



CONTRACT

Between

County of Orange

And

WebMD Health Services Group, Inc.

For

Health Management Program

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CONTRACT

THIS AGREEMENT for the Provision of a Health Management Program (hereinafter referred to as “Contract”), is effective by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and WebMD Health Services Group, Inc., with a place of business at 395 Hudson Street, New York, NY 10014, (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for the Provision of a Health Management Program as defined herein; and

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

WHEREAS, the County’s Board of Supervisors has authorized the Purchasing Agent or authorized Deputy Purchasing Agent to enter into this Contract with Contractor for the Provision of a Health Management Program;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

1. **Scope of Contract:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the County will procure a Health Management Program from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
2. **Compensation:** The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
3. **Term of Contract:** The initial term of this Contract is for three (3) years, effective May 14, 2022, continuing for three (3) years from that date, unless earlier terminated by the County. The Contract Term may be renewed for two (2) additional consecutive one (1) year terms, upon the mutual written agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors. Permitted renewals of the Contract provided in this paragraph 3 shall not result in any change in any other term, condition or provision of this Contract.
4. **Entire Contract:** This Contract, including its Attachments A, B, C, D, E, F and Exhibit 1, 2, and 3 as they now exist or may hereafter be changed, modified or amended and which are attached hereto and incorporated herein by this reference, contains the entire Contract between the Parties with respect to the matters herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. No exceptions, alternatives, substitutes, or revisions are valid or binding on the County unless authorized by the County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on the County unless accepted in writing by the County’s Purchasing Agent or his authorized designee.

5. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on the County unless authorized by the County in writing.
6. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. 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.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
9. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work. 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.
10. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- ~~11. **County of Orange Local Small Business (OCLSB) Preference Requirements:** Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this Contract is executed.~~
- ~~12. **County of Orange Disabled Veteran Business Enterprise (DVBE) Preference Requirements:** Contractor certifies it is in compliance with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.~~
- ~~13.~~ **11. Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County Program Manager, as identified below. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County Program Manager shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County consents to the subcontractors listed in Attachment D.
- ~~14.~~ **12. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with

the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1741 of the California Labor Code.

15.13. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.

16.14. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

17.15. Warranty: Contractor expressly warrants that the goods covered by this Contract will conform to the requirements of Attachment A when used by County in accordance with the terms set forth in Attachment A. ~~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.~~ If a component of the services provided by Contractor fails to meet the agreed upon specifications set forth in Attachment A, Contractor shall: as soon as reasonably possible, repair or replace such component to the extent reasonably necessary to correct such failure. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph 189 below, and as more fully described in paragraph 189, 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.

18.16. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 19 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

19.17. Compliance with Laws: ~~Contractor represents and warrants that services to be provided under this Contract~~ Each of the parties shall fully comply, at Contractor's ~~their own~~ 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 189 below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws. County represents and warrants that it will not direct Contractor to use or disclose Participant Information in a manner that violates any applicable laws, rules or regulations.

Although Contractor's recommended wellness program structure and the Online Services (as defined below) comply with industry best practices, including but not limited to ACA and HIPAA guidelines, County acknowledges and agrees that it is ultimately responsible for confirming compliance of its benefits and wellness program with applicable federal and state law, including but not limited to the Affordable Care Act (ACA), the Americans with Disabilities Act (ADA), the Genetic Information and Nondiscrimination Act of 2008 and HIPAA. The Parties understand and intend that Contractor is not acting as a fiduciary of any kind with respect to County or any benefit plan. It is understood and agreed that none of the services to be provided by Contractor are fiduciary services that would be performed for or on behalf of any benefit plan, that Contractor has no discretion or ability, formal or otherwise, to exercise any authority, direction or influence, whether direct or indirect, with respect to the administration of any aspect of any benefit plans including, but not limited to, the disposition of the assets of such plans, the interpretation or application of such plans' documents, or to determine the entitlements of such plan's participants and their beneficiaries to coverage of benefits. The Parties further agree that all authority, discretion and control, formal or informal, direct or indirect, with respect to the adjudication of benefit claims, the disposition, application or investment of the assets of any benefit plan and the administration of such plans are exclusively vested in County or in those persons to whom it has delegated, or who exercise, any such authority or power.

~~20~~18. **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.

~~24~~19. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

~~22~~20. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire Term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

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

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

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

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

Qualified Insurer

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 3,000,000 per claims made or per

occurrence

Network Security & Privacy Liability	\$1,000,000 3,000,000 per claims-made
Sexual Misconduct	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

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

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

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

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

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

If Contractor's Professional Liability and Network Security and Privacy Liability are "Claims-Made" policies, Contractor shall agree to maintain coverage for two (2) years following completion of the Contract.

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

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

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

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

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

~~23.~~21. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the Term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

~~24.~~22. **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

~~25.~~23. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

~~26.~~24. **Program Manager:** The County shall appoint a Program Manager to act as liaison between the County and the Contractor during the Term of this Contract. The County's Program Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Program Manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's

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

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

26. Rights and Ownership of Documents:

Any content, applications, tools, graphics, images, or other materials, whether in print, online, or other electronic format (collectively, the "Materials"), provided to County and its affiliates by Contractor as part of the services may not be copied, reproduced, licensed, or sold by County or its affiliates. During the Term of this Contract, Contractor grants County and its affiliates a royalty free, nontransferable, nonexclusive license to provide its eligible participants, who are participating in Contractor's programs, with access to Contractor's Materials described in the Scope of Work attached hereto as Attachment A or otherwise provided by Contractor as part of the services. This license does not include the right to use the Materials to furnish a service to others or to copy, distribute, reproduce or alter the Materials in any way. Materials are provided to the participants solely for their own personal, non-commercial use. All trademarks, ideas, concepts, know-how and techniques used by Contractor, belong to Contractor and Contractor retains all rights and ownership thereto. As used herein, "Intellectual Property Rights" means any copyrights, copyrightable subject matter, trademarks, service marks, know-how, moral rights and other intellectual property rights existing under the laws of any governmental authority, domestic or foreign, including all applications and registrations relating to any of the foregoing. To the extent that County or any affiliate of County provides intellectual property in which County or such affiliate has Intellectual Property Rights ("County IP") to Contractor for use as part of the Materials, such County IP shall remain the exclusive property of County or the relevant affiliate of County, and County hereby grants Contractor a limited right and license to use such County IP solely for the purpose of performing under this Contract and shall cause the relevant County affiliate to likewise grant Contractor such a license. In the event that a third party brings a claim against County or any County affiliate asserting that any component of the Materials used within the scope of the license hereunder constitutes an infringement of such third party's Intellectual Property Rights, and provided that Contractor is notified promptly in writing by you of any notice of such claim, or should any component of the Materials become, or in Contractor's opinion is likely to become, the subject of any such claim, then you shall permit Contractor, at Contractor's option, either (a) to procure for you the right to continue using such Materials, (b) to replace or modify such component of the Materials so that it becomes non-infringing, or (c) terminate the license of such component of the Materials and pro-rate the amount of fees payable hereunder during the remaining Term of the Agreement, which pro-ration shall be based on the number of components of the Materials remaining following the termination relative to the total number of components of the Materials licensed hereunder. Neither Party shall acquire a right to use and may not use without the other Party's prior written consent in each instance, the names, characters, artwork, designs, trade names, trademarks or service marks of the other Party in any advertising, publicity, public announcement, marketing, press release, promotion and/or client list except as otherwise provided for under this Contract. Notwithstanding the foregoing, Contractor may include County's name in its list of customers for promotional materials with the County's prior permission.

~~The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.~~

28.27. Title to Data: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain

the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

~~29.~~28. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the 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 the County. Storage of records ~~outside of Orange County, CA, in another county~~ will require written approval from the County of Orange assigned Deputy Purchasing Agent.

~~30.~~29. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

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

~~31.~~30. **Publication:** No copies of schedules, written documents, and computer-based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.

~~32.~~31. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

~~33.~~32. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract or any misrepresentation or fraud on the part of the Contractor. County's sole liability in the event of such termination for convenience shall be to pay for services rendered to the date of termination, and reasonable, non-cancelable expenses. ~~Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.~~

~~34.~~33. **Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Terminate this Contract immediately, pursuant to paragraph ~~32~~33 herein;
- b. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

~~35.~~34. **Disputes - Contract:** 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 Program Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

- a. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in paragraph 33 herein.

~~36.~~35. **Orderly Termination:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

~~37.~~36. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and

Contractor avails himself of any available remedies.

~~38.~~37. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

~~39.~~38. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

~~40.~~39. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the County's Program Manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Program Manager, Lauren Pierson
Human Resource Services/Employee Benefits
333 W. Santa Ana Blvd., 1st Floor, Room 137
Santa Ana, CA 92701

Contractor: WebMD Health Services Group, Inc.
395 Hudson Street, 3rd Floor
New York, NY 10014
Attn: Legal Department

Cc: WebMD Health Services Group, Inc.
2701 NW Vaughn Street, Suite 700
Portland, OR 97210
Attn: John Harrison, General Manager

~~41.~~40. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

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

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

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

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

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

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

43.42. Precedence: The Contract documents consist of this Contract and its exhibits and 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 exhibits and attachments.

44.43. Headings: The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

45.44. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

46.45. Calendar Days: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

47.46. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

48.47. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any

other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including 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.

