

AMENDMENT ONE TO AGREEMENT  
BETWEEN  
COUNTY OF ORANGE  
AND  
AVERTEST, LLC DBA AVERHEALTH  
FOR THE PROVISION OF DRUG TESTING SERVICES

THIS AMENDMENT ONE made and entered into upon execution of all necessary signatures, is to that certain AGREEMENT Number CPS0221-04 between the parties hereto, hereinafter referred to as the “Agreement” and is by and between the COUNTY OF ORANGE, hereinafter referred to as “COUNTY,” and AVERTEST, an independent contractor doing business at 2916 West Marshall Street, Suite A, Richmond, VA, 23230, hereinafter referred to as “CONTRACTOR.” COUNTY and CONTRACTOR may be referred to individually as “Party” and collectively as “the Parties.”

WITNESSETH

WHEREAS, on July 1, 2021, COUNTY and CONTRACTOR entered into an Agreement for the provision of Drug Testing Services, for the term of July 1, 2021, through June 30, 2024;

WHEREAS, COUNTY desires to renew the Agreement for an additional six (6) months; amend Paragraphs 1, 13, 18, 29, and 37 and Subparagraphs 9.4.3, 10.2.1, 19.1, 19.3.1, 23.2.2, 24.6, 24.7, and 33.2.4 of the Agreement; amend Subparagraph 3.2 of Exhibit A of the Agreement; amend Subparagraph 4.5 of Exhibit C of the Agreement; add Subparagraph 32.4 and Paragraph 42 to the Agreement; and add Attachment A to the Agreement;

WHEREAS, CONTRACTOR agrees to such extension and to continue to provide such services under the terms and conditions set forth in this Agreement; and

ACCORDINGLY, THE PARTIES AGREED AS FOLLOWS:

1. Paragraph 1 of the Agreement is hereby amended to read as follows:

1. TERM

The term of this Agreement shall commence on July 1, 2021, and terminate on ~~June 30~~December 31, 2024, unless earlier terminated pursuant to the provisions of Paragraph 39 of this Agreement; however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, audits, reporting, ~~and accounting. This Agreement may be renewed thereafter for two (2) additional one-year terms upon mutual agreement of both Parties. The COUNTY does not have to provide a reason if it elects not to renew this Agreement~~ and accounting.

2. Subparagraph 9.4.3 of the Agreement is hereby amended to read as follows:

9.4.3 The following websites provide Civil Rights information, publications and/or forms:

~~<http://www.cdss.ca.gov/cdssweb/entres/forms/English/PUB470.pdf>~~

9.4.3.1 <https://www.cdss.ca.gov/Portals/9/FMUForms/M-P/PUB470.pdf?ver=2021-05-10-164956-817> (Pub 470 - Your rights Under Adult Protective Services)

~~<http://www.cdss.ca.gov/inforesources/Civil-Rights/Your-Rights-Under-California-Welfare-Program>~~ 9.4.3.2

<http://www.cdss.ca.gov/inforesources/Civil-Rights/Your-Rights-Under-California-Welfare-Program> (Pub 13 – Your Rights Under California Welfare Programs)

9.4.3.3 <http://ssa.ocgov.com/about/services/contact/complaints/comply> [Social Services Agency (SSA) Contractor and Vendor Compliance page]

3. Subparagraph 10.2.1 of the Agreement is hereby amended to read as follows:

10.2.1 Deposited in the United States mail, first class postage prepaid and addressed as shown in ~~the~~ Subparagraph 10.1 above;

