



**CONTRACT NO. MA-042-22010749**

**FOR**

**COVID-19 CONTACT TRACING SERVICES**

**BETWEEN**

**THE COUNTY OF ORANGE  
(HEALTH CARE AGENCY)**

**AND**

**APPLIED MEMETICS, LLC**

CONTRACT No. MA-042-22010749  
FOR  
COVID-19 CONTACT TRACING SERVICES  
WITH  
APPLIED MEMETICS, LLC

This Contract Number MA-042-22010749 ("Contract") is made and entered into this 1<sup>ST</sup> day of January, 2022 ("Effective Date") between Applied Memetics, LLC ("Contractor"), with a place of business at 161 Fort Evans RD NE, Ste. 250, Leesburg, VA 20176, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506. Contractor and County may sometimes be referred to hereinafter individually as "Party" or collectively as "Parties".

### **ATTACHMENTS**

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work/Pricing  
Attachment B – Compensation and Invoicing  
Attachment C – Business Associate Contract

### **RECITALS**

**WHEREAS**, Contractor and County are entering into this Contract for COVID-19 Contact Tracing Services under a firm fixed fee Contract; and

**WHEREAS**, Contractor agrees to provide COVID-19 Contact Tracing Services to the County as further set forth in the Scope of Work/Pricing, attached hereto as Attachment A; and

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

**WHEREAS**, County of Orange Board of Supervisors has authorized the County Procurement Officer or designee to enter into a Contract for COVID-19 Contact Tracing Services with Contractor;

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

### **DEFINITIONS**

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

## ARTICLES

### General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor -Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the 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.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and County Indemnitees as more fully described in paragraph "Y," harmless from liability, loss, damage and expense, including

reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor 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 "Y" 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 and attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Contractor shall provide County no less than sixty (60) calendar days written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor must comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **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 is 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.
- L. **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.
- M. **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 goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

**N. Insurance Requirements:**

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*	\$1,000,000 per claims-made \$1,000,000 aggregate

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

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to



provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the 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 department address listed in Paragraph 17, Notices.

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by CEO/Purchasing or the agency/department purchasing division, County may immediately terminate this Contract without penalty.

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

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

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

- O. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's express prior written consent.
- P. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of County.

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

In addition, Contractor has the duty to notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor is also obligated to notify County in writing if Contractor becomes a party to any litigation against 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 County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

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

- Q. **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 to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more
- R. **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.
- S. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Y" 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.
- T. **Freight:** Prior to County's express acceptance of delivery of products, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- U. **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.
- V. **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.
- W. **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 had been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.



- X. **Employee Eligibility Verification:** Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Y. **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.
- Z. **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 County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.
- County reserves the right to audit and verify Contractor's records before final payment is made.
- Contractor must 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 must include in each subcontract a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.
- Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.
- AA. **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.

- BB. **Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide COVID-19 Contact Tracing Services to County, as further detailed in the Scope of Work, incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on January 1, 2022 through and including December 31, 2022. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties. This Contract may be renewed for four (4) additional one year periods. County does not have to give a reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
3. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
  - a) Terminate the Contract immediately pursuant to Paragraph 19, Termination;
  - b) Afford 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 if the breach is curable;
  - c) Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
  - d) Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
4. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
5. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager has the right to require the removal and replacement of the Contractor's Project Manager

from providing services to County under this Contract. The County's Project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

7. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.
8. **Conditions Affecting Work:** Contractor is responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract.
9. **Data – Title To:** All materials, documents, data or information obtained from 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 County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.
10. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor is responsible for paying County the difference between the Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
11. **Disputes – Contract:**
  - A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
    1. Contractor shall submit to the 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 County, on its own initiative, has already rendered such a final decision.
    2. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the

supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.

- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If County fails to render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this section shall be construed as affecting County's right to terminate the Contract for cause or termination for convenience as stated in Paragraph 19, Termination.

12. **Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor will:

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

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

1. Contractor has made false certification, or
2. Contractor violates the certification by failing to carry out the requirements as noted above.

13. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing in Attachment B shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide



proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster is not permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.