~~49.~~**48. Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

49. Health Insurance Portability and Accountability Act (HIPAA):

- a. Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Exhibit 3 hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Exhibit 1 shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.
- b. In providing the services, County may disclose and Contractor may receive Protected Health Information, as defined in 45 C.F.R. §164.501 ("PHI"). Contractor will use and disclose any such PHI in accordance with applicable provisions of HIPAA and the privacy and security regulations promulgated pursuant to HIPAA set forth under 45 C.F.R. § 164.101 et. seq. (as amended) and any other applicable California state or federal laws or regulations. Contractor reserves the right to use the PHI and other data and information gathered in the course of providing the services for statistical evaluation and research. Results of this statistical evaluation and research will be disclosed only in aggregate form and such disclosures will not identify County or any affiliate of County or any individual participant unless prior consent has been received in each case. The specific terms of Contractor's use and disclosure of PHI shall be governed by the "Business Associate Agreement" ("BAA") attached hereto as Exhibit 1 and by the terms of the Privacy Statement (referenced below) accepted by the participant. To the extent that provisions of the BAA conflict with provisions of this Contract, the provisions of the BAA shall govern.
- c. The relationship between Contractor and any one of County's participants, all communications in connection with that relationship, and all individual data gathered by Contractor, is confidential and will only be used and disclosed to County (either in its capacity as an employer or plan sponsor) or County's contractors as permitted by the Terms of Use/Privacy Statement ("Privacy Statement") accepted by each individual as part of their participation in Contractor's programs.
- d. In the event access to individual data gathered by Contractor, including but not limited to PHI (collectively, the "Participant Information"), is required to facilitate the administration of certain aspects of County's programs, such as data analysis and the administration of incentives, and such use was not specified in the Privacy Statement, then County agrees to provide Contractor with written authorization from the individual(s) whose Participant Information is to be disclosed to County or to a third party designated by County
- e. If County requests that Contractor transfer any Participant Information to a third party, Contractor shall reasonably cooperate with County and its designated vendor ("Vendor"), subject to the terms set forth below. Contractor shall transfer the Participant Information to the Vendor upon satisfaction of the following conditions: (i) Contractor receives written instruction from County directing Contractor to transfer the Participant Information to the Vendor; (ii) Contractor receives written confirmation from County that the Vendor has entered into a business associate agreement with County, if required, or that a business associate agreement is not required; and (iii) the Privacy Statements allow for the transfer of the Participant Information to the Vendor.

50. 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.

51. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
52. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with the bid/proposal. Debarment pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department of agency may result in the bid/proposal being deemed non-responsible.
53. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
54. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 20 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
55. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
56. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
57. **Incorporation:** This Contract and its Attachments A through F and Exhibits 1 through 3 are attached hereto and incorporated herein by this reference and made a part of this Contract.

CONTRACT SIGNATURE PAGE

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

CONTRACTOR*:

 Print Name

 Title

 Signature

 Date

 Print Name

 Title

 Signature

 Date

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

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

COUNTY of ORANGE

A political subdivision of the State of California

 Print Name

 Title

 Signature

 Date

APPROVED AS TO FORM:

 Deputy, Office of County Counsel
 Orange County, California

Attachment A Scope of Work

I. Definitions

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

II. Values and Expectations for Employee Benefit Plans and Programs

The County is committed to providing its employees with comprehensive, high quality, and cost-effective benefit plans and programs that provide optimum value to both the County and its employees. The County will establish relationships with its consulting firm to assist in achieving these goals, including the mutual development of performance standards that support the County’s key goals and objectives. Examples of these goals and objectives include:

- a. *Long-Term Optimal Value in County-Sponsored Health Plans.* The County is committed to stabilizing and controlling plan costs in its health and welfare benefits program while obtaining optimal value (best price, quality of care and quality service) for plan participants. This will require the Contractor to assist in holding its providers accountable for delivering high quality, cost-effective care. The County expects providers to help stabilize and control plan costs while minimizing future cost increases in this manner.
- b. *Information Reporting and Performance Measurement.* Collection, reporting and analysis of data are critical in measuring and comparing plan and provider performance. The County believes a key part of this process requires providers to regularly examine and improve their systems for

assuring that necessary performance data is collected and care is being delivered in the most efficient and cost-effective manner. It is expected the County's benefits consultant will fully support the County in its efforts to continue acquiring this important information from County health plan providers.

III. Scope of a Health Management Program for the County of Orange

The Contractor will, at minimum, deliver to all eligible participants the following services:

Customer Service and Operations Support:

Contractor shall:

- A. Provide a toll-free telephone number for participant access to customer services representatives from 6 5:30 a.m. to 6 5 p.m. Pacific Time Monday through Friday, excluding, but not limited to, the following holidays: New Year's Day (observed), Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day (observed), Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day (observed).
- B. Provide notice to County in advance of anticipated customer service high-traffic, low availability
- C. Responds to participant questions.
- D. Provides multilingual support or access to translation representatives with use of ~~Language Line~~ Voiance.
- E. Assist participants with questions about passwords and logging in, security and confidentiality.
- F. Assist participants with questions about Non-Smoking Attestation, Biometric Screening and Health Assessment questionnaire completion, and incentives.
- G. Handle participant inquiries regarding general appeals and the appeals process.
- H. Provide extended customer services hours for the two-week period at the end of the incentive period, if it is determined necessary by the County.
- I. Ensure voice messages are to be returned within 24 hours or at the time indicated in the caller's message, during operational hours as listed in the Scope of Work.
- J. Have the ability to handle warm transfers to the County or other County program partners.
- K. Provide staffing and continuous evaluation of service levels to the performance agreements set forth in the contract with the County.
- L. Provide a call recording system. Recordings shall be used for quality assurance purposes and for reviewing participant interactions.

Web Portal

Contractor shall:

- A. Provide a web portal the delivers an engaging user experience and allow the user to view their current status relative to completion of required or incentive-earning activities.
- B. Provide and maintain an on-line web portal that gives participants access to wellness content, a Health Assessment, Non-Smoking Attestation, wellness challenges, team competitions and goal tracking (if applicable), monthly wellbeing sessions (online and mobile), educational materials, and incentive tracking, Communities (Champion) features with local level events, messaging and social walls, health coach chat and virtual visits (if applicable), and data feeds (imports and exports).
- C. Provide and maintain an on-line web portal that gives participants, who are not required to participate in the County's Wellness Program, access to wellness content, wellness challenges (if applicable), and educational materials.
- D. Will update web portal content as necessitated by medical advances or on a component basis.
- E. Protect the privacy of participants by requiring users to enter a unique user id and password combination to gain entry. Passwords will be encrypted using a one-way hash algorithm before being stored in our

database. The Web Portal will use the County's demographic file to ensure only those eligible have access to their individual information. Contractor will secure all data transmitted to and from the Web Portal application using at least 128bit SSL encryption. Once participants are logged into the Web Portal, all data is secured by Contractor's physical, technical, and procedural controls.

Incentive Administration

Contractor's platform (website and app) will list the activities required to be completed to earn incentives for the County's Wellness program.

Contractor shall list all available activities in the County's incentive design, and the Contractor's platform will provide the ability for participants to get a description of each activity, as customized by the County. These descriptions will also contain links to the activity, a PDF form, and/or applicable websites.

Contractor Shall:

- A. Provide a data file containing all incentive earners in a format approved by the County, to the County's Benefits Service Center and to the County

Health Assessment (HA)

Contractor shall:

- A. Coordinate and conduct an annual HA campaign designed to identify existing and emerging health issues, and to provide a baseline for establishing a health improvement/maintenance plan. The questionnaire should contain sufficiently plain language so as to be able to be completed by participants without assistance from a medical professional.
- B. Provide convenient access to the HA, including on-line with accommodations for those with disabilities, as well as convenient submission options as specified by the County.
- C. Allow the County to provide customized questions to be incorporated into the HA.

Biometric Screening

Contractor shall:

- A. Develop a Biometric Screening process consisting of cost-efficient health tests that will be administered by qualified individuals in locations convenient and accessible to participants. At a minimum, the Biometric Screening will include:
 - Blood pressure
 - Height, weight, and waist measurements
 - Non-fasting or fasting cholesterol levels
 - Non-fasting or fasting glucose levels
- B. Provide and manage a system to schedule Biometric Screenings, with options to do so via a central Wellness Program website, with accommodations for those with disabilities. Participants should receive frequent reminders to schedule Biometric Screenings to facilitate participant participation. Additionally, participants should receive appointment reminders.
- C. Coordinate and conduct onsite Biometric Screenings at the County's request.
- D. Screenings will be made available as requested by the County at convenient times during the weekday and available outside of normal work hours and limited evening and/or weekend hours.
- E. Develop a system in which participants may submit recent test results (within ~~last six months prior to the start of the Biometric Screening~~ a date range defined by the County) via an affidavit from their physician verifying completion of the required tests.

- F. Provide privacy screens for onsite events, two ~~privacy screens~~ sets per screening staff, to create separate screening areas within a screening event are available if requested by the County.
- G. Provide registration staff for no additional fee at events with 50 or more participants expected and/or events with a flow rate of 20 participants an hour or greater.
- H. Have the ability to load Biometric Screening results into the participant's HA.
- I. Provide home Biometric kits for Biometric screening, including the ability for participants to order a home Biometric kit from the web portal or app. The home Biometric kit should include a prepaid return envelope for processing the self-obtained blood sample.

Non-User of Tobacco/Nicotine (including vaping) Smoking Attestation (NSA)

Contractor shall:

- A. Develop a process for employees to complete a Non-User of Tobacco/Nicotine ~~(including vaping)~~ affidavit attesting that one of the following statements is true:
 - I have never smoked or used nicotine products ~~(including vaping)~~; or
 - I have been nicotine-free for the last 30 days; or
 - I have tried a smoking/nicotine cessation program in the last 12 months; or
 - I am currently enrolled in a smoking/nicotine cessation program.
- B. Provide convenient access to the ~~Non-User of Tobacco/Nicotine (including vaping)~~ ~~Affidavit~~ **Smoking Attestation** including on-line with accommodations for those with disabilities, as well as convenient submission options as specified by the County.

Communications

Contractor shall:

- A. Develop an annual communication plan for the County's Health Management Program
- B. Provide an annual wellness ~~credit~~ program for up to a maximum of 650 hours per year which is based upon the Per Employee Per Year fee listed in Attachment B for the development of communication materials that shall include, but shall not be limited to, ~~include~~ the following pieces:
 - **Branding strategy, development and design**
 - 1 print brochure
 - 6 print postcards
 - 6 emails
 - 15 electronic targeted messages
- C. Fulfill requirements of mailing the materials
- D. Accommodate adjustments to communications materials, at the County's requests, within the same overall budget.
- E. Provide the County with a quarterly newsletter at the rates listed in Attachment B and Contractor will be responsible for copywriting/editing, design and production support.
 1. Each newsletter will be a minimum of 4 pages front and back Contractor will print, collate, fold and tab the newsletter for mailing, if requested by the County.
 2. Contractor shall work collaboratively with County of Orange on content.
 3. Contractor will write articles and/or edit provided text as needed.
 4. Contractor will provide County with final PDFs for posting online.
 5. Contractor will print, collate, fold and tab newsletters for mailing, if requested by the County.
 6. **If mailing is requested by the County**, Contractor will presort, address and check in the newsletters for mailing at the post office.