4. Paragraph 13 of the Agreement is hereby amended to read as follows:

13. INSURANCE

- 13.1 Prior to the provision of services under this Agreement, CONTRACTOR agrees to ~~purchase~~carry all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with. CONTRACTOR agrees to keep such insurance coverage; current, provide Certificates of Insurance and endorsements ~~on deposit with~~to ADMINISTRATOR during the entire term of this Agreement. ~~In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.~~
- 13.2 CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. 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 Agreement for inspection by COUNTY representative(s) at any reasonable time.
- 13.3 All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any ~~SIR in an amount~~SIRs 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~~. COUNTY reserves the right to require current audited financial ~~report. If CONTRACTOR's SIR is approved,~~reports from CONTRACTOR, ~~in addition to, and without limitation of,~~ If CONTRACTOR is self-insured, CONTRACTOR will indemnify COUNTY for any ~~other and all~~

claims resulting or arising from CONTRACTOR's services in accordance with the indemnity provision(s) stated in the this Agreement, ~~agrees to all of the following:~~

~~13.3.1 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 agent's, employee's or subcontractor's performance of this Agreement, CONTRACTOR shall defend COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and~~

~~13.3.2 CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and~~

~~13.3.3 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 provisions shall be interpreted as though CONTRACTOR was an insurer and COUNTY was the insured.~~

13.4 If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this Agreement, COUNTY may terminate this Agreement.

13.5 Qualified Insurer

13.5.1 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).~~

13.5.2 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.

13.5.3 The policy or policies of insurance maintained by CONTRACTOR for Patch services shall provide the minimum limits and coverage as set forth below:

Coverage

Minimum Limits

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per <del>occurrence</del> <u>accident or disease</u>
Network Security & Privacy Liability	\$1,000,000 per <del>claimsmade</del> <u>claims-made</u>
Sexual Misconduct Liability	\$1,000,000 per occurrence

13.5.4 If CONTRACTOR for Patch services offers mobile services, they shall also provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Automobile Liability including coverage for owned, non-owned, and hired vehicles	\$1,000,000 per <del>occurrence</del> <u>combined single limit each accident</u>

13.5.6 The policy or policies of insurance maintained by CONTRACTOR for Random Drug Testing services 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
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per <del>occurrence</del> <u>accident or disease</u>
Network Security & Privacy Liability	\$1,000,000 per <del>claimsmade</del> <u>claims-made</u>
Professional Liability Insurance	\$1,000,000 per <del>claimsmade</del> <u>claims-made or occurrence</u> \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

13.5.7 The policy or policies of insurance maintained by CONTRACTOR for SCRAM CAM services 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 <del>per occurrence</del> <u>combined single limit each accident</u>
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per <del>occurrence</del> <u>accident or disease</u>
Network Security & Privacy Liability	\$1,000,000 per <del>claimsmade</del> <u>claims-made</u>

13.5.8 Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

### 13.6 Required Coverage Forms

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

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

### 13.7 Required Endorsements

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

13.7.1.1 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, and agents as Additional Insureds or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

13.7.1.2 A primary non-~~contributing~~ contributory 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~~contributory.

13.7.2 ~~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, employees, and agents or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.~~

13.7.3 The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance.

13.7.3.1 An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, ~~agents and~~ employees, and agents as Additional Insureds for its vicarious liability.

13.7.3.2 A primary and non-~~contributing~~contributory endorsement evidencing that the CONTRACTOR's insurance is primary, and any insurance or self-insurance maintained by the County ~~of Orange~~ shall be excess and non-contributing.

~~13.8 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.~~

~~13.9~~13.8 All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, ~~agents and~~ employees, and agents when acting within the scope of their appointment or employment.

~~13.10~~13.9 CONTRACTOR shall ~~notify COUNTY in writing within~~provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days ~~for~~prior written notice where cancellation is due to 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~~Contract, upon which the COUNTY may suspend or terminate this Agreement.

~~13.11~~13.10 If CONTRACTOR's Professional Liability and/or Network Security & Privacy Liability policy are a "~~claims-made~~Claims-Made" policy, CONTRACTOR shall agree to ~~maintain Professional Liability and/or Network Security & Privacy Liability coverage for two (2) years~~the following completion of this Agreement.:

13.10.1 The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Agreement services.

13.10.2 Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Agreement services.

13.10.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, Contractor must purchase an extended reporting period for a minimum of three (3) years after expiration or earlier termination of the Agreement.

~~13.12~~13.11 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).

