhibit 1 hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Exhibit 1 shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.
- 51) Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18 and 19 shall survive the termination of this Contract.
- 52) 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.
- 53) Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 18 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- 54) Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- 55) Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- 56) Incorporation:** This Contract and its Attachments A through G and Exhibits 1 through 5 are attached hereto and incorporated herein by this reference and made a part of this Contract.
- 57) Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
- 58) Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection

with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.

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

CONTRACT SIGNATURE PAGE TO FOLLOW

CONTRACT SIGNATURE PAGE

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

CONTRACTOR*:

Print Name Title

Signature Date

Print Name Title

Signature Date

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

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

COUNTY of ORANGE

A political subdivision of the State of California

Print Name Title

Signature Date

Approved by the Board of Supervisors on: _____

APPROVED AS TO FORM:

Deputy, Office of County Counsel
Orange County, California

Attachment A

Scope of Work

1. Claims Administration

Contractor, acting through its third party claims administrator subcontractor, as Claims Administrator, shall provide Claims Administration services for the Health Reimbursement Arrangement (HRA) program. Contractor will ensure that its current or any future subcontractors engaged by Contractor to provide Claims Administration services shall meet all contractual requirements and performance guarantees as provided for in the Contract and all Attachment and Exhibits. Contractor shall monitor its subcontractor's services and submit reports to the County. County shall also have the ability to review any subcontractor's performance at County's sole discretion.

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

- a. Establishment and maintenance of each Participant's HRA Account in accordance with The County of Orange Health Reimbursement Arrangement Plan Document (Attachment G).
- b. Adjustment of each Participant's HRA Account for contributions, earnings, losses and administrative costs. The County will determine the frequency by which HRA Accounts will be adjusted, as can be accommodated by Contractor, provided that adjustments are made no less frequently than annually. Contractor shall make adjustments to each Participant's HRA Account in accordance with its normal business practices and consistent with reasonable industry standards. Asset and account administration fees will be charged to each Participant's HRA Account on a quarterly basis, based on the balance in the account on the last day of the previous quarter.
- c. Claims Payment
 1. Claims Administrator shall pay all Retired Participant, Spouse and Covered Dependent claims that meet the Qualified Medical Expense criteria.
 2. County and Claims Administrator shall have discretionary authority to administer and interpret all claims, including the full discretionary authority to determine eligibility for Benefits under the Plan; provided, however, that discretionary authority for final claims determinations shall rest with the County.
 3. Benefits under this Plan will only be paid to the extent the claimant Retired Participant, Spouse or Covered Dependent complies, in addition to the other requirements of this Plan, with the claims administration procedures established from time-to-time in writing by County or Contractor. At a minimum such claims administration procedures will require submission by the claimant of a written claim form (signed under penalty of perjury), proof of payment, and sufficient back up materials regarding the claim in order for County or Contractor to substantiate the claim.
 4. Approved claims will be paid to the Retired Participant as soon as possible following the County's or Claims Administrator's approval. Reimbursement payments under the Plan shall be made directly to the Retired Participant.
- d. Claims Review Procedures
 1. If the Claims Administrator denies a claim, the Claims Administrator shall provide a written denial notice to the Retired Participant. The notice shall be written in a manner calculated to be understood by the claimant and shall set forth (i) the specific reason(s) for the denial; (ii) specific references to the pertinent Plan or administrative provisions or procedures on which the denial is

based; (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and (iv) an explanation of the Plan's claims procedure.

2. After receipt of a written denial notice, the claimant shall have sixty (60) days to appeal the claim denial to the Claims Administrator. The claimant or his duly authorized representative may (i) appeal upon written notice to the Claims Administrator; (ii) review pertinent documents; and (iii) submit issues and comments in writing.
3. A decision by the Claims Administrator will be made no later than sixty (60) days after receipt of an appeal, unless special circumstances (in the opinion of the Claims Administrator) require an extension of time for processing, in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Claims Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

2. Account Management

a. Contractor shall:

1. Provide a cohesive, dedicated and responsive account management team that is experienced in services similar to County's, trained in the County's plan issues, accessible to the County geographically, focused on proactive and efficient management of the program service and with sufficient capacity and authority to respond to the County's issues in a timely manner.
2. Provide an Account Manager as the primary point-of-contact for day-to-day communications with the County and have an Account Assistant Manager and back-up plan when the primary person is unavailable.
3. Provide an escalation process to assist in matters that are unable to be resolved at the account team level.
4. Provide the County Program Manager thirty (30) days advance notice of any planned change in Contractor's primary Account Manager.
5. Provide the County Program Manager the right to interview and agree to the Contractor's intended replacement of the primary Account Manager. The County shall provide written or verbal approval of all proposed replacements.
6. Provide access to an electronic tracking and resolution log of the County issues.
7. Provide documentation of a process for prompt issue resolution in the event of a failure to perform a required service.
8. Attend teleconferences and in person meetings as requested by the County, quarterly and annual program reviews on site as requested at the County to review Plan benefit performance, programs, financial results and servicing of the County's account, and be available for service questions on any business day that Contractor's office is open.