Telephonic Health Coaching

Contractor shall:

A. Provide one on one telephonic coaching as follows:

1. Minimum topics included: Nutrition, Weight, Stress, Back Care, Smoking, Cholesterol, Blood Pressure, and Physical Activity.
2. Unlimited series of coaching calls, made on a personalized schedule.
3. During each program year Participants will be able to contact their coach as needed, even after formal program completion, to get the support they need to maintain their progress in making healthy change, at no additional charge provided such Participant has not completed a new Health Assessment.

Program Management

Contractor shall:

A. Provide County with a full-time Onsite Wellness Program Manager (~~the “Program Manager”~~) who will be located onsite at a specified County location or locations, and work collaboratively with the County, and other County vendor partners with the purpose of:

1. Creating a culture of health.
2. Increasing awareness and engagement in the company-wide health management programs.
3. Providing customized support to designated locations/business units.
4. If applicable, coaching individuals on behavioral changes in order to encourage risk reduction.
5. Coordinating logistics and implement company-wide campaigns, screening promotions, programs, events, etc.

B. Conduct the recruiting and hiring process, but will have mutual agreement with County as to the final job description and final candidate.

Additional Services

At the County’s request, Contractor will provide the following services:

- Ability to link/integrate with other provider programs
- On-line and/or paper-based wellness challenges
- Activity tracking device integration
- Incentive tracking and reporting (to employee and County-designated fulfillment administrator)
- Lifestyle coaching/behavior modification programs
- Comprehensive reporting to participants and County on program participation status, incentive-earning status, HA-Biometric results (aggregate only to County)
- Data aggregation, management, warehousing, and transfer to designated partners.
- ~~Program branding design and support~~
- Wellness Champion resources including, but not limited to, support for establishing the wellness champion network; resource center with assets for champions to use in developing local and onsite promotions, challenges, contests; facilitation support for scheduled wellness champion meetings; limited administrative access to well-being platform to plan and schedule local challenges; etc.

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Attachment B

Cost/Compensation for Contractor Services

1. Compensation: This is a fixed price Contract between the County and Contractor for a Health Management Program as provided in Attachment A, Scope of Work.

County agrees to compensate the Contractor for the Term of the Contract per the firm fixed prices set forth in the tables below. Contractor agrees to accept the same as full compensation for performing all services and furnishing all staffing and materials called for; and for risks connected with the services; and for performance by Contractor of all its duties and obligations hereunder.

There is an option to renew the Contract for two (2) additional one-year periods (year 4 and 5).

Total Estimated Price for year 4 and 5, if Contract is renewed will be dependent upon all services implemented each Contract year. The estimated fees for Contract year 4 and Contract year 5 is expected to total: \$2, 448,432.

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

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

Contractor's payment terms are net 30 days from receipt of invoice.

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

CORE SERVICES

Services		Fee	Notes
WebMD ONE Portal	Per Employee Per Month (PEPM)	\$1.00	Online Health Assessment, incentive tracking, online health coaching. Contractor will invoice the County based on the number of eligible employees reported on the Eligibility File each month.
Non-Smoking Attestations	Per Form	\$10.00 – Telephonic Attestations only	<ul style="list-style-type: none"> Self-Reported Attestations are included in web portal PEPM Telephonic Attestations are \$10.00 per call Contractor will invoice the county, monthly in arrears, for the number of calls received.
Data Feeds to/from Benefits Center			<ul style="list-style-type: none"> Contractor will provide the County with all current data feeds used with the My StayWell Platform on the WebMD ONE Platform at no additional cost. Contractor will provide two (2) additional data feeds (single sign-on, data import file, or batch data export file) during the Term of the Agreement at no additional cost. Any additional feeds will be billed at a one-time fee of \$3,750 per file implemented.

			<ul style="list-style-type: none"> Contractor typically automates the data feeds (daily, weekly, monthly, etc.) therefore there is no additional per file cost regardless of the frequency of the file and the number of times the data is imported into or exported out of the WebMD ONE Portal.
Onsite Wellness Program Manager (1 FTE)	Annual Salary & Benefits	\$150,000	<ul style="list-style-type: none"> Contractor will invoice the County 1/12th of the Annual Salary each month.

COMMUNICATION SERVICES

Services		Fee	Notes
Development of Communication Materials	Per Employee Per Year (PEPY)	\$7.00	<ul style="list-style-type: none"> The PEPY rate will provide for the creation of the content and the development of the strategy for the Annual Communications Plan for County of Orange Health Management Program. This will consist of brand creation/identity, content strategy, creation and delivery of home mailers, emails, onsite promotional signage, support Onsite Wellness Program Manager in addition to Contractor monitoring and evaluating the yearly strategy to ensure year-round engagement. This PEPY rate includes 650 hours of a communication strategist's time to develop the following communication materials, which shall include but not be limited to: <ul style="list-style-type: none"> Branding strategy, development & design 1 print brochure 6 print postcards 6 emails 15 electronic targeted messages Wellness Champion material are included The cost to provide the Home mailer includes printing costs. Postage fees are additional and will be invoiced at actual cost. Contractor will accommodate adjustments to the communication materials within the same budget. Contractor will invoice the County 1/12th of the PEPY multiplied by the actual eligibility count each month.
Wellness Newsletter - Printed	Per Newsletter	\$0.56	<ul style="list-style-type: none"> This is the estimated per newsletter price for Employee Newsletters and Retiree Newsletters. Final cost is dependent upon the number of newsletters printed. Printing is included. Postage fees are additional and will be invoiced at actual cost. Contractor will provide the County with a Contractor work order which will detail the estimated number of newsletters and approximate postage fee.
Wellness Newsletter – in PDF Format	Per Newsletter	\$5,000	<ul style="list-style-type: none"> Contractor will provide the printed version of the Quarterly Wellness Newsletter in a PDF file format for a fixed fee of \$5,000 per Newsletter. Contractor will invoice the County upon delivery of the PDF File.
Postage for Paper Communications	Per Communication	USPS rates	
Other	Per Hour	\$175	<ul style="list-style-type: none"> In the event the County requires additional custom communication hours in excess of 650 hours per year, the project will be scoped to determine the number of hours required and will be invoiced at the rate of \$175 per hour.

HEALTH COACHING SERVICES

Services		Fee	Notes
Telephonic Health Coaching	Flat Fee Per Participant Per Year (PPPY)	\$185	Contractor's Lifestyle Health Coaching Program for High Risk, Moderate Risk, or Low Risk individuals is priced on a Per Engaged Participant Per Year pricing methodology. Contractor will invoice the County for the number of new Participants each month.
Text Health Coaching	Flat Fee PPPY	\$185	Contractor's coaching services includes WebMD Coach Connect. This is an online secure messaging platform whereby an individual can connect with a WebMD Health Coach. An individual can become engaged through Coach Connect and if they do the price will be \$185 Per Engaged Participant Per Year. Once an individual becomes a Participant, they can switch modalities (telephonic or SMS secure messaging) as they like during the length of their engagement. The County is only invoiced once regardless of the modalities the individuals use to connect with a WebMD Health Coach. Contractor will invoice the County for the number of new Participants each month.
WebMD Coaching U Live – Group Coaching Sessions	Monthly	\$3,000	<ul style="list-style-type: none"> The Monthly Fee includes up to 150 group coaching session attendees per month. Any incremental attendees in excess of 150 per month will be billed at the rate of \$20.00 per attendee. Contractor's Group Coaching Sessions assumptions: <ul style="list-style-type: none"> Contractor will offer at least 588 group coaching session attendee seats per month across over 40 Discussion or Participation sessions per month. Contractor will invoice the County the Monthly Fee each month and any incremental attendees at the per attendee rate, if applicable.
WebMD Coaching U Live Webinars	Per Webinar	Included with onsite resource	Contractor's standard library of webinars is available for delivery through the dedicated Onsite Wellness Program Manager.
Agile Health Digital Text Based Coaching Program	PEPM	\$0.5660	Through Contractor's partner Agile Health, we can offer a bundle of 10 coaching programs (Diabetes Prevention, Diabetes Self-management, Healthy Living Navigator, Heart Health, Hypertension Management, Hypertension Management Lite, Medication Adherence, Stress / Resilience, Tobacco Cessation, and Weight Loss). Eligible Employees will only be enrolled in one program at a time, except for Diabetes, Heart Health & Hypertension program modules that work in conjunction with co-morbidities and the Eligible Employee can participate in more than one of these programs at the same time. Contractor requires a 12-month commitment for Agile Health commencing on the Launch Date. Contractor will invoice the County based on the number of eligible employees reported on the Eligibility File each month.
Tobacco Cessation Coaching Program w/ NRT	Flat Fee PPPY	\$400	Contractor's Tobacco Cessation Coaching Program is a standalone 12-week intensive specialty program with up to 5 outbound sessions with Contractor's Tobacco Treatment Specialty Coach and unlimited number of inbound sessions. NRT is included (patches, gum or lozenges) for 2 shipments which contain 4 weeks of supplies delivered to the Participants home. Contractor will invoice the County for the number of new

			Participants each month.
Weight Management Coaching – Positively Me	Flat Fee PPPY	\$335	Contractor's optional 12-month specialty weight management coaching program, Positively Me, is invoiced on a Per Engaged Participant Per Year basis. Contractor will invoice the County for the number of new Participants each month.

BIOMETRIC SCREENING SERVICES

Invoicing for Biometric Screening Services

- Contractor will invoice the County for the Services per the terms, conditions listed herein, after the Services have taken place. Please note that depending on the timing and/or type of Service, such as Lab Vouchers, the County may receive multiple invoices at various intervals during the contract year as the Biometric Screening vendor receives and processes the relevant data.
- Contractor will invoice the County for Quest Activate Home Kits, monthly in arrears, for the number of kits that were requested and processed. There is a minimum of thirty (30) Quest Activate Home Kits requested per Program Year beginning January 1, 2022. At the end of each Program Year if the number of Quest Activate Home Kits ordered is less than thirty (30) Contractor will invoice for the difference between the minimum number required and the actual number of Quest Activate Home Kits requested. For purpose of clarity this minimum per Program Year is only applicable if the County requests Quest Activate Home Kits to be sent to End Users. Quest Activate Home Kits are not available to Participants living in the State of New York.