~~13.13~~13.12 Insurance certificates should be ~~mailed~~forwarded to COUNTY at the address indicated in Paragraph ~~10~~10 of this Agreement.

~~13.14~~13.13 If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/County Procurement Office or ADMINISTRATOR, award may be made to the next qualified ~~CONTRACTOR~~proponent.

~~13.15~~13.14 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 Agreement. Any increase or decrease in insurance will be as deemed by



County of Orange Risk Manager as appropriate to adequately protect COUNTY.

~~13.16~~13.15 COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not ~~deposit copies of~~ provide acceptable ~~certificates~~ Certificates of ~~insurance~~ Insurance and endorsements ~~with~~ to COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

~~13.17~~13.16 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 Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

5. Paragraph 18 of the Agreement is hereby amended to read as follows:

18. BREACH SANCTIONS

18.1 Failure by CONTRACTOR to comply with any of the provisions, covenants, or conditions of this Agreement shall be a material breach of this Agreement. In such event, ADMINISTRATOR may, and in addition to immediate termination and any other remedies available at law, in equity, or otherwise specified in this Agreement:

18.1.1 Afford CONTRACTOR a time period within which to cure the breach, which period shall be established by ADMINISTRATOR; and/or

18.1.2 Discontinue reimbursement to CONTRACTOR for and during the period in which CONTRACTOR is in breach, which reimbursement shall not be entitled to later recovery; and/or

18.1.3 Offset against any monies billed by CONTRACTOR but yet unpaid by COUNTY those monies disallowed pursuant to Subparagraph ~~18.3~~18.1.2 above.

18.2 ADMINISTRATOR will give CONTRACTOR written notice of any action pursuant to this Paragraph, which notice shall be deemed served on the date of mailing.

6. Subparagraph 19.1 of the Agreement is hereby amended to read as follows:

19.1 Maximum Contractual Funding Obligation

The maximum funding obligation of COUNTY under this Agreement shall not exceed the amount of ~~\$4,800~~8,000,000, or actual allowable costs, whichever is less. The estimated annual amount for each twelve (12) month period is as follows:

19.1.1 \$1,600,000 for July 1, 2021, through June 30, 2022;

19.1.2 \$1,600,000 for July 1, 2022, through June 30, 2023; ~~and~~

19.1.3 \$1,600,000 for July 1, 2023, through June 30, 2024;

19.1.4 \$1,600,000 for July 1, 2024, through June 30, 2025; and

19.1.5 \$1,600,000 for July 1, 2025, through June 30, 2026.

7. Subparagraph 19.3.1 of the Agreement is hereby amended to read as follows:

19.3.1 CONTRACTOR shall submit monthly claims to be received by ADMINISTRATOR no later than the twentieth (20th) calendar day of the month for expenses incurred in the preceding month, except as detailed below in Subparagraph 19.3.4. In the event the twentieth (20th) calendar day falls on a weekend or COUNTY holiday, CONTRACTOR shall submit the claim the next business day. COUNTY holidays include New Year's Day, Martin Luther King Jr. Day, President Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, ~~Columbus~~Native American Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day.

8. Subparagraph 23.2.2 of the Agreement is hereby amended to read as follows:

23.2.2 CONTRACTOR shall keep all COUNTY data provided to CONTRACTOR during the term(s) of this Agreement for a minimum of five (5) years from the date of final payment under this Agreement, or until all pending COUNTY, State, and federal audits are completed,

whichever is later. These records shall be stored in Orange County, unless CONTRACTOR requests and COUNTY provides written approval for the right to store the records in another county. Notwithstanding anything to the contrary, upon termination of this Agreement, CONTRACTOR shall relinquish control with respect to COUNTY data to COUNTY in accordance with Subparagraph [39.2 of this Agreement](#).

9. Subparagraph 24.6 of the Agreement is hereby amended to read as follows:

24.6 CONTRACTOR shall ensure that clearances and background checks described [above](#) in Subparagraphs 24.4 and 24.5 are completed prior to CONTRACTOR's Personnel providing services under this Agreement.