- ### b.
- Each individual of the account management team assigned to the County will have at least two years' experience in HRA or similarly related services, and will be available to County during normal business hours. In the event the primary account manager is not available, County is to have a back-up contact person with a guaranteed return call guarantee within one business day.

- c. Contractor shall administrator the HRA in accordance with IRS regulations.
- d. Contractor shall ensure its record keeping is complete and thorough and in compliance with all required rules and regulations. Contractor shall keep accurate records that meet the following minimum requirements:
 1. Maintain a consolidated database that shows, at any time, the daily valuation of each Participant's account.
 2. Maintain a database listing all statistics related to bi-weekly data transmissions and cash transfers from the County.
 3. Maintain a database and supporting records substantiating all Participant withdrawals and claims payments.
- e. Contractor shall *maintain* daily information associated with a Participant's account including, but not limited to, investment balances, contributions, transfers, distributions, earnings, administrative costs, investment elections, current address, beneficiary designation(s), and any other information necessary for the proper administration of a Participant's account. Regarding the valuation of a Participant's account, the Contractor will adhere to the following:
 - a. Amounts will be valued at their net asset value as of the close of each business day, and/or in accordance with any applicable contract with a mutual fund Contractor or in accordance with the fund prospectus.
- f. Contractor shall maintain records relating to individual Participants and a database shall be kept, which at a minimum, shall include the following fields for active and inactive Participants:
 1. Name
 2. Date of Plan entry
 3. Date of birth
 4. Date of hire
 5. Contribution amounts
 6. Claim activity
 7. Bargaining Unit that the Participant works for
 8. Home address and telephone number
 9. Social security number
 10. Personal identification number (PIN)
 11. Spouse and Dependent -- Contractor shall be the primary record holder of the spouse and dependent designations.
- g. Contractor shall develop a system for correcting erroneous contributions or claim payments. Any errors made by the Contractor shall be corrected, at its expense, so that the value of the Participant's account is not less than it would have been had the error not occurred. Contractor shall adjust Participant's account retroactively if the Participant notifies Contractor within Ninety (90) days following the quarterly statement end date. Such system shall provide for prompt repayment or credit of any refunds within fifteen (15) business days following the date on which the reason for such refund or credit is brought to the Contractor's attention by the County. In the event of an error made by Contractor, and as a direct result, a loss is incurred by the participant (or a gain was not received), Contractor will adjust the account retroactively in accordance with any applicable U.S. Securities and Exchange Commission (SEC) standards and requirements consistent with the Contractor's error correction policy, unless the Contractor and County mutually agree that an exception to the Contractor's policy will apply in a given instance. Contractor will correct the transaction and the account will be made 100% whole.

- h. Contractor shall issue quarterly Participant statements of accounts. Statements are to be mailed by the Contractor to Participants' home addresses (or to County location(s) at the direction of the County) no later than the agreed upon date. Statements shall include, but not be limited to, the following information:
 - 1. Participant's name and address.
 - 2. Beginning and end balances for the quarter.
 - 3. All activity for the quarter including claims payments, transfers, contributions, earnings/losses, and administrative costs all detailed by investment choice.
 - 4. Year-to-date information on contributions and withdrawals as well as the totals for a Participant since he/she became eligible.
 - 5. Individual Participant investment performance.
 - 6. Participant fees
 - 7. General Plan-related messages provided or agreed to by the County.
 - 8. Results of all investment options for the quarter, the last year, and the last three (3), five (5), and ten (10) years, if applicable, and compare to the appropriate benchmarks, as agreed upon with the Program Manager.
- i. At the request of County, Contractor shall be available to participate in all of County's open enrollment meetings and health fairs throughout the year up to a maximum of twenty-one (21) meetings per calendar year. Attendance and promotional materials shall be provided by Contractor as part of the base administrative fees and will be provided at no additional charge to the County.
- j. Contractor shall provide enrollment support specific to the County's plan design and will continue to support the County's electronic file for enrollment of Participants as part of the base administrative fees and are provided at no additional charge to the County.
- k. Contractor shall forward the quarterly account management satisfaction surveys/score cards within thirty (30) days of the preceding quarter for evaluation by the County. The survey and scoring methodology shall be mutually agreed upon prior to contract finalization.
- l. Contractor shall ensure that it complies with all HIPAA Security, Portability and Privacy requirements. In addition, Contractor shall ensure that any of its subcontractors providing services to the County under the Contract shall comply with all HIPAA Security, Portability and Privacy requirements.
- m. Contractor shall cooperate with the Program Manager and other County officials to establish administrative rules for the operation of the Plan, including enrollments, address changes, contributions, transfers, and termination withdrawals. The Contractor will prepare and publish a comprehensive administrative manual that includes the administrative rules described in the first sentence of this paragraph as well as all legal and tax requirements.
- n. Contractor shall notify the County within thirty (30) days of purchase, acquisition, and any other change in its ownership or partners or control affecting 10% or greater interest, any acquisition by it of 10% or greater interest in any subsidiary, and any new agreement with, by, or between any affiliates that is relevant to the contract.
- o. No services provided, under the Contract, by the Contractor or subcontractors to the County may be provided offshore.

