



CONTRACT NO. MA-042-22011565

FOR

DIAGNOSTIC TESTING SERVICES

BETWEEN

COUNTY OF ORANGE
(HEALTH CARE AGENCY)

AND

AMBRY GENETICS CORPORATION

CONTRACT NO. MA-042-22011565
FOR
DIAGNOSTIC TESTING SERVICES
WITH
AMBRY GENETICS CORPORATION

This Contract Number MA-042- 22011565 ("Contract") is made and entered into this 23rd day of March, 2022 ("Effective Date") between Ambry Genetics Corporation ("Contractor"), with a place of business at One Enterprise, Aliso Viejo, CA 92656, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 405 W. 5th Street, Suite 600, Santa Ana, CA 92701. Contractor and County may sometimes be referred to hereinafter individually as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract and constitute a part of this Contract:

Attachment A – Scope of Work/Pricing

Attachment B – Compensation/Invoicing

Attachment C – OCHCA Security Requirements and Guidelines for Contractors and Application Service Providers

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Diagnostic Testing Services under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Diagnostic Testing Services to County as further set forth in the Scope of Work/Pricing, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation/Invoicing, attached hereto as Attachment B; and

NOW, THEREFORE, the Parties, in consideration of the above recitals, and in consideration of the mutual covenants, benefits and promises contained herein, mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless accepted in writing by County via an amendment.
- D. **Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the scope of work in Attachment A. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County pursuant to Paragraph F.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made pursuant to Attachment B in arrears after County's satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended.

Contractor agrees to indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Z, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor is solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Z, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses and attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause includes, but is not limited to, any material breach of contract, any misrepresentation or fraud. Additionally, Contractor shall have the right to immediately terminate this Contract without penalty for cause or without cause after thirty (30) calendar days' written notice. Subject to Paragraph 18, either Party's exercise of the right to terminate the Contract shall relieve that Party of all further obligations. The rights, obligations, and conditions, that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to,

or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor is responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Requirements:** Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy 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 County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract are 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 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 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 County at Contractor's 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 Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

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

Qualified Insurer

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

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

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

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

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 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that 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) calendar days of any policy cancellation and ten (10) calendar 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 County may suspend or terminate this Contract.

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

Insurance certificates should be forwarded to the department address listed in Paragraph 16, Notices.

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by CEO/Purchasing or the department purchasing division, County may terminate this Contract for cause pursuant to Paragraph K, Termination.

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) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

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

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and 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 County.

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

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect 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 must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

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

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies.

S. **Confidentiality:** Subject to Paragraph 24 (California Public Records Act), the Parties agree to maintain the confidentiality of all County and County-related records and other information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all

other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph Z, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws. The intent of the Parties is that the terms of this Contract are in compliance with all federal, state, and local statutes, regulations, and ordinances applicable on the date the Contract takes effect, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Stark Law (42 U.S.C. § 1395nn), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b), and their implementing regulations.

- U. **Freight:** Prior to County's express acceptance of delivery of products, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear its own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of its 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 it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** 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. 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. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.
- County reserves the right to audit and verify 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 in each subcontract a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.
- Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the DPA.
- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** Contractor shall notify the DPA in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County is not responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment has been executed.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide Diagnostic Testing Services to County as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on March 23, 2022 through and including June 30, 2022, unless this Contract is earlier terminated by the Parties. County does not have to give reason if it decides not to renew.
3. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
 - a) Terminate the Contract immediately for cause pursuant to Paragraph K, Termination;
 - b) Afford Contractor written notice of the breach and, if the breach is curable, ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
 - d) Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
4. **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.
5. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager has the right to require the removal and replacement of the Contractor's Project Manager from providing services to County under this Contract. The County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within five (5) business days after written notice by the County's

Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. County is not required to provide any information, reason or rationale in the event County requires the removal of Contractor's Project Manager from providing further services under the Contract.

7. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county requires written approval from the DPA.
8. **Conditions Affecting Work:** Contractor is responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so does not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract.
9. **Data – Title To:** As between the Parties, all materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.
10. **Disputes – Contract:**
 - a) The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 - 1) Contractor shall submit to the DPA 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 County, on its own initiative, has already rendered such a final decision.
 - 2) Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
 - b) Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this

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

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If County does not render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience as stated in Paragraph K, Termination.