10. Subparagraph 24.7 of the Agreement is hereby amended to read as follows:

24.7 In the event a record is revealed through the processes described in [above](#) Subparagraphs 24.4 and 24.5, COUNTY will be available to consult with CONTRACTOR on appropriateness of Personnel providing services through this Agreement.

11. Paragraph 29 of the Agreement is hereby amended to read as follows:

29. SECURITY

[CONTRACTOR shall abide by the requirements in Attachment A attached hereto and incorporated by reference.](#)

12. Subparagraph 32.4 is hereby added to the Agreement to read as follows:

[32.4 Emergency Publicity & Outreach: In response to natural disasters and local emergencies, at the direction of the COUNTY, CONTRACTOR shall assist the COUNTY with publicity of COUNTY provided emergency benefits informational materials and messaging, to provide CONTRACTOR's clientele with helpful emergency benefits and resource information during emergencies.](#)

13. Subparagraph 33.2.4 of the Agreement is hereby amended to read as follows:

33.2.4 If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube, or other publicly available social media sites) to publish information related to this Agreement, CONTRACTOR shall develop social media policies and procedures and have them available to the ADMINISTRATOR. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Agreement. The policy is available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies><https://cio.ocgov.com/egovernment-policies>.

14. Paragraph 37 of the Agreement is hereby amended to read as follows:

37. CERTIFICATION ~~REGARDING LOBBYING~~ AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

~~30.1~~37.1 CONTRACTOR shall be in compliance with Section 319 of Public Law 101-121 pursuant to Section 1352, Title 31, U.S. Code. Under these laws and regulations, it is mutually understood that any contract which utilizes federal monies in excess of \$100,000 must contain and CONTRACTOR must certify compliance utilizing a form provided by ADMINISTRATOR that includes the text below in Subparagraphs 37.1.1 - 37.1.1.4.

37.1.1 The undersigned certifies to the best of his or her knowledge and belief that:

37.1.1.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any federal contract, grant, loan or cooperative agreement.

37.1.1.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL “Disclosure Form to Report Lobbying,” in accordance with its instructions.

37.1.1.3 The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants loans and cooperative agreements) and that subrecipients shall certify and disclose accordingly.

37.1.1.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

15. Paragraph 42 is hereby added to the Agreement to read as follows:

42. COOPERATIVE AGREEMENT

42.1 This Agreement is a cooperative agreement and may be utilized by all County of Orange departments.

42.2 The provisions and pricing of this Agreement may be extended, at the option of Contractor, to any Municipal, County, Public Utility, Hospital, Educational Institution, or any other non-profit or governmental organization (the “Cooperative Program”). Parties in a Cooperative Program wishing to use this Agreement will be

responsible for issuing their own purchase documents / price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any agreement entered into with another agency or entity that is entered into pursuant to the provisions and pricing of this Agreement a clause that binds the parties to the agreement to “indemnify, defend with counsel approved in writing by the 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” under the agreement. Failure to include this clause voids the Agreement’s extension to a Cooperative Program and will be considered a material breach of this Agreement and grounds for immediate Agreement termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The County of Orange makes no guarantee of usage by other users of this Agreement.

42.3 Subordinate agreements must be executed prior to the expiration or earlier termination of this Agreement and may survive the expiration of this Agreement. This Cooperative Agreement provision shall survive expiration or termination of this Agreement.

16. Subparagraph 3.2 of Exhibit A of the Agreement is hereby amended to read as follows:

3.2 CONTRACTOR’s holiday schedule shall not exceed COUNTY’s holiday schedule which is as follows: New Year’s Day, Martin Luther King Jr. Day, President Lincoln’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, ~~Columbus~~Native American Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day. CONTRACTOR shall obtain prior written approval from ADMINISTRATOR for any closure outside of COUNTY’s holiday schedule and the hours listed in Subparagraph 3.1 of Exhibit A. Any unauthorized closure shall be deemed a material breach of this Agreement, pursuant to Paragraph 18 of this Agreement, and shall not be

reimbursed. Failure of CONTRACTOR to obtain such approval shall result in CONTRACTOR incurring upon itself all fiscal obligations related to non-County holiday(s) and shall be deemed in material breach of this Agreement for services not provided by CONTRACTOR during unapproved holiday(s).