3. Investment Services and Trust Administration

Investment Services

- a. Contractor shall provide investment options, as available, to the County for consideration throughout the

Term of the Contract or at the County's request. County shall have the sole discretion to make the final determination of which investment options shall be made available to Participants and may elect to make fund changes at any time throughout the Term of the Contract.

- b. Contractor shall offer Participants all investment options authorized by County in Section 3.a. above.
- c. Contractor shall set up all necessary investment accounts and contracts required for the operation of the investment choices to be offered.
- d. Contractor shall record all contributions and investment allocations.
- e. Contractor shall accept contribution information in a manner compatible with the County's payroll system(s). County will be submitting contribution data on a twenty-six (26) payroll cycle basis.
- f. Contractor shall transfer funds it receives to the appropriate investment service provider on the same day it receives the funds in good order, as long as the funds are received prior to the deadline. Amounts received in good order later in the day will be processed on the next business day.
- g. Contractor shall compute the amount of transfers between investment options, adjust the amounts allocated to each investment option, and make these transfers on the day instructions are received timely and in good order from the Participant.
- h. In the event of a change in investment value, between the time contributions should have been invested and the time it is ultimately invested, if the investment value has increased, and the Contractor caused the suspense item to occur, the Contractor must pay the difference between the initial contribution amount and the price of the investment when it is actually purchased. In the event the investment value has gone down, the entire initial contribution amount will be utilized to purchase the investment at its current price so that there is no gain to the Contractor. The Contractor will maintain and report to the County a monthly suspense account balance reflecting all unpaid and uncleared transactions with corresponding occurrence dates. The Contractor is not responsible for errors made by Participants or the County.

Trust Administration

- i. On behalf of County, Contractor will open and maintain an Internal Revenue Services Code Section 501(c)(9) or Section 115 trust account, and hold, or instruct the trustee to hold, in such accounts all cash, securities, and certificates of ownership initially deposited plus any additional cash, securities and certificates of ownership that may be received from time to time for the account.
- j. Contractor shall keep accurate books and records detailing all investments, receipts (including all investment income), expenses, disbursements and other transitions relating to the account. Contractor shall maintain records of all transactions, including all historical cost basis information, and provide reports required under the Contract and the applicable trust contract based on those records. Such reports shall include all information necessary for the preparation of any applicable government or other required filings.
- k. Contractor shall conduct all necessary transactions, including the buying and selling of securities and making deposits and withdrawals from investment accounts upon the instructions of authorized parties. As necessary, Contractor shall establish daily interfaces with all investment managers and funds and the record keeper.
- l. Contractor shall accrue and pay all authorized Plan expenses in accordance with the applicable Plan document and trust/custody agreement.

- m. Contractor shall conduct all necessary activities to register all securities and shareholder accounts and vote all proxies and tender offers received in accordance with the applicable trust agreement.
- n. Contractor shall provide County a monthly statement of account of the inventory of all the assets in each account, all activity during the previous month, and the market value of all the assets in the account. Contractor shall also provide such other reports as County may reasonably request, including reports to the County Auditor-Controller or its authorized agents. Contractor shall also provide a monthly summary of transactions, including the payment of benefits and expenses from the Plan.
- o. Contractor shall ensure that all custody activities and transactions are in compliance with the provisions of applicable Plan document and trust agreements and do not jeopardize the tax status of the Plan.
- p. Contractor shall prepare all report documents necessary to meet trust reporting requirements and CAFR requirements in accordance with GASB and Federal/State requirements.
- q. Contractor shall provide assistance with preparation and maintenance of trust document.

4. Participant Services

- a. Contractor will design and print literature and prepare communications material at no additional cost to the County or Participants, such as brochures, posters, presentations, webinars, and any other materials needed for use in educating eligible employees regarding all aspects of the Plan (including investment education, investment performance, investment selection based on risks and returns, and claims processing information), and, with prior written approval of the County, distribute and present this information in an accurate and clear manner at no additional cost. In each instance, the Contractor shall fully disclose to each employee all of the Plan features and costs.
- b. Contractor will create and, after receiving written approval of the County, publish (print and/or electronic) easily understood Plan self-enrollment materials at no additional cost to the County or Participants, which can be used by Participants. Enrollment material must include promotional material, explanatory material (including explanations and notices required by law), and enrollment forms, subject to the County's approval. The Contractor will act as the County's agent with regard to the Plan's enrollment agreements.
- c. Contractor will be available to assist employees with the completion of enrollment forms or online applications and verify the completeness of such forms, applications or other enrollment documents. Contractor must also be staffed to provide enrollment counseling to employees who wish to discuss Plan participation in person or over the telephone. A supply of self-enrollment packages must also be provided to the County to be made available at various work locations.
- d. Contractor will develop literature to communicate Plan changes when they occur, at no additional cost to the County, and upon receipt of advance written approval of the County, distribute the literature to each appropriate County Office with a request that it be distributed to eligible Participants.
- e. Contractor will distribute:
 - 1. investment performance information;
 - 2. an investment newsletter; and
 - 3. pertinent articles in each Participant's quarterly Statement of Account at no additional cost. The articles shall include, but are not limited to, updates on the Plan, investment trends, and any applicable legislative updates.