Services		Fee	Notes
Onsite Biometric Screening – Fasting	Per Screen	\$50	Includes onsite coordination
Onsite Biometric Screening – Non-Fasting	Per Screen	\$50	Includes onsite coordination
After-hours Onsite Biometric Screening Fees	Per Event	\$250	Weekend and Holiday scheduled onsite events. Please note: there will be no additional per hour per staff fees for onsite events held Monday through Friday regardless of the hours for the event.
Fee if event minimum is not met	Per Event		There is a minimum order of 30 screenings per onsite event. The County will be invoiced for the number of actual participants screened at each onsite event, or for 90% of the number of screenings ordered for the onsite event, whichever is greater; provided, however, that in no instance shall the County be invoiced for less than 30 screenings.
Lab Voucher & Processing	Per Voucher	\$50	
Physician Form	Per Form	\$12	
Quest Activate Home Kit – option 1	Per Mailed	\$20	Option 1 Home Collection Kit does not include the blood pressure cuff
Quest Activate Home Kit – option 2	Per Mailed	\$40	Option 2 Home Collection Kit includes the blood pressure cuff which the participant will keep.
Quest Activate Home Kit – Returned/Processed	Per Test Kit	\$35	
Privacy Screens	Per Screen	\$25	Privacy Screens will incur a \$25.00 fee per screen up to a maximum of 10 screens for a total of \$250 per event.
Onsite Event Less than 4-hour minimum	Per hour / per staff	\$125	Any onsite event scheduled for less than 4 hours the County will be invoiced for the number of hours needed to make up the 4 hours.

Additional Staffing	Per hour / per staff	\$95	Any onsite event that requires a staff member to work extra hours will be invoiced \$95 per hour per staff member. If the County requests additional staff that is in excess of the standard staffing model the County will be invoiced \$95 per hour per staff member.
Registration Clerk	Per hour / per staff	\$70	The County will have 1 Registration Clerk for any onsite event with 50 or more screenings. For any event with fewer than 50 screenings a fee of \$70 per hour per clerk will be invoiced if the County requests a Registration Clerk.
Increase in the estimated number of participants	Expediting fee per staff / per box of supplies	\$150	If there is an increase in the estimated number of participants less than 10 business days from the event date the expediting fee will be \$150.00 per additional staff member and an expediting fee of \$150.00 per box of supplies shipped.
Short Lead Time	Per Event	\$425	If the County requests an event date with less than six-week lead time and WebMD and Quest can accommodate the date the County will be invoiced for \$425.00 per Event.
Minor Event Change	Per Event	\$200	If there is a requested change to an event 10 business days or less prior to the event date a fee of \$200 per event will be invoiced for a minor change such as: an address change less than 20 miles of the original event location; a start or end time change up to 2 hours of the original event time, or a change in services ordered that will not impact the number of staff.
Major Event Change	Per Event	\$300	If there is a requested change to an event 10 business days or less prior to the event date a fee of \$300.00 per event will be invoiced for a major change such as: an address change more than 20 miles of the original event location; a start or end time change greater than 2 hours of the original event time, or a change in services ordered that will impact the number of staff.
Event Cancellation			If the County cancels/postpones an onsite event 10 business days or less prior to the scheduled onsite event for reasons not related to Quest's performance the fee will equal fifty percent (50%) of the estimated event fees. Estimated event fees will be based upon the number of screenings order multiplied by the per participant fee and any travel fees that have been already incurred.
Travel Fees			Non-standard travel for events located outside a 60 mile radius of a Metropolitan statistical area, mileage fees will be billed based on the current IRS mileage guidelines. For required hotel stays the per diem rate will be \$125.00 per night and \$40.00 meal expense.

OPTIONAL SERVICES

Services		Fee	Notes
Single Sign-On (SSO)	Per SSO	\$3,750	<ul style="list-style-type: none"> Contractor will provide two (2) additional data feeds (eligibility file, single sign-on, data import file, or batch data export file) during the Term of the Agreement at no additional cost. Any additional feeds after those noted here will be billed a one-time fee of \$3,750 per file implemented. Contractor typically automates the data feeds (daily, weekly, monthly, etc.) therefore there is no additional per file cost regardless of the frequency of the file and the number of times the data is

			<p>imported into or exported out of the WebMD ONE Portal.</p> <ul style="list-style-type: none"> Contractor will invoice the County upon implementation of any Single Sign-On in excess of the number Contractor included in the PEPM Fee.
Data Feeds from third-party vendors	Per Feed	\$3,750	<ul style="list-style-type: none"> Contractor will provide two (2) additional data feeds (eligibility file, single sign-on, data import file, or batch data export file) during the Term of the Agreement at no additional cost. Any additional feeds after those noted here will be billed a one-time fee of \$3,750 per file implemented. Contractor typically automates the data feeds (daily, weekly, monthly, etc.) therefore there is no additional per file cost regardless of the frequency of the file and the number of times the data is imported into or exported out of the WebMD ONE Portal. Contractor will invoice the County upon implementation of any data files in excess of the number Contractor included in the PEPM Fee.
Other – Custom Data Files	Hours	\$175	Any custom built data feeds will be mutually scoped to determine the number of hours required for each project.
WebMD Rewards Fulfillment by Online Rewards	Per Card Redeemed	\$3.50	<p>Contractor partners with Online Reward to provide our customers with a catalog of Reward Fulfillment options such as prepaid debit cards, gift cards, charity and merchandise. Customer and Contractor will enter into scoping discussions to determine what options would be included in Customer's catalog.</p> <p>When the County elects to implement these Services, Contractor will provide the County with a work order which shall detail all the Services the County will implement in its catalog, how the funding of the face value of the cards / merchandise will be invoiced, as well as the per card fees.</p>
Other – Beyond Well Mental Health Podcasts – Enhanced Package	Annual	\$20,000	<p>Contractor partners with Beyond Well to provide an enhanced package of Mental Health Podcasts to promote programs/resources and to support managers. This enhanced package includes, but shall not be limited to, customizations to the existing library of podcasts, one custom podcast per year, and manager mental health training podcasts.</p> <p>Contractor will invoice the County upon implementation of this Service.</p>
Enrich Financial Wellness Platform	PEPM	\$0.2222	<p>Contractor partners with iGrad to provide an integrated financial well-being solution known as Enrich. The solution is made up of education-based modules that take a skill building approach to influence behavior change.</p> <p>Contractor requires a 12-month commitment for Enrich Financial Wellness platform commencing on the Launch Date.</p> <p>Contractor will invoice the County based on the number of eligible participants reported on the Eligibility File each month.</p>
meQuilibrium Stress and Resilience Platform	PEPM	\$0.6040	<p>Contractor partners with meQuilibrium to provide a solution which offers evidence-based digital coaching that measures and helps individuals increase their resilience and emotional well-being.</p> <p>Contractor requires a 12-month commitment for</p>

			<p>meQuilibrium Stress and Resilience platform commencing on the Launch Date.</p> <p>Contractor will invoice the County based on the number of eligible participants reported on the Eligibility File each month.</p>
HES Campaigns / Challenges	Flat Fee per HES Campaign	\$41,350	<ul style="list-style-type: none"> The \$41,350 flat fee per campaign will apply to any available HES Campaign. The pricing is applicable to the County's entire population of 15,000 participants. Contractor will invoice the County on the launch date of each HES Campaign.
Other – Additional Onsite Staff	Annual Salary & Benefits	\$150,000	<ul style="list-style-type: none"> Optional Full-time Dedicated Well-being Staff ,Onsite Clinical Wellness Program Coordinator, or Certified Diabetes Educator. As an optional service Contractor will only invoice upon the placement of such onsite staff member based on 1/12th of the Annual Salary each month.
Other – Per Diem Certified Diabetes Educator	Per Diem Salary, Benefits and Travel Expenses	\$3,000	<ul style="list-style-type: none"> Contractor has available Certified Diabetes Educators on a Per Diem basis (8-hour day). The Per Diem fee includes the cost of travel to the County's location. Contractor shall invoice the County monthly, in arrears, based upon the number of days the Certified Diabetes Educator was onsite or remote.
Other – Custom Development / Ad-Hoc Reporting / Additional Analytics	Per Hour	\$175	<ul style="list-style-type: none"> Each project will be mutually scoped to determine the number of hours required.

CREDITS

Annual Credit	Credit	Notes
Annual Credit	\$50,000	<p>The County will have available to them each program year (May to May during the Term) a credit in the amount of \$50,000 upon reaching year-to-date fees of \$750,000 during the program year (the "First Threshold").</p> <p>This \$50,000 credit may be used towards services such as pilot programs, new products, data files, etc.</p> <p>The County will have 12 months from the date of the First Threshold in which to use the credit.</p> <p>All unused credits remaining upon the expiration of a program year, or the expiration or termination of the Agreement will expire as applicable.</p> <p>For purpose of clarity, as indicated above, the \$50,000 credit may be used toward a pilot program, new products, data files, etc. once the County has reached the First Threshold. For example, if the County wants to add the Enrich Financial App the County will receive invoices until the First Threshold is reached, thereafter, any credit dollars available may be applied toward monthly fees for Enrich.</p>
Annual Credit	\$75,000	<p>The County will have available to them each program year (May to May during the Term) a credit in the amount of \$75,000 upon reaching year-to-date fees of \$1,000,000 during the program year (the "Second Threshold").</p> <p>This \$75,000 credit may be used towards services such as pilot programs, new products, data files, etc.</p> <p>In the event the County reaches the Second Threshold in the same program year as the First Threshold Contractor will provide an incremental credit of \$25,000 for a total of \$75,000 in credit for that particular program year in</p>

		<p>which the County reached the First and Second Threshold.</p> <p>The County will have 12 months from the date of the Second Threshold in which to use such incremental credit.</p> <p>Any incremental credit from reaching a Second Threshold within the same program year will expire at the end of such 12 months.</p> <p>All unused credits remaining upon the expiration of a program year, or the expiration or termination of the Agreement will expire as applicable.</p> <p>For purpose of clarity, the County will be able to use the \$75,000 credit as explained above in the same manner once they have reached the Second Threshold.</p>
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2. **Firm Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for similar services. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
3. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
4. **Payment Terms:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the contractor. Billing shall cover services and/or goods not previously invoiced. The contractor shall reimburse the County of Orange for any monies paid to the contractor for goods or services not provided or when goods or services do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.
5. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:
 1. Contractor's name and address
 2. Contractor's remittance address, if different from 1 above
 3. Name of County agency/department
 4. Delivery/service address
 5. Contractor/Subordinate contract or number
 6. Date of order
 7. Type of fees/service
 8. Sales tax, if applicable
 9. Dates of fees/service
 10. Name and number of hours worked for each staff member (Consulting Services Only)
 11. Brief description of fees/service
 12. Contractor's Federal I.D. Number

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

To the extent required by applicable law, the Contractor will provide subsidiary reports to support County's ability

to submit Federal or State claims (i.e. Covid related activities).