17. Subparagraph 4.5 of Exhibit C of the Agreement is hereby amended to read as follows:

4.5 CONTRACTOR shall collect urine samples, as described in Subparagraph 1.4 of Exhibit C, at the following locations:

Avertest, LLC dba Averhealth  
3400 Ball Road, Suite 201  
Anaheim, CA 92804  
Monday through Friday: 7:00 AM to 7:00 PM  
Weekends and Holidays: 9:00 AM to 12:00 PM

Avertest, LLC dba Averhealth  
2621 S. Bristol St., Suite 203  
Santa Ana, CA 92704  
Monday through Friday: 7:00 AM to 7:00 PM  
Weekends and Holidays: 9:00 AM to 12:00 PM

Avertest LLC, dba Averhealth  
1200 N. Tustin Ave., Suite 220  
Santa Ana, CA 92705  
Monday through Friday: 7:00 AM to 7:00 PM  
Weekends and Holidays: 9:00 AM to 12:00 PM

~~E&J Medical Services (subcontracted)~~

~~17024 Magnolia Street~~

~~Fountain Valley, CA 92708~~

~~Monday through Friday: 9:00 AM to 5:00 PM~~

~~Southland~~American Family Urgent Care (subcontracted)

~~27660 Santa Margarita Pkwy~~

~~Mission Viejo~~27522 Antonio Parkway Suite P-3

Ladera Ranch, CA 92691~~92694~~

Monday through Friday: 8:00 AM to ~~5~~7:00 PM

Weekends and Holidays: 8:00 AM to 4:00 PM

18. Attachment A is hereby added to the Agreement and attached as follows.

19. The Parties agree that separate copies of this Amendment may be signed by each of the Parties, and this Amendment will have the same force and effect as if the original had been signed by all Parties.

20. All other terms and conditions of the Agreement shall remain the same and in full force and in effect.



IN WITNESS WHEREOF, the Parties hereto have executed this Amendment One to Agreement on 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 that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: AVERTEST, LLC DBA AVERHEALTH**

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

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

Deputized Designee Signature:

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

**APPROVED AS TO FORM**  
COUNTY COUNSEL  
COUNTY OF ORANGE, CALIFORNIA

_____	<u>Deputy County Counsel</u>
Print Name	Title
_____	_____
Signature	Date

ATTACHMENT ACOUNTY OF ORANGE INFORMATION TECHNOLOGY SECURITY PROVISIONS

All Contractors with access to County data and/or systems shall establish and maintain policies, procedures, and technical, physical, and administrative safeguards designed to (i) ensure the confidentiality, integrity, and availability of all County data and any other confidential information that the Contractor receives, stores, maintains, processes, transmits, or otherwise accesses in connection with the provision of the contracted services, (ii) protect against any threats or hazards to the security or integrity of County data, systems, or other confidential information, (iii) protect against unauthorized access, use, or disclosure of personal or County confidential information, (iv) maintain reasonable procedures to prevent, detect, respond, and provide notification to the County regarding any internal or external security breaches, (v) ensure the return or appropriate disposal of personal information or other confidential information upon contract conclusion (or per retention standards set forth in the contract), and (vi) ensure that any subcontractor(s)/agent(s) that receives, stores, maintains, processes, transmits, or otherwise accesses County data and/or system(s) is in compliance with statements and the provisions of statements and services herein.

1. County of Orange Information Technology Security Guidelines: County of Orange security standards follows the latest National Institute of Standards and Technology (NIST) 800-53 framework to ensure the highest levels of operational resiliency and cybersecurity.