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, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
15. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

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

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

16. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through the County's Project Manager.
17. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid,

whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:      Name:            Applied Memetics, LLC  
                                  Attention:       Dan Gabriel  
                                  Address:        161 Forth Evans RD NE, Ste. 250  
                                                     Leesburg, VA 20176  
                                  Telephone:     571-225-9857  
                                  E-mail:        [Dan@amllc.co](mailto:Dan@amllc.co)

For County:            Name:            County of Orange HCA/Procurement and Contract  
                                                     Services  
                                  Attention:       Albert Diaz  
                                  Address:        405 W. 5<sup>th</sup> Street, 6<sup>th</sup> Floor  
                                                     Santa Ana, CA 92701  
                                  Telephone:     (714) 834-5021  
                                  E-mail:        [adiaz@ocha.com](mailto:adiaz@ocha.com)

CC:                      Name:            County of Orange HCA  
                                  Attention:       Anza Vang  
                                  Address:        405 W. 5<sup>th</sup> Street, 7<sup>th</sup> Floor  
                                                     Santa Ana, CA 92701  
                                  Telephone:     714-796-0404  
                                  E-mail:        [Avang@ochca.com](mailto:Avang@ochca.com)

18. **Precedence:** The Contract documents consist of this Contract and its Attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, then the Attachments.
19. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract or any misrepresentation or fraud on the part of the Contractor. County's exercise of its right to terminate the Contract shall relieve County of all further obligations.

After receipt of a termination notice from the County of Orange, Contractor may submit to County a termination claim. Such claim shall be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination and submission of a termination claim, County agrees to pay Contractor for all services performed prior to termination which meet the requirements of the Contract and subject to Paragraphs 3 and 12, 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.

20. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.



21. **Usage Reports:** Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted ninety (90) calendar days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
22. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.
  - a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
  - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
  - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
23. **Debarment:** Contractor certifies in writing that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency. County has the right to terminate this Contract if Contractor is the subject of any debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any state or federal department or agency.
24. **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.
25. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
26. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
27. **Parking for Delivery Services:** County shall not provide free parking for delivery services.
28. **Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any

purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or Services.

29. **Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, 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 County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.
30. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. County shall look to Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

(SIGNATURE PAGE FOLLOWS)

**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-22010749 the date set forth opposite their signatures. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: APPLIED MEMETICS, LLC**

Dan Gabriel

CEO

Print Name

Title

DocuSigned by:

*Dan Gabriel*

11/17/2021

Signature

Date

Tarek Nahabet

Secretary

Print Name

Title

DocuSigned by:

*Tarek Nahabet*

11/18/2021

Signature

Date

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

Purchasing Agent/Designee Authorized Signature:

Deputy Purchasing Agent

Print Name

Title

c

Signature

Date

**APPROVED AS TO FORM**

Office of the County Counsel  
County of Orange, California

DocuSigned by:

*Brittany McLean*

11/18/2021

Signature

Date

**ATTACHMENT A****SCOPE OF WORK/PRICING****Scope of Services**

Activities, goods and services shall be in accordance with current Center for Disease Control (CDC) and World Health Organization (WHO) guidance, as well as the State of California Department of Health Services' guidance, and compatible with local and state mandated reporting, privacy and health information statutes and regulation. The Orange County Health Care Agency will coordinate activities under this contract and will regularly direct and interact with Contractor management, supervisors and staff. This will include the authority to have Contractor's staff removed from the project based on performance, complaint or justified concern. Contractor will employ professional epidemiology staff that will oversee and support operations for this project, including one or more named and specific Master of Public Health (MPH) level or equivalent staff. Contractor will provide equipment, as needed, to include laptops, cellphones or AWS headsets.

**I. Vendor shall provide staffing for the following activities:**

1. **Project Management:** Provide oversight and support for all daily operations of contracted COVID response-related activities including testing, vaccine and case investigation and contact tracing activities. Work with OCHCA management to coordinate and review all activities associated with COVID response activities.
2. **Case Triage:** Monitoring cases and contacts in the CalCONNECT system for efficient assignment to established teams.
3. **Case Investigation:** Outreach to COVID positive cases to provide education and instructions on self-isolation, symptom monitoring, and identification of close contacts and linkage to appropriate social programs to support disease control efforts.
4. **Contact Tracing:** Outreach to identify COVID contacts to provide education and instructions on self-quarantine, symptom monitoring and linkage to appropriate social programs to support disease control efforts.
5. **Quality Assurance:** Monitoring and review of work completed in CalCONNECT to ensure adherence to appropriate guidelines and timely and complete data entry.
6. **Data Analysis:** Provide analytics/reports for COVID response activities including testing, vaccine and case investigation and contact tracing work completed in the CalCONNECT system.