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

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

- a) Contractor has made false certification, or
 - b) Contractor violates the certification by failing to carry out the requirements as noted above.
12. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during

non-emergency/disaster conditions. The pricing stated in Attachment B shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster is not permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.

13. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If 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 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 County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
14. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

15. **News/Information Release:** Contractor shall not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through the DPA.
16. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the DPA, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Name: Ambry Genetics Corporation
 Attention: Legal Department
 Address: One Enterprise
 Aliso Viejo, CA 92656
 E-mail: legal@ambrygen.com

CC: Name: Ambry Genetics Corporation
 Attention: Mike Martinson
 Address: One Enterprise
 Aliso Viejo, CA 92656
 Telephone: (949) 900-5500
 E-mail: cbuhler@ambrygen.com

For County: Name: County of Orange HCA/Procurement and Contract
 Services
 Attention: Brittany Davis
 Address: 405 W. 5th St. Suite 600
 Santa Ana, CA 92701
 Telephone: (714) 834-5326
 E-mail: bdavis@ochca.com

CC: Name: County of Orange HCA/Medical Health Services
 Attention: Anza Vang
 Address: 405 W. 5th St.
 Santa Ana, CA 92701
 E-mail: AVang@ochca.com

17. **Precedence:** The Contract documents 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 recitals and articles of this Contract, and then the Attachments.

18. **Termination – Orderly:** If County terminates this Contract, Contractor may submit to County a termination claim, if applicable, after receipt of the termination notice. Contractor's claim shall be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination and submission of a termination claim, County agrees to pay Contractor for all services satisfactorily performed prior to the effective date of the termination that meet the requirements of the Contract according to the compensation provisions contained in this Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
19. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
20. **Usage Reports:** Contractor shall submit usage reports on an annual basis to the DPA. The usage report shall be in a format specified by the user department and shall be submitted ninety (90) calendar days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
21. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.
- a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
 - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
 - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
22. **Debarment:** To the extent applicable, Contractor certifies that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency. County has the right to terminate this Contract for cause pursuant to Paragraph K if Contractor is or becomes subject of any debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any state or federal department or agency.

23. **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, 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.
24. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
25. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in this Paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
26. **Parking for Delivery Services:** County shall not provide free parking for delivery services.
27. **Software – Protection:** County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this Contract only and shall be held in confidence. All proprietary data shall remain the property of Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of Contractor. County shall ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. County agrees that it shall take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of licensed programs and optional materials.
28. **Software – Maintenance:** The correction of any residual errors in any software products which may be discovered by Contractor or by County shall be considered maintenance. Such maintenance shall be performed by Contractor without additional charge for the duration of this Contract. Suspected errors discovered by County in the software products shall be handled by the following procedure:
- a. A listing of the output and a copy of the evidential input data in machine-readable format shall be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.

- b. Errors in the software product as verified by Contractor shall be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

Contractor shall be available to assist County in isolating and correcting error conditions caused by County's particular hardware or operating system at rates specified in this Contract. If Contractor is called upon by the state to correct an error caused by County's negligence, modification by County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, Contractor reserves the right to charge County for such service on a time and material basis at rates in accordance with the Contract.

29. **Software License:** Contractor hereby grants to County of Orange and County accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the software products listed in this Contract, hereinafter referred to as "software products." The license granted above authorizes County to use the software products in machine-readable form on a single computer system, designated in writing by County to Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to Contractor, County may re-designate the CPU in which the software products are to be used and must do so if the re-designation is permanent.

When encryption/CPU ID authorization codes are required to operate the software products, Contractor shall provide all codes to County with shipment of the software. In the case of an inoperative CPU, as defined above, Contractor shall provide a temporary encryption/CPU ID authorization code to County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, Contractor shall issue to County within twenty four (24) hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

30. **Software Installation:** The installation date for the software products shall be established in accordance with the provisions below:
- a. If County elects to install the software products, County shall have thirty (30) days from the date of receipt of the software products to initially install and evaluate the software. The date of expiration of this period shall hereafter be known as the "installation date." Contractor shall be responsible for providing criteria and test data necessary to check out the software products.
 - b. If installation by Contractor is required by County, Contractor shall have up to thirty (30) days from the effective date of this Contract to provide initial installation and evaluation of the software products on County's designated CPU. Contractor shall issue written notice of the fact that the software products are operational, and the date of said notice shall be known as the "installation date." It shall be at Contractor's discretion to determine the criteria and tests necessary to allow Contractor to issue a notice to the effect that the system is operational.