Contractor, Contractor personnel, Contractor's subcontractors, any person performing work on behalf of Contractor, and all other agents and representatives of Contractor will, at all times, comply with and abide by all County of Orange Information Technology Security Guidelines ("Security Guidelines"), as existing or modified, that pertain to Contractor in connection with the Services performed by Contractor as set forth in the scope of work of this Contract. Any violations of such Security Guidelines shall, in addition to all other available rights and remedies available to County, be cause for immediate termination of this Contract. Such Security Guidelines include, but are not limited to this Attachment.

Contractor shall use industry best practices and methods with regard to confidentiality, integrity, availability, and the prevention, detection, response, and elimination of threat, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County data and/or system(s) accessed in the performance of Services under this Contract.

2. The Contractor shall implement and maintain a written information security program that contains reasonable and appropriate security measures designed to safeguard the confidentiality, integrity, availability, and resiliency of County data and/or system(s). The Contractor shall review and update its information security program in accordance with contractual, legal, and regulatory requirements. Contractor shall provide to County a copy of the organization's information security program and/or policies.

**3. Information Access:** Contractor shall use appropriate safeguards and security measures to ensure the confidentiality and security of all County data.

County may require all Contractor personnel, subcontractors, and affiliates approved by County to perform work under this Contract to execute a confidentiality and non-disclosure agreement 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 in no event shall Contractor permit any such mechanisms to be shared or used by other than the individual Contractor personnel, subcontractor, or affiliate to whom issued. Contractor shall provide each Contractor personnel, subcontractors, or affiliates with only such level of access as is required for such individual to perform his or her assigned tasks and functions.

Throughout the Contract term, upon request from County but at least once each calendar year, Contractor shall provide County with an accurate, up-to-date list of those Contractor personnel and/or subcontractor personnel having access to County systems and/or County data, and the respective security level or clearance assigned to each such Contractor personnel and/or subcontractor personnel. County reserves the right to require the removal and replacement of Contractor personnel and/or subcontractor personnel at the County's sole discretion. Removal and replacement shall be performed within 14 calendar days of notification by the County.

All County resources (including County systems), County data, County hardware, and County software used or accessed by Contractor: (a) shall be used and accessed by such Contractor and/or subcontractors personnel 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 or Contractor's personnel and subcontractors, at any time.

Contractor acknowledges and agrees that any failure to comply with the provisions of this paragraph shall constitute a breach of this Contract and entitle County to deny or restrict the rights of such non-complying Contractor personnel and/or subcontractor personnel to access and use the County data and/or system(s), as County in its sole discretion shall deem appropriate.

**4. Data Security Requirements:** Without limiting Contractor's obligation of confidentiality as further described in this Contract, Contractor must establish, maintain, and enforce a data privacy program and an information and cyber security program, including safety, physical, and technical security and resiliency policies and procedures, that comply with the requirements set forth in this Contract and, to the extent such programs are consistent with and not less protective than the requirements set forth in this Contract and are at least equal to applicable best industry practices and standards (NIST 800-53).

Contractor also shall provide technical and organizational safeguards against accidental, unlawful, or unauthorized access or use, destruction, loss, alteration, disclosure, transfer, commingling, or processing of such information that ensure a level of security appropriate to the risks presented by the processing of County Data,

Contractor personnel and/or subcontractor personnel and affiliates approved by County to perform work under this Contract may use or disclose County personal and confidential information only as permitted in this Contract. Any other use or disclosure requires express approval in writing by the County of Orange. No Contractor personnel and/or subcontractor personnel or affiliate shall duplicate, disseminate, market, sell, or disclose County personal and confidential information except as allowed in this Contract. Contractor personnel and/or subcontractor personnel or affiliate who access, disclose, market, sell, or use County personal and confidential information in a manner or for a purpose not authorized by this Contract may be subject to civil and criminal sanctions contained in applicable federal and state statutes.

Contractor shall take all reasonable measures to secure and defend all locations, equipment, systems, and other materials and facilities employed in connection with the Services against hackers and others who may seek, without authorization, to disrupt, damage, modify, access, or otherwise use Contractor systems or the information found therein; and prevent County data from being commingled with or contaminated by the data of other customers or their users of the Services and unauthorized access to any of County data.