**II. Training Plan:** Detailed training plan accounting for both respondent's staff and Orange County staff that will liaise with respondent staff, including basis for curriculum, delivery model, and proposed schedule. Coursework shall include:

1. HIPAA and Compliance
2. Cultural competency
3. COVID case investigation skills including basic disease clinical guidelines, eliciting contacts and self-isolation

- 4. Contact investigation skills including basic clinical guidelines for symptom monitoring and self-quarantine
- 5. Referrals to community social supports

Pricing for 150+ FTEs (Represents Trace Estimated Head Count)					
Labor Categories		FTE Quantity (estimated)	Loaded Rates	Hours (estimated)	
Project Manager		2	\$ 84.44	2080	
Deputy Project Manager		2	\$ 63.89	2080	
Senior Data Analyst		1	\$ 79.84	2080	
Full Performance Data Analyst		1	\$ 67.55	2080	
Trainer/Program Coordinator		2	\$ 65.00	2080	
Reach back Cell operator		1	\$ 60.05	2080	
Case Navigator/Supervisor*		5	\$ 60.05	2080	
Case Investigator*		25	\$ 50.83	2080	
Contact Tracer*		5	\$ 38.34	2080	
				<b>Users/per month</b>	<b>Base Period of Performance (12 months)</b>
MakeShift scheduling platform (per user, per month)		44	\$2.30	\$102.10	\$1,214.4
Tableau Creator suite (per user, per month)		2	\$70.00	\$140.00	\$1680.00

## COVID-19 Testing Coordination Services

### OVERVIEW

Contractor shall coordinate and provide oversight of COVID-19 testing sites. HCA currently manages or coordinates services with the following testing sites:

- 12 community clinic sites;
- Two (2) Health Equity partners, Latino Health Equity Initiative and OC API Taskforce, who provide testing and wraparound support services for the Latino and API communities. Test site locations are established based on COVID data; and
- One (2) at home-kit testing distribution contractors.

### Contractor's Responsibilities

#### 1. SERVICES

##### A. TESTING TARGET POPULATIONS

COVID-19 testing services shall prioritize access to testing of individuals at high risk of infection, specifically individuals who reside or work in Orange County Healthy Places Index (HPI) 4th quartile census tract areas that have a COVID-19 positivity rate higher than the county average. Testing should be in locations that increase access to testing for disproportionately impacted communities. Testing should also provide access to essential workers and public health priority populations who cannot get a test through their health care provider.

##### B. TESTING COORDINATION

Testing coordination services include oversight and coordination of HCA-managed COVID-19 testing sites. Services must include:

- a) Management of logistics for current testing sites. This includes, but is not limited to, maintaining/obtaining site lease agreements or MOUs, ensuring required equipment is available for site, addressing test registration issues or needs, and addressing logistical issues as they arise.
- b) Review, approval, and coordination of pop-up site requests. This includes reviewing the request, approval or denial of request or route requestor to an existing testing site option, identifying the proper vendor(s) to be utilized for approved pop-up event(s), review (walk-thru) of potential site, and coordination of promotion of the event.
- c) Maintenance of a testing calendar for all vendors/partners to be aware of planned testing events.
- d) Monitor testing site volume to increase capacity or identify a plan to relocate or reduce testing sites.
- e) Coordination with the state on testing site locations, schedules, and logistics.

##### C. TESTING CONTRACT OVERSIGHT

- a) Oversight of testing contract relationships.
- b) Approval of testing invoices based on contracted terms.
- c) Oversight of contract amendments.
- d) Conduct regular testing coordination meetings.
- e) Monitor contract expenditures and test billing reconciliation.



**D. TESTING DATA COLLECTION AND ANALYSIS**

- a) Development of weekly testing report.
- b) Development of monthly testing wraparound services report.
- c) Routine testing data review and analysis to identify potential changes to testing site locations.
- d) Review COVID positivity data and trends to identify future locations for testing.

**E. DEVELOPMENT OF A TESTING TRANSITION PLAN**

- a) Coordination with HCA management to develop plan to transition COVID-testing to county-wide health system.

**2. PERFORMANCE OBJECTIVES****Strategic Objective 1: Coordination of Testing Ecosystem**

Ensure daily COVID-19 testing capacity in Orange County is above 4,800 through the duration of the contract.

**Priority Areas:**

- Symptomatic
- Contacts to cases
- First responders
- Healthcare professionals
- Other essential workers (teachers, school staff, restaurant workers, etc.)