County agrees to provide such access to its computer system as may be required by Contractor to properly install and test the software products. County further agrees to provide, at no cost to Contractor, systems and production support as may be required by Contractor during installation.

If installation by Contractor is required by County, Contractor shall provide such installation on County's equipment at the rates specified in this Contract.

31. **Software – Acceptance Testing:** Acceptance testing may be required as specified for all Contractor-supplied software as specified and listed in the Contract or order, including all software initially installed. Included in this clause are improved versions, including new releases, of this software, any such software which has been modified by Contractor to satisfy County requirements, and any substitute software provided by Contractor in lieu thereof, unless the Contract or order provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with Contractor's technical specifications and meets County's performance specifications.
32. **Software – Documentation:** Contractor agrees to provide to County, County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to County in its use of the equipment or software provided hereunder. County shall designate the number of copies for production use and the number of copies for disaster recovery purposes and shall provide this information to Contractor.

If additional copies of such documentation are required, Contractor shall provide such manuals at the request of County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. Contractor agrees to provide such additional manuals at prices not in excess of charges made by Contractor to its best customers for similar publications.

Contractor further agrees that County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. County agrees to include Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by Contractor.

33. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by Contractor and are made available to other licensees, they shall be made available to County at County's option, provided such versions are operable on the same computer hardware configuration.
34. **Compliance with County Information Technology Policies and Procedures:**

Policies and Procedures

Contractor, its subcontractors, Contractor personnel, and all other agents and representatives of Contractor, shall at all times comply with and abide by all Information Technology (IT) policies and procedures of County that are provided or made available to Contractor that pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in

addition to all other available rights and remedies of County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following:

Security and Policies

All performance under this Contract shall be in accordance with County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods, and all applicable HIPAA privacy and security regulations with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

Information Access

County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure agreement and concerning access protection and data security in the form provided by County. County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and Contractor shall take all commercially reasonable measures that comply with HIPAA security and privacy regulations to secure such mechanisms. Contractor shall provide each Contractor personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.

Enhanced Security Procedures

County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

Breach of Security

Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.

Conduct on County Premises

Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

Security Audits

Each Contract year, County may perform or have performed security reviews and testing. Such reviews and testing shall ensure compliance with all pertinent County security standards as well as any HCA/Environmental Health requirements such as federal tax requirements or HIPAA.

(SIGNATURE PAGE FOLLOWS)

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-22011565 the date set forth opposite their signatures. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, the President, or any Vice President; 2) the second signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: Ambry Genetics Corporation

Mike Martinson

Print Name
DocuSigned by:
Mike Martinson
DA3D33060BFC449...
Signature

Chief Financial officer

Title

4/20/2022

Date

Robert Guigley

Print Name
DocuSigned by:
Robert Guigley
B14EF8367A2548B...
Signature

Chief Commercial officer

Title

4/20/2022

Date

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

Purchasing Agent/Designee Authorized Signature:

Print Name

Deputy Purchasing Agent

Title

Signature

Date

APPROVED AS TO FORM

Office of the County Counsel

Orange County, California

Brittany McLean

Print Name
DocuSigned by:
Brittany McLean
9713A4061D4343D...
Signature

Deputy County Counsel

Title

4/20/2022

Date

ATTACHMENT A

SCOPE OF WORK/PRICING

- I. Contractor's Services to be Provided:** Contractor shall provide COVID-19 RT-PCR testing services for users. Users will have access to self-collection test kits; if such information is collected through the CARE platform, users will be able to utilize their insurance (if any) to complete the registration process.
- A. Test Description:
- Ambry COVID-19 RT-PCR Test is intended for the qualitative detection of nucleic acid from SARS-CoV-2 in saliva specimen collected as authorized for use under the Food and Drug Administration's Emergency Use Authorization.
- B. Contractor's Turn Around Time:
- Contractor will target a 24-hour turnaround time from receipt of specimen in the lab performing testing for 85% of specimens (conditioned on such specimens satisfying Contractor's quality control standards) and expects no specimens to exceed 48 hours turnaround time from receipt of specimen in the lab performing testing (conditioned on such specimens satisfying Contractor's quality control standards).
- C. Contractor's Software:
- CARE Platform
 - The CARE platform is a HIPAA compliant software that enables users to register to receive a test kit order and testing through Contractor's third-party telehealth provider. Users will receive their clinical laboratory report directly through the CARE platform.
- D. Contractor's Additional Services that are included in the cost of purchasing tests and testing services:
- Project management
 - Communications
 - Reporting requirements and coordination
 - Instructions and software interface in Five O.C. threshold languages will be maintained.
- II. Pricing for Lab Services Fees:**
- A. If User's insurance information is collected, Contractor will bill User's insurance for COVID-19 testing ("Lab Services Fees") (if appropriate), allowing insured users to complete their insurance information during the kit registration process, upon availability through the CARE platform. Contractor agrees to bill all available insurance plans, the U.S. Health Services Resources Administration (HRSA), and other government or public health insurance programs for the Lab Services Fees whenever possible, and if appropriate.
- B. Contractor agrees that where payments are received from third parties for Lab Services Fees, such payments shall be considered payment in full for Lab Services Fees, and Contractor will not charge any copayment to users, and absolves County of any and all financial responsibility for Lab Services Fees.

- C. To ensure efficient and accurate claims processing, healthcare providers who are contracted to perform the specific task of either collection and handling of the patient specimen for COVID-19 diagnostic testing, clinical diagnostic laboratory COVID-19 testing processes, or coronavirus vaccine administration should bill using the allowable CPT or HCPCS codes corresponding to the service(s) performed in accordance with Centers for Disease Control & Prevention (CDC) and the Centers for Medicare & Medicaid Services (CMS). Contractor should ensure appropriateness of claims and adequate documentation of clinical services provided to maximize proper reimbursement and to avoid denials.

III. Billing:

- A. The Parties agree to work with each other in good faith to ensure Contractor provides accurate insurance information for insurance billing.
- B. County shall pay Contractor \$82 per test for uncompensated individuals in accordance with the restrictions outlined in subparagraphs III.B.1.a. – 1.d. below.
1. County's payment of uncompensated COVID-19 testing services is limited to the following:
- a. Testing requested by County without third-party information and/or authorized to be billed to "County."
 - b. Claims correctly submitted and legally denied by insurers or HRSA and other government or public health insurance programs for testing ordered by County.
 - c. Claims correctly submitted and legally denied by insurers or HRSA and other government or public health insurance programs for testing ordered by providers partnering with County at designated test sites. This only applies to testing provided at test sites and dates specifically authorized by County in writing.
 - d. Claims for patients that live in the following Zip Codes: 92805, 92701, 92844, 92703.
- C. Contractor agrees to bill all available insurance plans, including the U.S. Health Services Resources Administration (HRSA), government or public health insurance programs and any other third-party responsible for payment including, but not limited to, employers, for payment for the COVID-19 testing services requested herein, to the greatest extent possible. Contractor agrees that payments received from third-parties shall be considered payment in full for testing services requested herein, and will not charge any copayment to County clients, and absolves County of any and all financial responsibility except as detailed below (III.E.).
- D. Contractor will provide a report of claim data to County on a monthly basis. County agrees to work with Contractor in good faith, and to assist Contractor in addressing and resolving any claim related issues with payers, including but not limited to commercial payers, government payers, and Independent Practice Association payers.

- E. County agrees to pay Contractor for all tests rendered upon completion of testing. Contractor will bill third-party payers for insurance, and for any claims accepted and paid by the insurance, Contractor will issue a refund to County of the amount previously charged to County. Summary report entailing total claims submitted in the relevant month and total claims paid in the relevant month will be provided on a monthly basis. County and Contractor agree to reconcile any discrepancies at the end of each month. A final reconciliation must be submitted to County by Contractor within forty-five (45) calendar days of contract term expiration unless provided with written approval from County.
- F. County reserves the right to terminate the Contract if performance is not met. Contractor is obligated to fulfill any request already in process and complete services for any test shipped out.

No material adjustments made to the Scope of Work will be authorized without prior written approval of County. Non-material adjustments may be made with the written approval of the DPA.