Contractor shall also continuously monitor its systems for potential areas where security could be breached. In no case shall the safeguards of Contractor's data privacy and information and cyber security program be less stringent than the safeguards used by County. Without limiting any other audit rights of County, County shall have the right to review Contractor's data privacy and information and cyber security program prior to commencement of Services and from time to time during the term of this Contract.

All data belongs to the County and shall be destroyed or returned at the end of the contract via digital wiping, degaussing, or physical shredding as directed by County.

- 5. Enhanced Security Measures:** County may, in its discretion, designate certain areas, facilities, or solution systems as ones that require 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 and shall cause Contractor personnel and subcontractors to fully comply with and abide by all such enhanced security and access measures and procedures as of such date.
- 6. General Security Guidelines:** Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems, email systems, auditing, and monitoring systems) and networks used by or for Contractor ("Contractor Systems") to access County resources (including County systems), County data or otherwise in connection with the Services and shall prevent unauthorized access to County resources (including County systems) or County data through the Contractor Systems.

- a) **Contractor System(s) and Security:** At all times during the contract term, Contractor shall maintain a level of security with regard to the Contractor Systems, that in all events is at least as secure as the levels of security that are common and prevalent in the industry and in accordance with industry best practices (NIST 800-53). Contractor shall maintain all appropriate administrative, physical, technical, and procedural safeguards to secure County data from data breach, protect County data and the Services from loss, corruption, unauthorized disclosure, and from hacks, and the introduction of viruses, disabling devices, malware, and other forms of malicious and inadvertent acts that can disrupt County's access and use of County data and the Services.
- b) **Contractor and the use of Email:** Contractor, including Contractor's employees and subcontractors, that are provided a County email address must only use the County email system for correspondence of County business. Contractor, including Contractor's employees and subcontractors, must not access or use personal, non-County Internet (external) email systems from County networks and/or County computing devices. If at any time Contractor's performance under this Contract requires such access or use, Contractor must submit a written request to County with justification for access or use of personal, non-County Internet (external) email systems from County networks and/or computing devices and obtain County's express prior written approval.

Contractors who are not provided with a County email address, but need to transmit County data will be required to maintain and transmit County data in accordance with this Agreement.

7. **Security Failures:** Any failure by the Contractor to meet the requirements of this Contract with respect to the security of County data, including any related backup, disaster recovery, or other policies, practices or procedures, and any breach or violation by Contractor or its subcontractors or affiliates, or their employees or agents, of any of the foregoing, shall be deemed a material breach of this Contract and may result in termination and reimbursement to County of any fees prepaid by County prorated to the date of such termination. The remedy provided in this paragraph shall not be exclusive and is in addition to any other rights and remedies provided by law or under the Contract.
8. **Security Breach Notification:** In the event Contractor becomes aware of any act, error or omission, negligence, misconduct, or security incident including unsecure or improper data disposal, theft, loss, unauthorized use and disclosure or access, that compromises or is suspected to compromise the security, availability, confidentiality, and/or integrity of County data or the physical, technical, administrative, or organizational safeguards required under this Contract that relate to the security, availability, confidentiality, and/or integrity of County data, Contractor shall, at its own expense, (1) immediately (or within 24 hours of potential or suspected breach), notify the County's Chief Information Security Officer and County Privacy Officer of such occurrence; (2) perform a root cause analysis of the actual, potential, or

suspected breach; (3) provide a remediation plan that is acceptable to County within 30 days of verified breach, to address the occurrence of the breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data, and information have been affected by such event; and (5) cooperate with County and any law enforcement or regulatory officials investigating such occurrence, including but not limited to making available all relevant records, forensics, investigative evidence, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by County and/or any law enforcement or regulatory officials, and (6) perform or take any other actions required to comply with applicable law as a result of the occurrence (at the direction of County).