**Strategic Objective 2: Testing for Disproportionately Impacted Communities**

Maintain 95% of testing access to reach disproportionately impacted communities through December 31, 2021.

**Strategic Objective 3: Support Services for Disproportionately Impacted Communities**

Maintain COVID education or other support services for 95% of those tested who are in disproportionately impacted communities through our Health Equity Partners through December 31, 2021.

**3. CONTRACTOR SHALL**

- a) Be liaison between HCA and testing vendors.
- b) Manage contracts with current HCA COVID-19 testing sites to maintain COVID-19 testing (*may consider transitioning contracts from HCA to vendor as sub-contracts*).
- c) Expand COVID-19 testing options as directed by HCA.
- d) COVID-19 data collection, analysis, and reporting.
- e) Completion of a monthly Expenditure and Revenue Reports.
- f) Completion of monthly contractor expenditures and projections reports.
- g) Coordinate meetings with testing vendors to implement services.

Testing Excellence Strike Teams (TEST)				
Labor Categories	FTE Quantity (estimated)	Loaded Rates	Hours (estimated)	
Senior Data Analyst	1	\$ 79.84	2080	
Clinical Coordinator	2	\$ 67.50	2080	
Operations Coordinator	1	\$ 67.50	2080	
Direct Bill		\$25,000		
	4			

\*Direct Bill: Includes costs accrued by Trace for project essentials: site relocation, vendor incidentals, shipping costs for items, etc. This may include cost of van or truck rentals, moving company fees, shipping fees, printing costs for co-sponsored events between Trace and OCHCA.

## COVID-19 VACCINE MANAGEMENT SERVICES

### CONTRACTOR RESPONSIBILITIES:

1. **Strategic Objective 1:** Develop COVID-19 vaccine quality assurance plan

#### **Priority Areas:**

- Quality assurance measures
- Protocols
- Reporting
- Staffing plan

Planning and Implementation: Quality assurance measures and protocols will be developed according to CDC guidelines, including application of immunization program management and emergency management informed recommendations. All quality assurance measures shall be scalable to apply each phase of the phased approach of COVID-19 Vaccination programs recommended by the CDC.

Staffing: Work with OCHCA to determine appropriate strike team staff ratios and solidify plan to scale up or down depending on vaccine availability and sites providing immunizations.

Continuous improvement: Contractor's staff shall perform a gap/needs assessment of the current operational plan and make appropriate changes or recommendations.

Establishing scopes of services and standard operating procedures: Uphold best practices of vaccine quality assurance management as established by FEMA, OSHA, CDC and other governing bodies- moving towards clinical excellence- to ensure the vaccine is as effective as possible. Clear procedural guidance on vaccine handling and storage will minimize wastage of vaccine, which is of the utmost importance with the limited supply of vaccine in the earliest phases of vaccine distribution.

2. **Strategic Objective 2:** Develop programmatic evaluation plan.

#### **Priority Areas:**

- KPIs
- Score Card
- Audit Tools
- Scope of work

#### Establish a Programmatic Evaluation Score Card:

To track this measure, Contractor shall use CDC programmatic measures for vaccine deliverable guidelines as a first benchmark. The data team will work with the current staff overseeing immunization programs to establish a program baseline for how well it provides immunization access to prioritized groups in the population.

Programmatic benchmarks

Accessibility of vaccine by tracking demand at various vaccine clinic locations, prioritized groups receiving vaccine, demographics of those receiving vaccine at each clinic site, primary language of vaccine recipients.

Immunization handling and storage benchmarks, including checking and recording refrigeration temperatures at regular, pre-determined intervals;

Immunization administration benchmarks, including proper documentation of administration site, route, vaccine lot number, vaccine manufacturer and product, and expiration date.

Immunization delivery benchmarks, including screening of all patients for vaccination status; comprehensive instructions for vaccine recipient as to the need for future dose of vaccine and return visits, provision of Emergency Use Authorization (EUA) fact sheet or Vaccine Information Statement (VIS).

Adherence to CDPH requirements for documentation and logging (CAIRS2, VaccineFinder), tracking of symptoms, and reporting to VAERS.

Adherence to Manufacturer guidance and EUA statements.

Identify operational plan to share data:

Contractor shall work with OCHCA to develop a plan to share data across agencies

Reporting cadence will also be established

Create QA Audit tools:

Contractor's strike team members shall work with OCHCA to develop QA and audit tools to establish key indicators of program success

3. **Strategic Objective 3:** Develop a project management support plan for all vaccine sites in Orange County and provide continuous support throughout the mass distribution process.