- f. Materials developed by the Contractor must be submitted to the County for final review and editing and the County must be given at least two (2) weeks for its review. Publications must present an unbiased approach to investment information and educate Participants about all aspects of the Plan, including investment options offered and performance and distribution selections. Contractor must provide adequate quantities of materials to keep in different work locations. The Contractor must also respond to Participant's requests for publications and mail them to the Participant address of record.
- g. Contractor must maintain an adequate supply and distribute mutual fund prospectuses to Participants.
- h. Contractor shall provide Participant toll-free telephone access to Contractor's customer service to:
 - 1. receive claim, account and investment option information;
 - 2. conduct transactions related to a Participant's account; and
 - 3. receive requests for forms, sales literature, prospectuses, and other written information between 8:00 a.m. and 5:00 p.m. Pacific Time. Contractor's customer service representatives shall be capable of assisting Participants in accessing information about HRA planning, in general, and the County's Plan, specifically. The customer service representatives will help Participants understand the educational materials the Contractor makes available to help employees make decisions about how to direct their investments given their particular situation.
- i. Contractor will maintain an adequate number of staff to provide the required information and services directly to County Participants. Contractor shall ensure that people with limited English proficiency and those who are deaf or hearing impaired have access to communication services that enable Participants to utilize the phone lines.
- j. Contractor will record all telephone conversations between service representatives and Participants. Recordings will be made available to the County upon request.
- k. Contractor shall design and maintain a secure, custom website for the Plan (custom URL), available 24/7/365, and distribute information via the Internet. The website must offer the following information and services to Participants:
 - 1. The following specific Participant information services:
 - i. Claim status;
 - ii. Claim denial appeal status and process;
 - iii. Current account total;
 - iv. Current balances of each investment option selected by a Participant;
 - v. Current performance on all investment option(s);
 - vi. Current net asset values;
 - vii. Current investment allocation information;
 - viii. Transfer of balances from one investment option to another; and
 - ix. Change the investment allocation of future contributions.
 - 2. Retirement planning information and tools, including an interactive planning module that allows Participants to enter their personal financial data and then project a variety of "what if" scenarios, and information about age and income-appropriate portfolio structures;
 - 3. Asset allocation questionnaire that will, based on a Participant's response to several questions, propose an appropriate allocation of investments.

4. Information regarding all the investment options available in the Plan:
 - i. Historical net return information for the last month, the last quarter, calendar year-to-date, the last year, the last three (3) years, the last five (5) years, and the last ten (10) years;
 - ii. Historical fee information, including management fee information and all other investment expenses;
 - iii. Volatility information;
 - iv. Investment style description in layman's terms;
 - v. Profile of fund manager and his/her tenure in the job; and
 - vi. Fund prospectus or informational brochure.
 5. Information regarding the Contractor's procedures for the following:
 - i. When are investment election changes made by the record keeper?
 - ii. When are changes in contribution allocation made by the record keeper?
 - iii. Are there any limits on Participant changes or transfers?
 6. Educational Webinars and web based investment and financial planning tools including, but not limited to, investment information, schedule of seminars, links to specific County documents and local representative contact information.
- l. Contractor shall develop and use alternate ID numbers for Participant identification in a format and style approved by County.
 - m. Contractor shall provide annual Participant-specific satisfaction surveys with a statistically valid sample size that includes Participants that have utilized services from call center Customer Services Representatives and the Internet. County shall be able to customize this survey at no additional charge.
 - n. During the Term of the Contract, additional collective bargaining units may be added to the Program. In the event this occurs, the Contractor will be required to assist in the implementation, which may include, but not be limited to, group meetings, communication materials etc. These services shall be provided at no additional cost to the County or Participants.

5. Data and Systems

- a. Contractor will not modify any operational process during the Term of the Contract without the prior notification of the County, as well as approval by County for any County specific processes.
- b. Upon termination of the Contract Term, Contractor shall provide data to succeeding contractor or the County, as directed, including all necessary data and information, except direct deposit information, including but not limited to claims data and patient profiles to ensure an orderly transition, at no additional charge to County. Contractor shall provide up to two files for historical paid claims and open claims, respectively, within 30 days of the termination of the Contract and deliver all records, accounts of operation and claim files to County.
- c. Contractor shall accept electronic data transfer and administer membership information in compliance with HIPAA standards for privacy, security and electronic data interchange.
- d. Contractor shall provide on-line, unlimited eligibility updating and entry capabilities for authorized County staff. Subject to applicable laws, rules and regulations relating to privacy and confidentiality, Contractor shall provide County's Benefits Administrator with on-line access to read County's eligibility information.
- e. Contractor shall receive from County, on a twice-monthly basis, an eligibility file of eligible County Participants through a File Transfer Protocol (FTP) feed.