County shall make the final decision on notifying County officials, entities, employees, service providers, and/or the general public of such occurrence, and the implementation of the remediation plan. If notification to particular persons is required under any law or pursuant to any of County's privacy or security policies, then notifications to all persons and entities who are affected by the same event shall be considered legally required. Contractor shall reimburse County for all notification and related costs incurred by County arising out of or in connection with any such occurrence due to Contractor's acts, errors or omissions, negligence, and/or misconduct resulting in a requirement for legally required notifications.

In the case of a breach, Contractor shall provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals.

Contractor shall indemnify, defend with counsel approved in writing by County, and hold County and County Indemnitees harmless from and against any and all claims, including reasonable attorney's fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from County in connection with the occurrence.

Notification shall be sent to:

Andrew Alipanah, MBA, CISSP  
Chief Information Security Officer  
1055 N. Main St., 6<sup>th</sup> Floor  
Santa Ana, CA 92701  
Phone: (714) 567-7611  
Andrew.Alipanah@ocit.ocgov.com

Linda Le, CHPC, CHC, CHP  
County Privacy Officer  
1055 N. Main St., 6<sup>th</sup> Floor  
Santa Ana, CA 92701  
Phone: (714) 834-4082  
Linda.Le@ocit.ocgov.com

County of Orange  
Social Services Agency  
Contracts Services  
500 N. State College Blvd, Suite 100  
Orange, CA 92868  
714-541-7785  
Karen.Vu@ssa.ocgov.com

**9. Security Audits:** Contractor shall maintain complete and accurate records relating to its system and Organization Controls (SOC) Type II audits or equivalent's data protection practices, internal and external audits, and the security of any of County-hosted content, including any confidentiality, integrity, and availability operations (data hosting, backup, disaster recovery, external dependencies management, vulnerability testing, penetration testing, patching, or other related policies, practices, standards, or procedures). Contractor shall inform County of any internal/external security audit or assessment performed on Contractor's operations, information and cyber security program, disaster recovery plan, and prevention, detection, or response protocols that are related to hosted County content, within sixty (60) calendar days of such audit or assessment. Contractor will provide a copy of the audit report to County within thirty (30) days after Contractor's receipt of request for such report(s).

Contractor shall reasonably cooperate with all County security reviews and testing, including but not limited to penetration testing of any cloud-based solution provided by Contractor to County under this Contract. Contractor shall implement any required safeguards as identified by County or by any audit of Contractor's data privacy and information/cyber security program.

In addition, County has the right to review Plans of Actions and Milestones (POA&M) for any outstanding items identified by the SOC 2 Type II report requiring remediation as it pertains to the confidentiality, integrity, and availability of County data. County reserves the right, at its sole discretion, to immediately terminate this Contract or a part thereof without limitation and without liability to County if County reasonably determines Contractor fails or has failed to meet its obligations under this section.

#### **10. Business Continuity and Disaster Recovery (BCDR):**

For the purposes of this section, "Recovery Point Objectives" means the maximum age of files (data and system configurations) that must be recovered from backup storage for normal operations to resume if a computer, system, or network goes down as a result of a hardware, program, or communications failure (establishing the data backup schedule and strategy). "Recovery Time Objectives" means the maximum duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a loss of functionality.

The Contractor shall maintain a comprehensive risk management program focused on managing risks to County operations and data, including mitigation of the likelihood and impact of an adverse event occurring that would negatively affect contracted services and operations of the County. Business continuity management will enable the Contractor to identify and minimize disruptive risks and restore and recover hosted County business-critical services and/or data within the agreed terms following an adverse event or other major business disruptions. Recovery and timeframes may be impacted when events or disruptions are related to dependencies on third-parties. The County and Contractor will agree on Recovery Point Objectives and Recovery Time Objectives (as needed) and will periodically review these objectives. Any disruption to services of system will be communicated to the County within

4 hours, and every effort shall be undertaken to restore contracted services, data, operations, security, and functionality.

All data and/or systems and technology provided by the Contractor internally and through third-party vendors shall have resiliency and redundancy capabilities to achieve high availability and data recoverability. Contractor Systems shall be designed, where practical and possible, to ensure continuity of service(s) in the event of a disruption or outage.