**Priority Areas:**

Vaccine allocations and management  
Vaccine prioritization plan adherence

**Site SOP/Working plan:** Work with each site to create specific support plans for each site. These are curated to each site to ensure that any site limitations or site specific barriers to success are removed. Each site plan will be founded in the overall project plan, workflows and SOPs.

**Active audit process:** Contractor shall set up regular walk throughs and site visits to ensure all standards of quality are being upheld. Each site audit will be accompanied by an after action plan to fix any issues or concerns. The after action plan will be monitored via the data analyst to ensure any interventions are tracked by quantitative data.

**Collaborate** with OCHCA to develop a project transition plan with key benchmarks and timelines to move the project scope from OCHCA to Contractor.

4. **Strategic Objective 4:** Ensure data collection and timely reporting of COVID-19

required metrics.

**Priority Areas:**

Work with OCHCA Data Management Plan  
Deliver daily, weekly and monthly reports

**Data Management Plan:** Contractor shall create, establish and disseminate a Data Management Plan to include the following categories:

**Data Description and Scope:** Establishes scope of data collected to include a plan of how data is collected and in what fields.

**Data Organization**

Organization: Determines standards in documentation of data and metadata.

Format: Standardization of data types, file formats, file types, etc.

Data documentation: Establishes a data language or presentation that can be understood by all stakeholders involved.

**Access and Sharing:** Create a file sharing work flow and file management work flow to view past or archived reports.

**Data Security:** Work through secure channels and ensure all stakeholders have and maintain secure access to all data.

**Data storage and archives:** Data redundancy through HIPAA compliant storage in GoogleDrive or additional redundancy through OCHCA server or secure platform.

**Reporting strategy:** At a cadence agreed upon by OCHCA and Contractor, the Contractor's team shall provide reporting on various components of the QA program

5. **Strategic Objective 5:** Create training and technical support materials from the vaccine quality assurance and distribution plan.

**Priority Areas:**

Provide COVID 19 vaccine technical assistance to provider

**Provide training and informational materials for vaccination providers:** Availability of vaccine handling and administration protocols ensures thorough training of operations and clinical staff. Ongoing assessment of training needs will be performed to tailor materials to the needs of each vaccination site.

All training and informational materials will be evidence-based, informed by best practices in vaccine handling and administration. Topics include: cold chain management, vaccine storage and handling, managing temperature excursions, reporting vaccine inventory, vaccine administration, reporting adverse events (VAERS), and various other topics specific to each vaccination clinic site.

**Provide technical support by immunizations program experts:** Support from seasoned immunizations program experts provides an extra measure of quality assurance. Contractor's lead immunizations program expert shall have 14 years of experience in

community health leadership and community-based nursing care, with specialized experience in vaccine management and handling, vaccine administration in patients of all ages, and provider education.

**Facilitate compliance with requirements for vaccination providers:**

Provide guidance and support to facilitate compliance with CDC requirements for vaccine management, including storage and handling, temperature monitoring at all times, complying with jurisdiction’s instructions for dealing with temperature excursions, and monitoring expiration dates. Providers must keep all records related to COVID-19 vaccine management for a minimum of 3 years, or longer if required by law.

Comply with FDA’s requirements, including EUA-related requirements described in FDA’s Letter of Authorization, as applicable. Providers must also administer COVID-19 vaccine in compliance with all applicable state vaccine laws.

Establish a training plan for vaccination providers, utilizing existing CDC and ACIP guidance for immunization providers as well as guidance specific to COVID-19 vaccine. Create additional content and method of delivery tailored to OCHCA and vaccination clinic sites.

Assist vaccination providers in developing written guidance for staff to maintain compliance.

Create staffing plans on-site at vaccine location to ensure ability to comply with requirements, including establishing a Vaccine Coordinator role at each vaccination clinic location.

Support critical health communication activities: Contractor shall provide Health Communication Specialist to work with OCHCA related to all health communication needs related to COVID-19 vaccination program, including but not limited to:

1. Maintaining easy to follow instructions to assure appropriate documentation, storage, handling and administration of vaccine
2. Website support to develop materials and to monitor website to ensure all recommendations and other vaccine information is up to date with current knowledge and guidance
3. Develop materials to provide education to medical providers and general public regarding COVID-19 vaccine information.