ATTACHMENT B**COMPENSATION/INVOICING**

1. **Compensation:** This is a fixed price Contract and the total amount not to exceed is \$500,000.

Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services with exception of the insurance-billed testing service, and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract.

See Attachment A

3. **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
4. **Taxpayer ID Number:** Contractor shall include its taxpayer ID number on all invoices submitted to County for payment to ensure compliance with IRS requirements and to expedite payment processing.
5. **Payment – Invoicing Instructions:** Contractor shall provide an invoice on Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, Contractor shall leave an invoice with each delivery. Each invoice shall have a unique number and shall include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address
 - c. Contractor's Taxpayer ID Number
 - d. Name of County Department
 - e. Delivery/service address
 - f. Master Agreement (MA)
 - g. Department's Account Number, if applicable
 - h. Date of invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

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

Invoice and support documentation are to be forwarded to:

Orange County Health Care Agency
CslInvoices@ochca.com

6. **Payment (Electronic Funds Transfer)**

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

ATTACHMENT C**OCHCA SECURITY REQUIREMENTS AND GUIDELINES FOR CONTRACTORS AND
APPLICATION SERVICE PROVIDERS**

**County of Orange
Health Care Agency**

**Security Requirements
and Guidelines for
Application Vendors
and Application
Service Providers**

04/2018

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1 Overview

Security Requirements and Guidelines for Application Vendors and Application Service Providers

This document provides a high-level overview of application security related guidelines and requirements set forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-implemented applications and application service providers who provide hosted services.

These requirements and guidelines are consistent with regulatory privacy and security requirements and guidelines as well as supportive of OCHCA's position and practices on risk management in terms of appropriately safeguarding OCHCA's information assets.

The sections below are comprehensive and may apply in whole or in part based on specific implementation and scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This information will be reviewed, validated and documented by OCHCA Security prior to any contract being finalized.

Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA's systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security Standards, and Sarbanes- Oxley (SOX). Vendors must also commit to ensuring compliance with all future local, state and federal laws and regulations related to privacy and security as they pertain to the application or service.

2 General Security Requirements

- The application/system must meet the general security standards based upon ISO 17799 – Code of Practice for Information Security and ISO 27799 – Security Management in Health Using ISO 17799.
- The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.
- For applications hosted by OCHCA, OCHCA will routinely apply patches to both the

operating system and subsystems as updated releases are available from the operating system vendor and or any third party vendors. The vendors must keep their software current and compatible with such updated releases in order for the application to operate in this environment.

- Vendors must provide timely updates to address any applicable security vulnerabilities found in the application.
- OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and manage the health and performance of the application server, network connectivity, power etc. The application must function appropriately while the monitoring tools are actively running.
- All application services must run as a true service and not require a user to be logged into the application for these services to continue to be active. OCHCA will provide an account with the appropriate security level to logon as a service, and an account with the appropriate administrative rights to administer the application. The account password must periodically expire, as per OCHCA policies and procedures.
- In order for the application to run on OCHCA server and network resources, the application must not require the end users to have administrative rights on the server or subsystems.

3 Encryption

- Application/system must use encryption to protect sensitive data at rest wherever technically possible (e.g. SQL TDE Encryption).
- All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level. This requirement pertains to any regulated data in motion such as website access and file transfers.
- All electronic files, where applicable, that contain OCHCA data must be encrypted when stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes). The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- All encryption methods used for data storage and transmission must be disclosed by the vendors.

4 Network Application Documentation

- Vendors must provide documentation related to the configuration of the application including methods of secure implementation and port requirements.

5 Access Management

- Application/system must control access to and within the system at multiple levels (e.g. per user, per user role, per area, per section of the chart) through a consistent mechanism of identification and authentication of all users in accordance with the 'Role Based Access Control' (RBAC) standard.
- Application/system must support measures to define, attach, modify and remove access rights for all classes of users.
- Application/system must support measures to enable and restrict access to the whole and/or sections of the technology solution in accordance with prevailing consent and access rules.
- Application must have the ability to create unique user accounts.
- Application must support session timeouts or automatic logoff after 20 minutes of inactivity.
- The application must provide functionality to automatically disable or lock accounts after 60 days of inactivity.