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

6. Reporting

- a. Contractor, itself or by subcontractor, shall collect and report statistics and/or summaries on a monthly, quarterly and annual basis as specified and as requested by the County. The reports may be standardized reports provided by the Contractor. If any services are subcontracted, reports shall also include subcontractor's statistics. If the reports do not adequately meet the County requirements, the Contractor shall customize the reports to the County's specifications as part of the base administrative fees with no additional cost to the County. The County's requirements may change from time to time during the Term of the Contract.
- b. Contractor shall provide a financial and program reporting package to County on a monthly basis. These standard reports will include Plan performance and financial information as required by

County.

- c. Contractor shall provide annual reports to County, as follows:
1. Annual Activity Report: A cumulative Plan year statistical report delivered during the Contract Term to parties identified by the County within thirty (30) days after the end of each Plan year. If the Contractor fails to deliver the Annual Activity Report within the specified time period, the Contractor will pay the County \$500 per day.
 2. Annual Financial Statement: The Contractor will provide the County with the Plan's annual financial statements and information to ensure the County and/or its independent accounting firm is able to audit the Plan in accordance with generally acceptable accounting principles and GASB requirements. The summary financial reports as specified by the County will be provided within fifteen (15) days after the end of the County's fiscal year. The Plan's Annual Financial Statements will be provided to the County within forty-five (45) days after the end of each Plan year, in a quantity required by the County. If the Contractor fails to deliver the plans' fiscal year and annual financial statements within the specified timeframe, the Contractor shall pay the County a \$500 per day penalty.
 3. Annual Reports to Participants and Management ("Stakeholder's Report"): If requested, the Contractor will work with the Program Manager or his/her designated representative to create an Annual Report to Participants and Management (the "Annual Stakeholder's Report") that will be produced by the Contractor and delivered to the County within forty-five (45) days after the end of the Plan year. The Stakeholder's Report will include information from the Annual Activity Report and the Annual Financial Statement as well as a description of the then-current investment options available to Participants and any significant Plan changes that occurred during the Plan year. The Annual Stakeholder's Report will be distributed to Participants and senior management of the County.
 4. Annual SSAE No. 18 Audit Reports: Contractor will provide the Program Manager with a copy of Contractor's SSAE 18 audit at least annually.
 5. Trust Fund Reports: Contractor will provide all necessary reports to meet Trust Fund reporting requirements. The format shall be mutually agreed upon by Contractor and County Program Manager.
 6. Annual Affordable Care Act (ACA) Report: Contract will provide all necessary information to meet the County minimal essential coverage reporting of the HRA under ACA.
- d. Contractor shall abide by the following data requirements:
1. Data shall be submitted electronically and by hard copy as requested, according to agreed standards.
 2. Data made available electronically shall conform to HIPAA data exchange standards once finalized.
 3. The minimum data elements to be provided, where applicable, shall include, but are not limited to, the following: participant's name, participant's date of birth, the County identification, claim valuation amounts, denial reason.

- e. The Contractor shall provide County with access to a data management/reporting tool, with access provided to the Consultant identified by County. The tool will be provided as part of the base administrative fees with no additional charge to the County.
- f. Contractor shall provide four user IDs to access the web-enabled on-line reporting tools as part of the base administrative fees with no additional charge to the County.
- g. Contractor shall offer comprehensive onsite or web-based training for the on-line reporting tool as part of the base administrative fees with no additional cost to the County.

7. Audit Rights

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

Attachment B

Fees and Investment Options

1. Total Pricing Considerations

In accordance with the Plan Document, all administrative fees relating to these services will be borne by the Participants. While it is understood that under the final agreed upon alliance arrangement the Contractor will receive investment management fees and expenses and/or various revenue from outside parties not limited to commissions, reimbursements, sub-transfer agency, 12(b) 1 or broker fees. Any such fees shall be credited by Contractor to Participant accounts and shall provide the County with full and complete disclosure of all costs, fees, and revenue received and any and all financial relationships with third-parties that will be involved, directly or indirectly, in connection with the Plans or the County's account. Additionally, Contractor will ensure no commissions or any other incentive are provided regarding any service and/or products that are marketed to Participants.

2. Administrative Fees

- a. Annual administrative fees are not applicable as listed below.
- b. Asset based fees and annual account fees will be applied as follows:
- c. Plan Asset Fee: 0.195%
- d. Annual Account Fee: No Annual Account Fee will be applied during the Term of the Contract.
- e. In the event assets increase significantly, the County reserves the right to request to discuss fee reductions with the Contractor.

3. Other Compensation

All fees and compensation are outlined in this Attachment B. In the event the County terminates this Contract pursuant to Article 8 or terminates the Contract without cause pursuant to Article 31, any amount outstanding under section 3 of this Attachment B. above shall be payable to Contractor upon such termination and will be borne by the Participants. The Contractor shall receive no other compensation other than the items described in this Attachment B.

4. Administrative Funding

The Contractor will provide funding for the administrative costs that the County incurs in overseeing and maintaining the Plan. The current administrative budget is eighty thousand dollars \$80,000 per annum increased annually by the California CPI for the previous calendar year. This amount shall be held in an Administrative Funding Account maintained by the Contractor in the Plan for the County.