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

Invoices and support documentation are to be forwarded to:

Lauren Pierson, Program Manager
Human Resource Services/Employee Benefits
Hall of Administration
333 W. Santa Ana Blvd., Rm. 137
Santa Ana, CA 92701

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

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Attachment C

Proposed Implementation Plan/Project Schedule

The implementation plan for transition from the Staywell platform to the WebMD ONE platform assumes the following:

- Client resources are allocated and mirrored with WebMD Core team for duration of project.
 - Weekly status meetings and ad hoc requirements gathering meetings for technical functionality and user experience design.
- Scope and testing duration may be modified based on requirements/timing expectations of the County of Orange.
- Typical WebMD implementation timeline is 12-14 weeks. Project duration increased for year-end constraints/Schedule risks.

WebMD Implementation Team – the following people will be involved in the initial implementation of WebMD ONE and may provide support if needed after the initial implementation.

- Project Manager – Main point of contact for managing deliverables to launch
- Implementation Consultant – Site Experience, Customer Service, Client Acceptance Testing
- Technical Business Analysts – Data integration (Authentication, data in and out of WebMD systems)
- Solution Architect (Scope)
- Vendor Manager (Partner integration, if needed)

WebMD Account Team – From Project launch, become day to day operational support:

- Client Success Manager (relaunch and account Management)
- Strategic Account Executive (strategy and goals)
- Communications Strategist – (Engagement support)
- Screening Coordinator – (Biometrics integration)

Project Schedule Shown on Next Page

High Level Schedule with Resources		County of Orange			
			Duration		Resource
	Milestone	Phase	From	To	
M	Verbal/Project Kick off		1/3/22		Sales, Project Manager, Solution Architect
	Scope of Work	Scoping	1/4/22	1/14/22	Solution Architect
M	Scope Approved		1/21/22		Solution Architect
	Create Schedule/Project Plan	Plan Development	1/17/22	1/21/22	Project Manager
M	Solution Build	Iterative Development	1/24/22	4/5/22	Core Team
	Weekly status calls/Project Management Site Experience/WebMD ONE: -Health Assessment & Paper HA -Daily Habits -Mobile App -Device & Connection Center -Health Topics -Customer Service/Reporting -Lifestyle Coaching/Tobacco Cessation w/NRT -Challenges Authentication/Data Integration <ul style="list-style-type: none">Eligibility File and Single Sign OnData Export and Import files Partners <ul style="list-style-type: none">meQuilibrium ResiliencyEnrich – FinancialBeyond Well Custom Communications Screenings				Project Manager Implementation Consultant Technical Analyst Vendor Manager(s) Communications Strategist Screening Coordinator
M	Client Acceptance Testing		4/6/22	4/14/22	Core Team
		Launch Readiness	4/18/22	4/22/22	Project Manager
M	Solution Acceptance		4/18/22		Project Manager
M	Launch		5/1/22		Core Team
	Transition/post launch		5/2/22	5/16/22	Project to Account team

High Level Schedule with Resources		County of Orange			
			Duration		Resource
	Milestone	Phase	From	To	
M	Verbal/Project Kick off		1/3/22		Sales, Project Manager, Solution Architect
	Scope of Work	Scoping	1/4/22	1/14/22	Solution Architect
M	Scope Approved		1/21/22		Solution Architect
	Create Schedule/Project Plan	Plan Development	1/17/22	1/21/22	Project Manager
M	Solution Build	Iterative Development	1/24/22	4/5/22	Core Team (see below)
	Weekly status calls/Project Management Site Experience/WebMD ONE: -Health Assessment & Paper HA -Daily Habits -Mobile App -Device & Connection Center -Health Topics -Customer Service/Reporting -Lifestyle Coaching/Tobacco Cessation w/NRT -Challenges Authentication/Data Integration <ul style="list-style-type: none"> Eligibility File and Single Sign On Data Export and Import files Partners <ul style="list-style-type: none"> Online Rewards Fulfillment Agile Health Coaching meQuilibrium Resiliency Enrich – Financial Beyond Well Custom Communications Screenings - HES				Project Manager Implementation Consultant Technical Analyst Vendor Manager(s) Communications Strategist Screening Coordinator
M	Client Acceptance Testing		4/6/22	4/14/22	Core Team
		Launch Readiness	4/18/22	4/22/22	Project Manager
M	Solution Acceptance		4/18/22		Project Manager
M	Launch		5/1/22		Core Team
	Transition/post launch		5/2/22	5/16/22	Project to Account team

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ATTACHMENT D Staffing Plan

1. Primary Staff to perform Contract duties

Name	Classification/Title
Summer Brockman	Director, Strategic Accounts
Krista Muell	Client Services Manager
Scott Stiever	Screening Coordinator
Chelsae Miles	Onsite Wellness Program Manager
Kaitlyn Chock	Senior Communications Strategist

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

Name	Classification/Title
Melinda Porter	Client Success Director
Michael Sarcone	Senior Director, Client Success Management
Ilene Ewing	Sr. Manager, Dedicated Well-Being Services

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

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

3. Sub-contractor(s)

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

Company Name	-Description of Subcontractor Services
Quest (Biometric Screenings)	Screening staff from Quest locations across the U.S., to provide worksite Biometric Screening and process blood work. Quest uses trained individuals such as RNs, LPNs, phlebotomists, and technicians. Staff may also include registered dietitians, exercise physiologists, EMT's, etc. Our vendors are certified, licenses, CLIA waived, and OSHA compliant.

TotalWellness	Contractor will use TotalWellness for the physician form option. Batch data export and data integration files are needed. We will link to the form and/or TotalWellness landing page from a service card on our platform.
Agile Health Inc. (digital-text based coaching)	Contractor partners with Agile Health Inc. to integrate their digital text-based coaching programs into the WebMD ONE Platform.
Beyond Well Solutions (mental health podcasts)	Contractor partners with Beyond Well Solutions to integrate Beyond Well's standard mental health podcast library into the WebMD ONE Portal which is available to all the County's eligible participants at no additional cost.
Beyond Well Solutions (enhanced mental health offering)	Contractor partners with Beyond Well Solutions to integrate an enhanced package to include customizations of Beyond Well Solution's standard mental health podcasts, as well as special manager mental-health training podcasts.
iGrad, Inc. (Financial Wellness)	Contractor partners with iGrad, Inc. to integrate a financial well-being program, known as Enrich, for WebMD participants.
CDS Global, Inc. (paper HA)	Data entry for paper Health Assessments and assistance for end users, including password resetting via a call center.
O'Neil Data Systems (paper HA)	Produces materials sent directly to end users, such a paper Health Assessments.
New Life Solution, Inc. d/b/a meQuilibrium (Stress & Resilience)	Contractor partners with meQuilibrium to integrate an online solution to help individuals increase their resilience capacity and emotional wellbeing while improving their job performance.
Whapps, LLC d/b/a Online Rewards (rewards fulfillment)	Contractor partners with Online Rewards to integrate an online solution to deliver prepaid debit cards, gift cards and merchandise to qualified participants of WebMD incentive programs.
Voiance Language Services, LLC (translation services)	Contractor partners with Voiance to provide on-call translation services on select phone calls with participants.
GlaxoSmithKline plc (NRT supplies)	Contractor partners with GSK to provide fulfillment of the NRT component of our Tobacco Cessation Specialty Coaching Program. This includes patches, gum and throat lozenges.
Validic (data aggregator)	Contractor's data aggregation partner who provides digital health activity data across a wide spectrum of mobile health devices and applications.

Health Enhancement Systems (wellness campaigns)	Contractor partners with Health Enhancement Systems to provide online wellness campaign services.
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ATTACHMENT E

Performance Standards

Following the end of each quarter the County shall complete the **Account Management Report Card** and submit to Contractor (See Attachment F). At the end of the term, Contractor will calculate the composite score in each performance assessment category by averaging the scores for the four (4) quarters of the term. The assessments of each of the performance assessment categories will be weighted equally. The Account Management Commitment will be deemed as fulfilled if the average of the Composite Scores in each category (“Account Management Composite Score”) is equal to or greater than the Account Management Composite Score indicated on the Account Management Report Card.

The following performance guarantees (“Performance Guarantees” or “PGs”) will be effective during the Term of the Contract. The Contractor and the County agree that certain fees identified in the table below, payable by the County to Supplier under the Contract, may be reduced by the percentages listed in the Percentage of Fees at Risk column in the table below for any applicable period in which Supplier fails any of the Performance Guarantees (“Credit”). For purpose of clarity Credits will only apply to the ongoing fees identified in the Percentage of Fees at Risk column below. Notwithstanding the above, the Implementation PG is a one-time fee. All performance metrics will be measured for the period described in the table below for the applicable PG, and Credits, if any, will be applied against the fees for a subsequent period. If it is determined that Credits are owed to the County, then such Credit will appear in the subsequent invoice. No claim may be brought by either party for any dispute regarding these Performance Guarantees more than twelve (12) months after the last date of the period in which the relevant Performance Guarantee applies.

Unless otherwise noted, annual liquidated damages at risk exclude fees related to pass-through items, including but not limited to fees related to postage, travel, gift cards, and incentives. Additionally, goods and services provided by a third party or subcontractor such as Fitbit devices shall also be excluded. In the event if any PG is not able to be calculated due to unmet assumption criteria that PG will be void and the Percentage of Fees at Risk associated with that PG will not be reallocated to any other PG. Measurement for all PGs will be based upon the County’s active employee population only. Customer termination during an active Program Year will void all PGs associated with such Program Year.