6 Password Management

- Application must support password management measures including but not limited to password expiration, account lockout and complex passwords.
- Passwords expiration must be set to 90 days and the system must prevent the use of the previous 4 passwords.
- Accounts must be locked after five unsuccessful login attempts.
- The password must be at least 8 characters in length and a combination of letters, numbers, and special characters with at least 3 of the four following categories.
 - ◆ Uppercase letters (A through Z)
 - ◆ Lowercase letters (a through z)
 - ◆ Numeric digits (0 through 9)
 - ◆ Special Characters (! @ # \$ % ^ & etc.)

7 Audit Capabilities

Auditing and logging capabilities will permit HCA to identify, and possibly reverse, unauthorized or unintended changes to application.

- Application must support the identification of the nature of each access and/or modification through the use of logging.
- Application must employ audit capabilities to sufficiently track details that can establish accountability for each step or task taken in a clinical or operational process.
- All audit logs must be protected from human alteration.
- Access to logs must be limited to authorized users.
- The application must employ basic query tools and reports to easily search logs.
- OCHCA record retention policies must be followed. Currently OCHCA requires that this period be at least six years from the time the record was initiated.
- Logging and auditing functionality must include the following:
 - ◆ Record of who did what to which object, when and on which system.
 - ◆ Successful/unsuccessful log-in and log-out of users.
 - ◆ Add, modify and delete actions on data/files/objects.
 - ◆ Read/view actions on data classified as restricted/confidential.
 - ◆ Changes to user accounts or privileges (creation, modification, deletion).
 - ◆ Switching to another users access or privileges after logging in (if applicable).

8 Protection from Malicious Code

- For cloud hosted solutions, vendors must utilize antivirus/antispyware software on servers and monitor to prevent malicious code which may lead to a compromise of OCHCA's data.
- For local hosted solutions, vendors must ensure that the application appropriately supports the use of antivirus/antispyware software.

9 Remote Support Functionality

- Provider must conform to OCHCA Vendor Remote Access Policy.

10 HCA Data Usage

- During the course of any implementation and subsequent support and life cycle management, any OCHCA data that the vendors have access to in any manner shall be considered confidential unless otherwise designated in writing.
- Vendors must not use or disclose OCHCA's data other than as permitted or as required by contract or law.
- The vendors must agree to use appropriate safeguards to prevent the unauthorized use or disclosure of OCHCA's data during any time that the data is stored or transported in any manner by vendors.
- After the end of any appropriate use of OCHCA's data within the vendors' possession, such data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

11 Cloud Solutions

Application Service Providers hosting OCHCA data must meet the following additional requirements and are required to comply with and provide deliverables noted below:

- **SSAE 18.** SSAE 18 SOC 2 Type 2 or SOC 3 compliance certificate
- **Network Intrusion Detection and Prevention.** All systems that are accessible via the internet must actively use a network based intrusion detection and prevention solution.
- **Workstation/Laptop Encryption.** All workstations, laptops and mobile devices that process and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- **Jurisdiction and Location of OCHCA Data.** To protect against seizure and improper use by non-United States (US) persons and government entities, all data / information stored and processed for OCHCA must reside in a facility under the legal jurisdiction of the US.
- **Patch Management.** All workstations, laptops, and other systems that access, process and/or store OCHCA data must have appropriate security patches installed. Application Service Providers must utilize a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a minimum, all applicable patches must be installed within 30 days of vendor release.

- **Application Access.** All systems accessible via the internet must employ security controls to prevent access to the application via an asset not approved or owned by the county.
- **Risk Assessment.** Application Service Providers hosting data for HIPAA covered services must conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on the latest version of NIST SP 800-30 (http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf). Upon request, the Risk Assessment findings and remediation strategy must be shared with OCHCA.
- **NIST.** To ensure compliance with HIPAA, Application Service Providers shall implement appropriate security safeguards by following National Institute of Standards and Technology (NIST) guidelines.

12 Policies

Vendors must have formal, published IT security policies that address how they manage and maintain the internal security posture of their own or sub-contracted infrastructure. The vendor shall also clearly demonstrate that additional security features are in place to protect systems and data in the unique environment of the service provider model: namely, security issues associated with storing County-owned data on a remote server that is not under direct County control and the necessity of transferring this data over an untrusted network.

Vendors must provide, to the extent permissible, all relevant security policies and procedures to the County for review and validation. All documentation must be provided in electronic format for the County's review.