Attachment C

STAFFING PLAN

Account Director	
Name	Tom Axline, Regional Manager
Responsibilities	Ultimately responsible for the overall satisfaction of the account. This individual shall analyze utilization reports, benchmark plan efficiency and assess the County's needs to identify strategic opportunities and recommendations.
Education	B.S., University of Arizona
Experience	26 years
Years with company	21 years
Years in current position	4 years
Office location	Temecula, California
Number of clients	120

Account Manager	
Name	Janna Dandridge, Senior Client Services Coordinator
Responsibilities	Day-to-day operations manager that is in regular contact with the County regarding topics such as eligibility, plan design and Participant issues. This individual ensures proper administration of the program.
Education	B.A., Old Dominion University
Experience	14 years
Years with company	11 years
Years in current position	11 years
Office location	Washington, D.C.
Number of clients	4

Investment Manager	
Name	Charles F. Mansfield III, CFA Senior Director, Client Portfolio Manager
Responsibilities	Responsible for oversight of all investments for the County in regular contact with the County regarding any investment or trust issues.
Education	M.S., American University B.S., Alexandria University
Experience	20 years
Years with company	17 years
Years in current position	6 years
Office location	Washington, DC
Number of clients	N/A

Attachment D**Performance Guarantees**

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

	Activity	Performance Standard/Activity Requirement
<i>Standard Accounting Activity</i>		
1	Contribution monitoring	Monitor contributions to ensure that all contributions are properly credited to participant accounts and periodically checked for compliance with all IRS and State rules.
2	Contribution posting	Post contributions received in good order by 1:00 p.m. PT on the on the same business day, and notify the County the same business day of all contributions that cannot be posted.
3	Changes in investment elections	Process 100% of all changes in participant investment elections on the same business day they are received by 4:00 pm ET/1:00 pm PT in good order.
4	Transfers/reallocations (daily traded funds)	Execute 100% of all fund transfers (purchases and redemptions) requested by participants within the investments at that day's closing NAV or price, providing the request was entered by close of NYSE, in good order and all of the investment option providers associated with the Plan meet the "late day" trading requirements.
5	Speed in correcting transaction errors	Rectify transaction errors within five (5) business days of a participant's notification of such error if received at the home office within 90 days after the statement date. This assumes that all documentation has been received to identify the error. If additional documentation is needed, the error may extend beyond five business days but will be completed as soon as feasible. However, should errors not be identified within 90 days of the statement date, or the errors have been made by the participant, the County, or other third party, the error(s) will be corrected within the five (5) business day period, but not made effective retroactively. The errors correction notification period may be extended based upon circumstances and mutually agreed upon between the County, ICMA-RC, and the Compliance Officer of ICMA-RC. For errors that occur related to contributions and claims processing, the 90-day notice period does not apply.
<i>Claims Processing</i>		
6	Distributions paid following receipt of request (forms)	Mail or electronically deposit all claims payments no later than fifteen (15) calendar days following the receipt of completed claim form and sufficient materials to substantiate the claim.
7	Claims processing accuracy	Process and pay 99.9% of claims accurately based on the plan requirements. This shall be calculated as the number of claims audited and found to be processed and paid without error divided by the total number of claims paid.
8	Written denial notice	Provide participants with written denial notice for any claim denied for payment within fifteen (15) calendar days of receipt of the claim.
9	Appeal response	Make determination and notify participant of decision(s) regarding any claim denial appeal within 60 days after receipt of the appeal request.

	Activity	Performance Standard/Activity Requirement
	<i>Automated Communications</i>	
10	Confirmation of transactions	Send confirmation to participant for any transfers, allocation changes, and claims payments. Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. All confirmation statements shall be mailed within five (5) days after the transaction.
11	Confirmation of demographic data changes	Send confirmation to participant of the initial participant account establishment and indicative data (including name and address changes). Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. All confirmation statements shall be mailed within five (5) days after the transaction.
12	Statements on demand	Statements requested online are available moments after the request is made and available for 3 days thereafter. Statements requested via Contractor's Contact Center shall be produced and mailed within two days after participant request is made.
13	Employer Plan Summary Report	Make the Employer Plan Summary Report available within 30 business days from quarter end.
14	PIN Numbers	Provide a data security policy/procedure which allows participants to register online to use Account Access. For security reasons, Contractor does not mail PINs to participants. If a participant forgets the User ID or password, participants may identify themselves online and a reset link will be sent to the participant's email address on record with ICMA-RC.
	<i>Controls for Manual & Systems Processes & Procedures</i>	
15	Transaction accuracy (participant requested transactions)	Maintain 99% accuracy on transaction processing rate, measured by calculating the total number of transactions processed without errors by the total number of transactions processed; errors defined through audit and as reported.
16	Distribution of enrollment materials	County shall enroll participants electronically. However, once the participant becomes benefit eligible, Contractor sends their benefit eligibility date to the third-party claims administrator (TPA). Thereafter, TPA sends the participant a Welcome Packet that indicates the participant is able to submit claims for medical expenses and includes the Claims Reimbursement Form. Contractor does not provide enrollment materials.
17	Distribution upon request of generic documents (including administrative forms, prospectuses, plan documents, etc.)	Mail 95% of available documents within two (2) business days of the request; 100% of the documents to be faxed or emailed shall be sent the day of the request.
18	Excess system capacity requirements – web	Contractor shall maintain excess capacity to facilitate growth across all of Contractor's systems. System usage and capacities are monitored, reviewed and expanded accordingly on an ongoing basis. These systems are made up of several components; networks, CPUs; servers, disk drives, data stores, software, etc. At any given time some components may exceed 25 % and others could be less than 25%, but all would exceed our patterned and planned growth statistics of 25%.
19	Excess system capacity	Contractor shall maintain excess capacity to facilitate growth across