~~Contractor will place an amount/percentage at risk per quarter if the stated standards(s) are not met. For any performance guarantee deemed to be invalid in any reporting period, associated fees at risk will be proportionately assigned to remaining, valid performance guarantees.~~

Please indicate your agreement with the performance guarantees listed below and provide your proposed fees at risk and any comments:

Core Services Performance Guarantees:

Metric	Definition	Expected Performance	% of Fees at Risk
Implementation	<p>(1) 100% of the following go live dates will be met:</p> <p><input type="checkbox"/> Hard launch will be available by May 1, 2022</p> <p><input type="checkbox"/> Milestones TBD</p> <p>(2) For evaluation, the due date will be the final agreed upon date, which will allow for agreed upon adjustments that occur post plan development and finalization of these guarantees. Dates that are mutually agreed upon as not achievable, because of the County’s delays or factors outside of Contractor’s control, will not be factored into the guarantee.</p>	For all Implementation Milestones listed in this guarantee, 100% will meet the agreed upon due date.	One-time Performance Fee of \$5,000

	<p>3) This guarantee assumes the utilization of a mutually developed and agreed upon Project Schedule which will be created after the execution of the initial Project Scope Document, as well as Customer's adherence to the delivery dates for all tasks, milestones and deadlines set forth in the Project Schedule.</p> <p>(4) The Project Scope Document must be signed prior to beginning the initial implementation; any changes to the Project Scope Document after the project starts will undergo Contractor's change management process.</p> <p>(5) The projected initial Launch Date can be changed, if mutually agreed to in writing by the Parties.</p>		
Stakeholder Satisfaction – Ongoing	<p>(1) An annual survey will be sent to key County stakeholders. Formal performance will be assessed annually.</p> <p>(2) Satisfied is defined as "agree" or "strongly agree" using the Contractor's standard client satisfaction 5-point survey tool.</p> <p>(3) The parties agree in principle with the measurement methodology as described. The parties further agree to refine such measurement methodology as mutually agreeable to the parties and to document the refined methodology in the contractual documents.</p>	Achieve an overall satisfaction rating of > 80%	Annual Performance Fee of \$3,500
Reporting	<p>(1) Quarterly reports on the program's progress will be produced within 45 business days after the close of each quarter and delivered to the Program Manager.</p> <p>(2) The County will be alerted of important trends in the reporting on a continuous basis.</p> <p>(3) All reports will include executive summaries.</p>	For all Reporting requirements listed, 100% will be met	A Quarterly Performance Fee of \$1,000 in the event reports have not been produced within the required timeframe.
Web Portal Availability	<p>(1) Web portal operational 99%, with the exception of scheduled maintenance</p> <p>(2) The County will be alerted of urgent updates to the web portal within 48 hours of when the change is scheduled to occur.</p> <p>(3) The County will be alerted of material scheduled updates to the web portal at least 30 days in advance of when the changes are scheduled to occur.</p> <p>The Availability Test is designed to measure performance-adjusted availability. Overall response time is not considered during this test, unless the availability threshold is exceeded.</p> <p>Definition: Monthly Availability Threshold Default Threshold: 99.00%</p> <p>The Availability Test will be measured as follows: The availability of webpages during a five-minute window in a calendar day will be tested. No fewer than 90% of all five-minute windows in a calendar day shall be tested. The availability is determined by loading webpages: if a webpage loads in greater than 45 seconds, the entire five-minute window is considered to be unavailable and the Tools are deemed "unavailable" for that five-minute window. If all webpages tested during the five-minute window are loaded within 45 seconds, the Tools are deemed "available" during the five-minute window. The Monthly Average Availability is calculated by summing all five-minute</p>	For all Web portal requirements listed, 100% will be met	Annual Performance Fee of \$5,500

	<p>windows that pass the availability test in a calendar month and dividing that by the sum of all five-minute windows that are tested in the calendar month. Contractor makes available a monthly report with the Monthly Average Availability.</p> <p>The Monthly Average Availability will then be compared to the Monthly Availability Threshold to determine if Contractor passes or fails the availability test for the month. (If the Monthly Average Availability is greater than or equal to the Monthly Availability Threshold then the month passes, if not, it fails.)</p>		
Call Center Availability	<p>(1) Call Center will be available during pre-agreed upon hours 100% of the time. 85% of callers will receive a live voice within the first 30 seconds.</p> <p>(2) The County will be alerted as soon as possible, but not less than 72 hours, in advance of any planned or anticipated reductions to access or extended wait times for the Call Center.</p>	For all Call Center requirements listed, 100% will be met	Annual Performance Fee is 2% of the WebMD ONE Portal Fees
Participant Satisfaction	<p>(1) Participant satisfaction will be measured annually by the administration of Contractor's standard participant survey</p> <p>(2) The survey will be presented after an eligible participant has been registered for a minimum of one (1) month.</p> <p>(3) Scoring will be measured by the number of respondents who select a rating of Strongly Agree (5) or Agree (4). Responses of "Not Applicable", neutral responses, and responses left blank will not be included in the Performance Guarantee calculation.</p> <p>(4) The parties agree in principle with the measurement methodology as described.</p>	Achieve an aggregate satisfaction score of at least 90% of participants.	Annual Performance Fee is 2% of the WebMD ONE Portal Fees
Population Health Risk Improvement	<p>Calculation of the Performance Guarantee: $((\text{follow-up \# risks} - \text{baseline \# risks}) / \text{baseline \# risks}) * 100 = -x.x\%$</p> <p>This Performance Guarantee will be void if any of the following criteria are not met:</p> <ol style="list-style-type: none"> Contractor and the County agree that the HA Cohort Risk Change Performance Guarantee will have a Performance Guarantee Measurement Date 90 days after the close of the follow-up Program Year provided that the minimum HA cohort rate noted in 6 below has been achieved. If the minimum HA cohort rate noted in 6 below has not been met as of ninety (90) days after the close of the Program Year, then the Performance Guarantee Measurement Date will be the end of the month in which the minimum HA cohort rate is met. If minimum is not met by one hundred eighty (180) days after the close of the Program Year, the HA Cohort Risk Change Performance Guarantee will no longer be measured for that Program Year and will be deemed invalid. County's implementation of a proposed and consistent comprehensive program model, including HA, targeted Lifestyle Health Coaching, and population-based health education opportunities in each Program Year. If the Lifestyle Health Coaching Engagement Performance Guarantee is not met or is invalid, the HA Cohort Risk Change Performance Guarantee will not be measured. 	Achieve a one percent (1%) net reduction in the average number of health risks	Annual Performance Fee is 2% of the WebMD ONE Portal Fees

	<ol style="list-style-type: none"> 3. The County must make the HA available to its population as part of an annual Program Year implementation and the previous Program Year HA responses must be cleared prior to the administration of each subsequent year's HA. 4. Implementation of same HA version in both baseline and follow-up periods; No substantive changes to the HA instrument are made between the baseline and follow-up program years. 5. After applying exclusions listed in the HA Cohort Risk Change Listing of Exclusions below, at least fifty percent (50%) of participants who completed an HA in the Program Year for which the HA Cohort Risk Change Performance Guarantee is being measured return to complete a follow-up HA in the subsequent Program Year prior to the date on which such Performance Guarantee is calculated (i.e. defined as the HA cohort group). 6. If, after applying exclusions listed in the HA Cohort Risk Change Listing of Exclusions below, the remaining denominator is less than 500 participants 180 days after the close of the Program Year, the HA Cohort Risk Change Performance Guarantee will not be measured. 7. The County's version of the WebMD ONE Portal and Daily Habits will be the latest version generally available. 8. The County will implement a pre-launch and a launch campaign, delivered through a combination of modalities agreed upon by both Parties such as overview brochures, flyers, email, weblets, banners, Coming Soon posters and Splash pages. 9. Contractor will be able to send at a minimum monthly communication via mailings, emails, or IVR outreach to the County's Employee population. 10. The County will implement mutually-agreed upon promotion/communication/ incentive strategy over the Program Year. 11. The County implements Contractor's standard engagement strategy for Lifestyle Health Coaching programs. 12. The County's Employees shall be required to provide accurate email addresses upon WebMD ONE Portal registration. 13. The County shall be required to provide Contractor with an accurate mailing address, to the best of their knowledge, file for each printed communication mutually agreed upon. 		
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Biometric Screening Performance Guarantees:

Metric	Measure	Performance Guarantee	% of Fees at Risk
Start Time	All scheduled events shall begin at the scheduled event start time.	<p>The event start time will be shared with the County and confirmed prior to the scheduled event.</p> <p>The onsite event begins 15 or more minutes after the scheduled event start time due to the lack of staff and/or materials required to start the event.</p>	<p>Performance Fee per event is \$250 for events with 100 or fewer screenings ordered.</p> <p>Performance Fee per event is \$500 for events with greater than 100 screenings ordered.</p>

			Performance Fee of \$500 per event regardless of the number of screenings ordered if the event is cancelled due to a staffing or supply issue.
Supplies	All scheduled events shall screen the number of expected participants.	<p>The expected number of participants will be shared with the County and confirmed prior to the scheduled event.</p> <p>The amount of supplies for each onsite event will be adequate based on the number of screenings ordered. Fees at risk will apply if the amount of supplies at the onsite event is not adequate to accommodate the number of registered participants or the number of screenings ordered for the onsite event, whichever is greater.</p>	<p>Performance Fee per event is \$250 for events with 100 or fewer screenings ordered.</p> <p>Performance Fee per event is \$500 for events with greater than 100 screenings ordered.</p> <p>Performance Fee of \$500 per event regardless of the number of screenings ordered if the event is cancelled due to a staffing or supply issue.</p>
Staff	All scheduled events shall be fully staffed according to the number of expected participants and amount of time designated to the event.	<p>The number of vendor staff will be confirmed by the vendor to the County prior to the scheduled event.</p> <p>The amount of staff for each onsite event will be adequate based on the number of screenings ordered. Fees at risk will apply if the number of staff present is not adequate to accommodate the number of participants registered in advance of the onsite event.</p>	<p>Performance Fee per event is \$250 for events with 100 or fewer screenings ordered.</p> <p>Performance Fee per event is \$500 for events with greater than 100 screenings ordered.</p> <p>Performance Fee of \$500 per event regardless of the number of screenings ordered if the event is cancelled due to a staffing or supply issue.</p>
Cancellations	No events shall be cancelled by Vendor.	<p>Guarantee subject to any one event is cancelled within 10 business day of event.</p> <p>If the onsite event is cancelled due to a staffing or supply issue the credit is \$500, per onsite event, regardless of the number of screenings ordered.</p>	Performance Fee is \$500 per event.
Client Satisfaction	Client shall provide assessment of its overall satisfaction with the planning, delivery and follow-up of screening events.	5% of revenue if client is “not satisfied” based upon supporting documents with evidence of dissatisfaction.	Annual Performance Fee of \$3,500 per Program year.
Online Scheduler Availability	24/7 availability, not including Scheduled Maintenance (with “Scheduled Maintenance” being defined as: (i) scheduled network, hardware or service maintenance occurring during off-peak hours where peak hours are defined as 7:00 a.m. - 10:00 p.m.(PT) M-F or (ii) specific build outs as requested by the County)	\$250 penalty per occurrence	Performance Fee is \$250 per occurrence.
Testing Equipment Quality Assurance	All screening equipment, including blood analyzer, shall be tested and within expected limits prior to each event.	\$250 per onsite event	Performance Fee is \$250 per onsite event.
Client Reports	Create and send accurate Employer aggregate report within 60 days of the program close.	\$250 per onsite event	Performance Fee is \$250 per onsite event.