These policies must include, but not be limited to, the following:

- **IT Staff Usage Agreement.** All vendor employees performing services for the County must sign and agree to an IT usage agreement within their own organization as part of an overall security training and awareness program. At a minimum, vendor employees must sign a statement of understanding within their own organization regarding Internet dangers, IT security, and IT ethics and best practices,
- **IT Security Policies and Procedures.**

- **IT Operations Security Policy.** Written standards for operational security for any facilities where the County data, staff or systems shall exist. These documents must include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
- **Data Management Security Policy.** Policy for the safeguarding and management of all data provided by the County or accessed by vendor as part of implementation and ongoing maintenance. This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of duties.
- **Security Incident Notification and Management Process.** A detailed document that outlines the contact names and order and escalation of events that will occur in the case of a security breach concerning the County staff, data, or systems. This document must be updated immediately upon any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the vendor must:

- Bear the cost of compliance for any required changes to security infrastructure, policies and procedures to comply with existing regulations, unless such change is unique to the County.
- Comply with reasonable requests by the County for audits of security measures, including those related to identification and password administration.
- Comply with reasonable requests by the County for onsite physical inspections of the location from which the vendor provides services.
- Provide the County with any annual audit summaries and certifications, including but not limited to HIPAA, ISO or SOX audits, as applicable.
- Designate a single point of contact to facilitate all IT security activities related to services provided to the County, with the allowance of appropriate backups. Such contact(s) must be available on a 7/24/365 basis.

13 Business Continuity / Disaster Recovery Plans

Application Service Providers must have a viable risk management strategy that is formally documented in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP plan(s) must identify recovery strategies within the application service areas, outline specific recovery methods and goals, and provide the mutually agreed upon recovery time and point objectives.

14 Backup and Restore

The vendor must provide their routine Backup and Restore policy and procedure which includes their backup data security strategy. These procedures shall allow for protection of encryption keys (if applicable) as well as a document media destruction strategy including media management tasks (i.e., offsite vaulting and librarian duties).

15 Staff Verification

For any employee a vendor contemplates using to provide services for the County, the vendor shall use its standard employment criteria as used for similar services provided to other customers in evaluating the suitability of that employee for such roles.

At a minimum, subject to the requirements of applicable law, such criteria must include the information as outlined below for each employee:

- **Relevant Skills, Licenses, Certifications, Registrations.** Each service employee must possess the educational background, work experience, skills, applicable professional licenses, and related professional certifications commensurate with their position. The County may, at any time and at its sole discretion, request that the vendor demonstrate compliance with this requirement as applicable to the nature of the services to be offered by the vendor's employee. The County may, at its sole discretion, also request the vendor's certification that the vendor employee has undergone a chemical/drug screening, with negative results, prior to granting access to the County facilities.
- **Background Checks.** In accordance with applicable law, the vendor must, at the County's request, obtain as a condition of employment, a background investigation on any vendor employee selected to work for the County. The security and background investigation shall include criminal record checks,

including records of any conviction in the U.S. or other relevant jurisdiction where the employee resides. Costs for background investigations must be borne by the vendor.

At a minimum, subject to the requirements of applicable law, the vendor must:

1. Ensure that all vendor service employees performing applicable services or supporting the vendor's duties and obligations under a County agreement: (i) have not been convicted of any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and (ii) have not been on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business.
2. Follow such verification procedures as may be reasonably specified by the County from time to time. If either the vendor or the County becomes aware that any vendor employee has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or has been included on any such list of persons or entities convicted of such crimes, then the vendor shall promptly remove the employee from providing services to the County and prohibit that employee from entering any facilities at which services are provided.
3. Annually certify to the County that, to the best of its knowledge, none of the service employees have been convicted of any felony involving fraud, theft, dishonesty or a breach of trust under any laws.

16 IT Physical Security and Access Control

The vendor must establish processes and procedures for physical access to and control of their own facilities that are, at a minimum, consistent with relevant industry-specific best practices.

Vendor employees are expected to:

- Comply with facility access procedures, using procedures such as sign-in/sign-out requirements and use of assigned ID badges.

- Scan ID badges, where applicable, at any secure door and/or entrance and exit gates, including any door or gate that may already be open.
- Refrain from using recordable media in conjunction with County-owned equipment.
- Comply with check-in/check-out requirements for materials and/or equipment.
- Adhere to the facility's established emergency, safety and evacuation procedures.
- Report any unsafe conditions to the facility's safety representative.
- Report any access violations or security threats to the facility's local security administrator.