	Activity	Performance Standard/Activity Requirement
	requirements – processing	all of Contractors systems. System usage and capacities are monitored, reviewed and expanded accordingly on an ongoing basis. These systems are made up of several components; networks, CPUs; servers, disk drives, data stores, software, etc. At any given time some components may exceed 25 % and others could be less than 25 %, but all would exceed our patterned and planned growth statistics of 25%.
20	Maximum lead time for adding a new fund (for systems changes)	Contractor must notify County within 15 days of the County’s decision if the fund company appears to be unable or unwilling to execute the appropriate operational agreements. Contractor shall use its best efforts to implement the new fund within 60 day timeline from initial decision to implementation, but will keep County updated every week during the process.
21	Maximum black-out period for adding new fund	There is no black-out period for adding new funds. If there is a fund mapping, this is also completed in one business day.
22	Response time for resolving issue when research is required (contact initiated through service reps)	Respond to written complaints within ten (10) business days. Report unresolved complaints to the County after 30 calendar days.
23	System recovery following disaster	Disaster Recovery process ensures that mission-critical systems are up within 72 hours to ensure participant and County transaction and information access capability. Other non-critical systems may require more than 72 hours to be reestablished; however, Contractor shall provide County with a daily status report.
<i>Participant Education and Outreach</i>		
24	Dedicated staffing	Maintain the contractual level of 2 dedicated, local, in-person educators (or its full-time equivalent). Report any lack of required staffing levels for a period of more than two (2) consecutive weeks or more than three (3) cumulative weeks over a period of three (3) months to County accompanied by an action plan for rectifying the staffing deficiency.
25	Consistency of dedicated staff	Within ten (10) days of the loss of one of the required core dedicated staff members (other than scheduled vacation or approved leaves of absence), notify County of the loss and present a preliminary action plan for remedying the staffing deficiency.
26	Participant survey	Contractor’s annual survey, as requested by the County, shall be conducted electronically Contractor shall tabulate and share results with County and shall present the annual results to County no later than 60 days after the end of the contract year.
27	Targeted communication campaigns	Prepare an annual target communication plan within 45 days of the beginning of the contract year. Present the results of these campaigns to County within 30 days of the close of each targeted communication campaign.
<i>Other</i>		
28	Plan sponsor status meetings	Schedule and conduct plan sponsor status meetings and telephone conferences as requested by the County that shall document plan activity for the prior period, plan and participant level service issues, and updated on legislative and industry developments.
29	Attend quarterly	One or more representatives of Contractor shall attend the quarterly

	Activity	Performance Standard/Activity Requirement
	advisory committee meetings	advisory committee meetings in person.
30	Prepare agenda for quarterly advisory committee meetings	Prepare and deliver to County the meeting agenda at least two (2) weeks before the scheduled meeting date.
31	Prepare minutes of quarterly advisory committee meetings	Prepare and deliver to County the meeting minutes four (4) weeks after the meeting date.
33	SSAE 16 and financial audit reports	Annually provide a copy of Contractor's SSAE 16 and audited financial statements within 180 days of the end of the Contractor's fiscal year. Financial statements shall be prepared by an independent certified public accountant.
34	Administrative manual	Produce and distribute administrative manual and any necessary updates.

Attachment E

Financial Performance Guarantees

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

Standard	Measurement	Financial Penalty for Non-Performance
Service & Administrative Performance Guarantees		
Participant phone service	100% of calls will be answered within an average of less than 45 seconds annualized and in aggregate for Call Center. Measurement will not include days in which extraordinary events occur that increase daily call volumes by 25% above the average daily call volume for the year.	\$1,000 per year in which standard is not met
Participant statement delivery	100% of quarterly statements will be mailed and made available electronically within 12 business days, unless performance returns are received late due to factors beyond Contractor control.	\$2,500 for each quarter in which less than 99% of statements in aggregate meet deadline
Claims processing	Process 99% of all claims received in good order within 10 business days of receipt	\$250 for each claims reimbursement received in good order and not processed within benchmark
Contribution posting	100% of contributions will post by the close of business the day they are received, provided contributions are received in good order before the close of the business day (4:00 p.m. Eastern Time/1:00 p.m Pacific Time).	\$1,000 per year in which at least 26 payrolls are submitted and in which two or more payrolls received in good order are not processed within benchmark
Employer reports	100% of Plan level quarterly statements will be made available to Orange County online via Contractor's EZLink portal administrative tool, within 12 business days following the end of the quarter. In addition, County's Program Manager may request the reports be sent directly to him/her via a secure, password protected email.	\$2,500 for each quarter in which plan level statements are not mailed within deadline
Account Management Satisfaction (See Attachment F)	An account management satisfaction composite score of "3" or better on a "1-5" scoring system based on the Account Management Report Card based on four (4) quarterly assessments	\$5,000 per year