Coaching Services Performance Guarantees (PG) – Applicable Only When Coaching is Implemented by County

Metric	Measure	Performance Guarantee	% of Fees at Risk
Engagement	<p>(1) Assessment of engagement will be based on participants enrolled in the program year being assessed.</p> <p>(2) Performance will be monitored throughout the program year. The formal performance guarantee measurement date will occur during the 1st quarter following the close of activity for the previous program year.</p> <p>(3) Engagement will be evaluated quarterly; if prior to formal performance assessment it appears engagement will not meet the assumed levels, strategies to increase engagement will be discussed and implemented.</p> <p>(4) Identified enrolled end users with an enrollment period that is less than ninety (90) days as of the scheduled Performance Guarantee Measurement Date will be excluded from the calculation of the Lifestyle Health Coaching Performance Guarantee</p> <p>(5) Lifestyle Health Coaching includes at minimum 500 identified enrolled end users per Program Year.</p> <p>(6) Individuals to whom Contractor is unable to place outreach calls, due to the lack of valid contact information, medical exclusion status, or any mutually agreed custom criteria will be excluded from the calculation of the Lifestyle Health Coaching Performance Guarantee.</p>	A minimum of 30% of participants will complete a minimum of three coaching calls.	Annual Performance Fee is 2.0% of the Annual Lifestyle Health Coaching Fees.
Participant Retention	<p>(1) Assessment will be based on the number of participants who are placed inactive (i.e., drop out, unable to contact) compared to the number of participants who remain active for the entire program year.</p> <p>(2) Participants who have been made ineligible (due to employment termination, loss of eligibility for the Plan, or other mutually agreed custom criteria) by the County prior to the end of the participant's twelve (12) month enrollment period will be excluded from the calculation</p> <p>(3) Performance will be monitored throughout the program year. The formal performance guarantee measurement date will occur during the 1st quarter following the close of activity for the previous program year.</p> <p>(4) Retention will be evaluated quarterly; if prior to formal performance assessment it appears retention will not meet the assumed levels, strategies to increase retention will be discussed and implemented.</p> <p>(5) Lifestyle Health Coaching includes at minimum 500 identified enrolled end users per Program Year.</p>	< 25% of program participants will become inactive (e.g., elect to discontinue participation, placed inactive due to UTC).	Annual Performance Fee is 2.0% of the Annual Lifestyle Health Coaching Fees.
Participant Satisfaction	<p>(1) Satisfaction will be measured among participants who complete a satisfaction survey and who have completed at least two (2) coaching sessions.</p> <p>(2) The formal performance guarantee measurement date will occur during the 1st quarter following the close of activity for the previous program year.</p> <p>(3) The Satisfaction Performance Guarantee requires that at least 300 participants complete the satisfaction survey by the applicable Performance Guarantee Measurement Date.</p> <p>(4) Scoring will be measured by the number of respondents who select a rating of Strongly Agree (5) or Agree (4). Neutral responses and responses left blank will not be included in the Performance Guarantee calculation.</p>	An aggregate satisfaction score of at least 90% among participants' experience with the Lifestyle Health Coaching program.	Annual Performance Fee is 1.0% of the Annual Lifestyle Health Coaching Fees.

Lifestyle Health Coaching Cohort Risk Change	<p>Calculation of the Performance Guarantee: $((\text{follow-up \# risks} - \text{baseline \# risks}) / \text{baseline \# risks}) * 100 = -x.x\%$</p> <p>This Performance Guarantee will be void if any of the following criteria are not met:</p> <ol style="list-style-type: none"> 1. Contractor and the County agree that the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee will have a Performance Guarantee Measurement Date 90 days after the close of the follow-up Program Year. 2. The County implementation of a proposed and consistent comprehensive program model, including HA, targeted Lifestyle Health Coaching, and population-based health education opportunities in each Program Year. 3. If the Lifestyle Health Coaching Performance Guarantee is not met or is invalid, the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee will not be measured. 4. The County must make the HA available to its population as part of an annual Program Year implementation and the previous Program Year HA responses must be cleared prior to the administration of each subsequent year's HA. 5. Implementation of same HA version in both baseline and follow-up periods; No substantive changes to the HA instrument are made between the baseline and follow-up program years. 6. After applying exclusions listed in the Lifestyle Health Coaching Cohort Risk Change Listing of Exclusions below, at least fifty percent (50%) of participants who completed an HA in the Program Year for which the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee is being measured return to complete a follow-up HA in the subsequent Program Year prior to the date on which such Performance Guarantee is calculated (i.e. defined as the HA cohort group). 7. If, after applying exclusions listed in the Lifestyle Health Coaching Cohort Risk Change Listing of Exclusions below, the remaining denominator is less than 300 participants 180 days after the close of the Program Year, the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee will not be measured. 8. The County's version of the WebMD ONE Portal and Daily Habits will be the latest version generally available. 9. The County will implement a pre-launch and a launch campaign, delivered through a combination of modalities agreed upon by both Parties such as overview brochures, flyers, email, weblinks, banners, Coming Soon posters and Splash pages. 10. Contractor will be able to send at a minimum monthly communication via mailings, emails, or IVR outreach to Customer's Employee population. 11. Contractor will implement mutually-agreed upon promotion/communication/ incentive strategy over the Program Year. 12. The County's Employees shall be required to provide accurate email addresses upon WebMD ONE Portal registration. 13. The County shall be required to provide Contractor with an accurate mailing address file, to the best of their knowledge, for each printed communication mutually agreed upon. <p>Exclusions:</p>	<p>Achieve a 5% net reduction in the average number of health risks among participants in the High or Moderate Risk Coaching</p>	<p>Annual Performance Fee is 1.0% of the Annual Lifestyle Health Coaching Fees.</p>
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	<ol style="list-style-type: none"> 1. Participants whose engagement period totals less than six (6) full months as of the applicable Performance Measurement Date will be excluded from the calculation of the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee. 2. Participants who have been made ineligible (due to employment termination, loss of eligibility for the Plan, or other mutually agreed custom criteria) by the County prior to the end of the participant's twelve (12) month enrollment period will be excluded from the calculation of the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee. 3. Individuals who do not first complete the HA and thereby do not qualify for Contractor's coaching per the standard Coaching Index stratification rules (e.g., self-referrals, Biometric Screening referrals, or claims referrals) will be excluded from the calculation of the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee. 4. Individuals to whom Contractor is unable to place outreach calls, due to the lack of valid contact information, medical exclusion status, or any mutually agreed custom criteria will be excluded from the calculation of the Lifestyle Health Coaching Cohort Risk Change Performance Guarantee. 		
Return on Investment ("ROI")	<p>Contractor determines ROI on its Lifestyle Health Coaching programs using changes in year over year HA data for health risk prevalence, self-reported absenteeism and self-reported presenteeism to derive estimates of savings. That savings estimate is divided by coaching fees to generate an ROI.</p> <ol style="list-style-type: none"> 1. Contractor and the County agree that the ROI Performance Guarantee will have a Performance Guarantee Measurement Date 90 days after the close of the Program Year provided that the minimum HA cohort rate noted in #4 below has been achieved. If the minimum HA cohort rate noted in #4 below has not been met as of ninety (90) days after the close of the Program Year, then the ROI Performance Guarantee Measurement Date will be the end of the month in which the minimum HA cohort rate is met. If the minimum is not met by one hundred eighty (180) days after the close of the Program Year, the ROI Performance Guarantee will no longer be measured for that Program Year and will be deemed invalid. 2. If the Lifestyle Health Coaching Engagement Performance Guarantee is not met, the ROI Performance Guarantee will not be measured. 3. The County must make the HA available to its population as part of an annual Program Year implementation and the previous Program Year HA responses must be cleared prior to the administration of each subsequent year's HA. 4. After applying exclusions listed in the ROI Exclusions section below, at least sixty percent (60%) of participants who completed an HA in the Program Year for which the ROI Performance Guarantee is being measured return to complete a follow-up HA in the subsequent Program Year prior to the date on which such Performance Guarantee is calculated (i.e. defined as the HA cohort group). 5. If, after applying exclusions listed in the ROI Exclusions section below, the remaining denominator is less than 300 participants 180 days after the close of the Program Year, the ROI Performance Guarantee will not be measured. 	<p>Contractor will provide a 0.8:1 ROI in Contract Year 1; 1.25:1 in Contract Year 2; and 1.5:1 in Contract Year 3 and each subsequent Contract Year.</p> <p>In the event that the ROI for a particular Contract Year does not meet these standards, Contractor will provide a credit of 1% of the Annual Lifestyle Health Coaching fees for the year in which the ROI metric is not achieved.</p>	<p>Annual Performance Fee is 1.0% of the WebMD ONE Lifestyle Health Coaching Fees</p>

	<p>Exclusions:</p> <ol style="list-style-type: none">1. Participants whose engagement period totals less than six (6) full months as of the applicable Performance Measurement Date will be excluded from the calculation of the ROI Performance Guarantee.2. Participants who have been made ineligible (due to employment termination, loss of eligibility for the Plan, or other mutually agreed custom criteria) by the County prior to the end of the participant's twelve (12) month enrollment period will be excluded from the calculation of the ROI Performance Guarantee.3. Individuals who do not first complete the HA and thereby do not qualify for Contractor coaching per the standard Coaching Index stratification rules (e.g., self-referrals, Biometric Screening referrals, or claims referrals) will be excluded from the calculation of the ROI Performance Guarantee.4. Individuals to whom Contractor is unable to place outreach calls, due to the lack of valid contact information, medical exclusion status, or any mutually agreed custom criteria will be excluded from the calculation of the ROI Performance Guarantee.		
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Attachment F

Account Management Report Card

Rating Methodology:

5 = Completely Satisfied

4 = Very Satisfied

3 = Satisfied

2 = Somewhat Satisfied

1 = Dissatisfied

Client/Company Name: County of Orange

Completed By (please print): _____

Client Signature _____

Date completed: _____

Telephone #: _____

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

Measurable Need	1 st Q	2 nd Q	3 rd Q	4 th Q	Composite to be completed by PG Unit
1. Responds to client issues and questions in a timely, within 48 hours, comprehensive manner.					
2. Develops, follows through on agreed upon action plans; effective coordination to resolve open issues. Develop action plan to resolve missed PGs.					
3. Provides client with timely notification, within 48 hours, of issues impacting participants					
4. Provides effective support in preparing for, and conducting annual wellness incentive campaign					
5. Account Management - Delivers agreed upon reports and communication of Contractor results by agreed upon deadlines					
Account Management Composite Score (All Categories)					

Fill in for each quarterly period:

Date Sent to Client:

 / / / / / / / /

Date Returned by Client:

 / / / / / / / /

EXHIBIT 1**EDD Independent Contractor Reporting Requirements**

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

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

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

To comply with the reporting requirements, County procedures for contracting with independent Offerors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First name, middle initial and last name
 Social Security Number
 Address
 Start and expiration dates of contract
 Amount of Contract

First Name	Middle Initial	Last Name
SSN _____		
Contract Number _____ Dollar value of contract _____		
Start Date _____ Expiration Date _____		

EXHIBIT 2**COUNTY OF ORANGE LOCAL SMALL BUSINESS (OCLSB) AND/OR
DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)
PREFERENCE CERTIFICATION REQUIREMENTS**

1) To participate as an OCLSB the following requirements must be met:

- a. A local small business must be certified with State of California the Department of General Services (DGS) as a Small Business - <https://caleprocure.ca.gov/pages/sbdvbeindex.aspx>
- b. Upon certification as Small Business with DGS, the local small business shall access the OCLSB Preference portal at OCLSBverify.com, search their legal company/business name in the County's database and print the OCLSB Certification.
 - i. Business name shall match the Company Legal Name specified on the Company Profile.
- c. Complete and sign the OCLSB Affirmation form attached herein. The signed Affirmation form and the OCLSB Certification are required and must be returned with the solicitation response in order to compete as an OCLSB.

2) To participate as a DVBE the following requirements must be met:

- a. A business must be certified with State of California the Department of General Services (DGS) as a Disabled Veteran Business Enterprise - <https://www.caleprocure.ca.gov/pages/sbdvbe-index.aspx>
- b. Complete and sign the Affirmation form attached herein. The signed Affirmation form and the DVBE Certification are required and must be returned with the solicitation response in order to compete as an DVBE.

3) OCLSB or DVBE Preference provides for the following:

- a. Invitation for Bid – IFB
When the lowest bidder is not an OCLSB or DVBE, the sole lowest certified OCLSB or DVBE within five percent (5%) of the lowest bid shall be given the opportunity to price match. To participate in either preference policy, the sole lowest qualified OCLSB or DVBE must accept the County's offer to price match within three (3) business days from the County's offer, unless otherwise specified by the County. If two or more OCLSBs or DVBEs have tied bids within the 5% the County shall request best and final bids from each OCLSB or DVBE, which shall price match the lowest bid or better. If the best and final bids are tied, the County shall determine the contract award based on the County's best interest.
- b. Request for Proposal - RFP
An extra five percent (5%) shall be applied to the tallied score of each certified OCLSB to obtain the final score. If the final score of any OCLSB matches the final score of a non-OCLSB, preference shall be given to the certified OCLSB. If two or more OCLSBs have the

same final score, the County shall determine the contract award based on the County's best interest.

- 4) Dual OCLSB and DVBE Preference provides for the following:
 - a. Business Certified as OCLSB and DVBE
If a State-certified OCLSB is also a State-certified DVBE, the preference is given to that business shall be 8% instead of 5%. The separate OCLSB/DVBE preferences shall not be applied.
- 5) OCLSB and/pr DVBE Certification must be valid at the date/time solicitation is closed, and it shall remain in effect at the time of contract award. County reserves the right to verify and/or reject incomplete documents.

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County of Orange Local Small Business (OCLSB) and/or Disabled Veteran Business Enterprise (DVBE) Affirmation

OCLSB Certification Requirements: To be certified as a Local Small Business by the County of Orange, a business shall meet (1) and (2) below:

(1) Local Business requirements:

- a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;
- b) has:
 - i. a business address located in the County of Orange that is not a post office box, or
 - ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.

(2) Small Business requirements:

- a) must be certified as a Small Business by the State of California Department of General Services (DGS); and,
- b) DGS Small Business requirements must be valid at the time of bid/proposal submittal.

DVBE Certification Requirements: To be certified as a Disabled Veteran Business Enterprise, a business must meet the following requirements:

- (1) Must be certified as a DVBE by the State of California Department of General Services (DGS); and,
- (2) DGS DVBE requirements must be valid at the time of bid/proposal submittal.

Please specify one or both preferences that apply to your business by checking below:

- ☐ OCLSB ☐ DVBE

I, certify that _____, (legal company/business name) is certified as an OCLSB and/or DVBE and currently meets the respective Certification Requirements set forth above.

Print Name

Title

Authorized Signature

Date

Please check one or both below:

- ☐ OCLSB Certificate attached ☐ State of California DVBE Certification attached

County Use Only

Solicitation Number:

Solicitation Description:

File Folder Number:

EXHIBIT 3**BUSINESS ASSOCIATE CONTRACT****A. GENERAL PROVISIONS AND RECITALS**

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

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.
2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
 - a. Breach excludes:
 - i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 - ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.
 - iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to

whom the disclosure was made would not reasonably have been able to retain such information.

- b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
 - i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - ii. The unauthorized person who used the PHI or to whom the disclosure was made;
 - iii. Whether the PHI was actually acquired or viewed; and
 - iv. The extent to which the risk to the PHI has been mitigated.
3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103, limited however, to the PHI that Contractor creates, receives, maintains, or transmits on behalf of County.
11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.
14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the

Secretary of Health and Human Services in the guidance issued on the HHS Website.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.
2. Contractor agrees to use reasonable and appropriate safeguards, as provided for in this Business Associate Contract and the Contract, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.
3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.
4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.
5. Contractor agrees to report to County ~~immediately~~ promptly any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.
6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.
7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.
8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.
9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined ~~by County or as designated~~ by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to the County during mutually agreeable times and normal business hours for purposes of the County determining Contractor's compliance with this Business Associate Contract.
10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
11. Contractor agrees to provide County or an Individual, as directed by County, in a reasonable time and manner to be determined by County, that information collected in accordance with the Contract, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §

164.528.

12. Contractor agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162, as well as all operating rules that apply to standard transactions, submission of certifications to HHS (to the extent HHS permits) concerning standard transactions, and all other electronic data interchange requirements included in the Patient Protection and Affordable Care Act of 2010. Contractor further agrees to ensure that any agent, including a subcontractor that conducts standard transactions on its behalf will comply with the EDI Standards.
13. Contractor agrees that it will determine the minimum necessary type and amount of PHI required to perform its services and will comply with 45 CFR §§ 164.502(b) and 514(d).
14. Contractor agrees to restrict the use or disclosure of PHI as may be agreed to in accordance with 45 CFR § 164.522, to document those restrictions, and to provide to County such documentation upon request and in a prompt and reasonable manner consistent with the HIPAA regulations.
15. Contractor agrees to accommodate alternative means or alternative locations for communicating PHI and to document those alternative means or alternative locations at the request of County or an Individual, pursuant to 45 CFR § 164.522(b), in a prompt and reasonable manner consistent with the HIPAA regulations.
16. Contractor agrees to be the primary party responsible for receiving and resolving requests from an Individual exercising his or her individual rights described in subsections (7), (8), (10), and (15) of this Paragraph C.
17. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.
18. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.
19. Contractor shall not receive direct or indirect remuneration for any exchange of PHI otherwise authorized under the Privacy and/or Security Rules without an Individual's authorization.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain **reasonable and** appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
2. Contractor agrees to ensure that access to electronic PHI related to County is limited to those workforce members who require such access because of their role or function.
3. Contractor agrees to implement safeguards to prevent its workforce members who are not authorized to access such electronic PHI from obtaining access and to otherwise ensure compliance by its workforce with the HIPAA Security Rule.
4. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.
5. Contractor shall report to County ~~immediately~~ **promptly** any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
 - a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
 - b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.
2. Contractor shall provide the notification of the Breach ~~immediately~~ promptly to the County Privacy Officer. Contractor's notification may be oral, but shall be followed by written notification within ~~24 hours~~ 5 business days of the oral notification.

Rafael Linares, Chief Information Security Officer OCIT – Enterprise Privacy & Cybersecurity 1055 N. Main Street, 6 th Floor Santa Ana, CA 92701 (714) 567-7611 Rafael.Linares@ocit.ocgov.com	Or Linda Le, County Privacy Officer, CHPC, CHC, CHP OCIT – Enterprise Privacy and Cybersecurity 1055 N. Main Street, 6 th Floor Santa Ana, CA 92701 (714) 834-4082 Linda.le@ocit.ocgov.com privacyofficer@ocgov.com
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3. Contractor's notification shall include, to the extent possible:
 - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;
 - b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - (1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - (4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - (5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Website, or postal address.
4. County may require Contractor to provide notice to the Individual and any governmental entities requiring notification at the sole discretion of the County. Such notification will contain the elements required in 45 CFR § 164.410, if it is reasonable to do so under the circumstances or applicable state law. Contractor agrees that the County will be given reasonable advance opportunity to review the proposed notice or other related communications to any individual or third party regarding the breach; the County may propose revised or additional content to the materials which will be given reasonable consideration by Contractor (or its agent).
5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph ~~and as required by the Breach notification regulations~~, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45

CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County, to the maximum extent possible all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 promptly as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.
8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.
9. To the extent the Breach of Unsecured PHI arises as a result of Contractor's breach of this Business Associate Contract, Contractor shall bear all reasonable expenses or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.
 - a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.
 - b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:
 - i. The Disclosure is required by law; or
 - ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately promptly notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.
 - c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.
2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.
3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.
4. Contractor may use or disclose PHI County discloses to Contractor as required by law.
5. Contractor shall share PHI as reasonably requested by the County to carry out its responsibilities as plan administrator of the Plan(s), including, without limitation, for purposes of auditing the performance of Contractor.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.
2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.
3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in

accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

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

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