17 IT Security Compliance and Training

The vendor must ensure that all vendor employees comply with security policies and procedures and take all reasonable measures to reduce the opportunity for unauthorized access, transmission, modification or misuse of the County's data by vendor employees.

The vendor must ensure that all vendor employees are trained on security measures and practices. The vendor will be responsible for any costs related to such training.

At a minimum, the vendor is expected to:

- Ensure that a formal disciplinary process is defined and followed for vendor employees who violate established security policies and procedures.
- Proactively manage and administer access rights to any equipment, software and systems used to provide services to the County.
- Define, maintain and monitor access controls, ranging from physical access to logical security access, including a monthly review of vendor employees' access to systems used to provide services to the County.

The vendor shall monitor facilities, systems and equipment to protect against unauthorized access. At a minimum, the vendor is expected to:

- Monitor access to systems; investigate apparent security violations; and notify the County of suspected violations, including routine reporting on hacking

attempts, penetrations and responses.

- Maintain data access control and auditing software and provide adequate logging, monitoring, and investigation of unusual or suspicious activity.
- Initiate immediate corrective actions to minimize and prevent the reoccurrence of attempted or actual security violations.
- Document details related to attempted or actual security violations and provide documentation to the County.
- Provide necessary documentation and evidence to the County in connection with any legal action or investigation.

18 Security Testing Recommendations

The vendor should perform a series of steps to verify the security of applications, some of which are noted below. This section will not be validated by the County, but reflects best practices that the vendor should consider and follow.

1. Look for vulnerabilities at various layers of the target environment. In the lowest layer, the vendor's testing team should look for flaws in the target network environment, including any routers and firewalls designed to control access to the web server and related target components. The team should attempt to determine whether such filters provide adequate protection at the network layer of the target hosts that the team can reach across the Internet.
2. Look for flaws in the Internet-accessible hosts associated with the target infrastructure, including the web server. This host-based component of the test will analyze which network-accessible services are available on the target hosts across the Internet, including the web server process. The testing team should look for incorrect configuration, unpatched or enabled services, and other related problems on the target hosts.

This review performed by the vendor should include but not be limited to:

- The web application (i.e., the software that interacts with users at their web browsers; typically custom- crafted code created by the web development team)
- The web server application (the underlying software that sends and receives information via HTTP and HTTPS, typically off-the-shelf software such as

Microsoft's IIS or the open-source Apache software)

- Any separate backend application servers that process information from the web application
- The backend database systems that house information associated with the web application.
- Infrastructure diagrams.
- Configuration host review of settings and patch versions, etc.
- Full code review.
- Identification and remediation of well-known web server, code engine, and database vulnerabilities.
- Identification and remediation of any server and application administration flaws and an exploitation attempt of same.
- Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities.
- Analysis of data communications between the application and databases or other backend systems.
- Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access.
- Analyses of user and group account authentication and authorization controls to determine if they can be bypassed.
- Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic.
- Identification of areas where error handling is insufficient or reveals too much sensitive information.
- Identification of opportunities to write to the host file system or execute uploaded files.
- Identification of product sample files, application debugging information, developer accounts or other legacy functionality that allows inappropriate access.
- Determination as to whether or not fraudulent transactions or access can be performed.
- Attempts to view unauthorized data, especially data that should be confidential.

- Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted.
- Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

19 Vendor Deliverables

The following items are to be provided by the vendor:

- OCHCA Security Requirements and Guidelines for Application Vendors and Application Service Providers- Questionnaire
- Business Continuity Plan Summary (as related to service provided)
- SSAE 18 SOC 2 Type 2 or SOC 3 compliance certificate
- Network Diagram that demonstrates vendor network and application segmentation including the security controls in place to protect HCA data
- IT Security Staff Usage Policy
- IT Security Policies and Procedures
- IT Operations Security Policy
- Data Management Security Policy
- Security Incident Notification and Management Process
- Security Contact Identification (24x7x365)
- Staff Related Items
 - Pre-Employment Screening Policy/Procedure
 - Background Checking Procedure
 - Ongoing Employment Status Validation Process
 - Staff Roster and Duties