Evaluation of Service and Payment of Penalties

1. Within four (4) months after the end of each calendar year during the Term, Contractor shall compile the necessary documentation and perform the necessary calculations to evaluate its fulfillment of each performance commitment set forth in this Contract and make this information available to the County.
2. If Contractor fails to meet any of the performance commitments set forth in herein, Contractor shall pay the appropriate penalty as set forth under the Performance Guarantee section of the Scope of Work. Such penalties shall be deposited into the Administrative Funding Account, or may be deposited into participant accounts, as directed by the County.
3. If the Contract under which Contractor provides administrative services to the Plan is terminated prior to the end of the Term of this Contract, any penalties owed by Contractor shall be prorated for that portion of the year for which the contract was in force, except that Contractor shall owe no penalties for partial quarters.
4. In the event that the period during which performance is measured is less than twelve (12) consecutive months, the penalty amount set forth under the Performance Guarantee section of the Scope of Work shall be prorated for that portion of the year for which performance measurements are in force.

The total amounts payable by Contractor during each calendar year of the Term for failure to meet the performance commitments set forth under the Performance Guarantee section of the Scope of Work shall not exceed \$12,250 per year.

Attachment F

ACCOUNT MANAGEMENT REPORT CARD

Rating Methodology:

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

Client/Company Name: County of Orange
 Completed By (please print): _____
 Client Signature _____
 Date completed: _____
 Telephone #: _____

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

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

Fill in for each quarterly period:

Date Sent to Client: / / / / / / / /
 Date Returned by Client: / / / / / / / /

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

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

EXHIBIT I

Business Associate Contract

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.
2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of “Business Associate” in 45 CFR § 160.103.
3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.
4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.
5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9. and B.14., apply to the CONTRACTOR in the same manner as they apply to a covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract, as it exists now or may hereafter be updated with notice to CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR’s workforce in relation to the protection of that information.
2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
 - a. Breach excludes:
 - 1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 - 2) Any inadvertent disclosure by a person who is authorized to access PHI at CONTRACTOR to another

person authorized to access PHI at the CONTRACTOR, or organized health care arrangement in which COUNTY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

- 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
 - 1) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - 2) The unauthorized person who used the PHI or to whom the disclosure was made;
 - 3) Whether the PHI was actually acquired or viewed; and
 - 4) The extent to which the risk to the PHI has been mitigated.
3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful

attempts to penetrate computer networks or servers maintained by CONTRACTOR.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.
18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to CONTRACTOR other than as permitted or required by this Business Associate Contract or as required by law.
2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.
3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Business Associate Contract.
5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which CONTRACTOR becomes aware. CONTRACTOR must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.
6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply through this Business Associate Contract to CONTRACTOR with respect to such information.
7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524.
8. CONTRACTOR agrees to make any amendment(s) to PHI in a Designated Record Set that COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.
9. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by COUNTY or

as designated by the Secretary for purposes of the Secretary determining COUNTY's compliance with the HIPAA Privacy Rule.

10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.
13. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a., above.

D. SECURITY RULE

1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
2. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.
3. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Subparagraph E. below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
 - a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
 - b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.
2. CONTRACTOR shall provide the notification of the Breach immediately to the County Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

<p>Rafael Linares, Chief Information Security Officer OCIT – Enterprise Privacy & Cybersecurity 1501 E. St. Andrews Place Santa Ana, CA 92705 (714) 567-7611 Rafael.Linares@ocit.ocgov.com</p>	<p>Linda Le, County Privacy Officer, CHPC, CHC, CHP OCIT – Enterprise Privacy and Cybersecurity 1501 E. St. Andrews Place Santa Ana, CA 92705 (714) 834-4082 Linda.le@ocit.ocgov.com privacyofficer@ocgov.com</p>
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3. CONTRACTOR's notification shall include, to the extent possible:
 - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
 - b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.
5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to COUNTY pursuant to Subparagraph E.2 above.
8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further

information, or follow-up information after report to COUNTY, when such request is made by COUNTY.

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

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.
 - a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for the proper management and administration of CONTRACTOR.
 - b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:
 - 1) The Disclosure is required by law; or
 - 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
 - c. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry out legal responsibilities of CONTRACTOR.
3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of COUNTY.
4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.

G. OBLIGATIONS OF COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect CONTRACTOR's Use or Disclosure of PHI.
2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR's Use or Disclosure of PHI.
3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR's Use or Disclosure of PHI.
4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the requirements of this

Business Associate Contract, COUNTY shall:

- a. Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
 - b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.
- a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of CONTRACTOR.
 - b. CONTRACTOR shall retain no copies of the PHI.
 - c. In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.
3. **The obligations of this Business Associate Contract shall survive the termination of the Agreement.**

EXHIBIT 2

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

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

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

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

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

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

(Additional sheets may be used if necessary)

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

Authorized Signature	Name	Title	Date
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