**Vaccine Administration Support:**

- Transcription of vaccine dose administration details into Othena
- Assist with lost COVID-19 vaccine card questions
- Assist with patient verification for immunization transcription needs in relation to lost COVID-19 vaccination card
- Sourcing patient details of COVID-19 immunization records in CAIR/Othena for the purposes of scheduling their second vaccine dose

<b>Labor Categories</b>	<b>FTE Quantity</b>	<b>Loaded Rates</b>	<b>Hours (Estimated)</b>
<b>Project Manager</b>	1	\$84.44	2080
<b>Senior Data Analyst</b>	1	\$79.84	2080
<b>Project Coordinator</b>	2	\$67.50	2080



<b>Deputy Project Manager</b>		4	\$ 63.89	2080
<b>PHN QA Nurse</b>		10	\$67.50	2080
<b>Health Communication Specialist</b>		1	\$63.44	2080
<b>Vaccine Admin Support</b>		1	\$38.34	2080
<b>Data Entry Specialist</b>		2	\$36.27	2080
		18		

**COVID-19 Employee Health Services**

**Adherence to the Scope of Work**

**Strategic Objective 1: [Technologies Implementation](#)**

**Priority Areas:**

- Inbound and outbound calls
- Cority EMR Staff Set Up
- Technology Integrations
- Communications Workflows

**Inbound and outbound Calls:**

Trace will implement a cloud-based system to provide an omnichannel platform to reach cases and contacts through multiple communication tools. The system is ready to use within days of signing a contract and the system automatically implements communication workflows proven to be effective in receipt and transmission of digital communication with cases and contacts.

**Share Point and Orange County Systems Set Up**

- Employee set up on Orange County Shared Drives
  - TRACE Project Manager and Operations Manager will work with OC support to create secure connections for project staff to assess OC databases.
  - TRACE Project Manager and Operations Manager will work with OC support to acquire necessary VPN or soft token access to the appropriate systems.
- TRACE staff will work with OC help desk and eliminate any administrative or access burden from the EHS team in setting up employees in the system.

## Strategic Objective 2: Employee Exposure Management

### Priority Areas:

- Strike team management
- Creation of SOPs and workflows in collaboration with EHS
- Staff performance management

### Employee Exposure Management

- **Staffing Support Schedule:** TRACE will provide Exposure management and clinical exposure management staff at the following times:
  - Monday-Friday: 8a-9p
  - Saturday – Sunday: 9a-9p
- **Exposure Management:** TRACE will work with EHS staff to implement appropriate workflows to track and manage COVID-19 positive employees and their close contacts.
  - TRACE staff will communicate with positive employees about their COVID-19 positive stats and ensure they do not report to work and further spread the disease
  - TRACE staff will work with EHS to ensure that all close contacts of the positive case are collected, call those contacts and instruct them not to report to work
  - TRACE's Project Manager will work with Human Resources at Orange County to find information of close contacts that is incomplete or out of service.
  - Standard operation procedures, policies, and employee facing documents will be shared with TRACE staff so they are best equipped to handle issues as they arise
- **Escalation:**
  - Case and Contact Escalation: TRACE will work with EHS to establish workflows for escalation and or need for high level referrals. Some reasons for escalating a case or contact may be:
    - High level medical or social support need
    - Absence from work creates a critical need for additional staff
    - Case or contact has political or public facing connections in the community
  - Leadership escalation: TRACE will have leadership on-call during all hours staff are working and communicating with employees. Should any issues arise during a shift, a supervisor will be immediately available.

## Strategic Objective 3: Employee Supervision & Corporate Reach Back

### Priority Areas:

- Strike Team Leadership
- Project Leadership
- TRACE Corporate Reachback and Leadership

### Strategic Objective 4: Comprehensive ongoing staff training

#### Priority Areas:

- Case Investigaton and Contact Tracing
- HIPAA Compliance
- Learning Management System

Pricing for Period of Performance 1/1/2022-12/31/2022					
Labor Categories		FTE Quantity (estimated)	Loaded Rates	Hours (estimated)	
Project Manager		1	\$ 84.44	2080	
Employee Exposure Navigator		1	\$60.05	2080	
Clinical Employee Exposure Coordinator		1	\$ 50.83	2080	
Employee Exposure Coordinator		1	\$ 38.34	2080	
				Users/per month	Base Period of Performance (6 months)
MakeShift scheduling platform (per user, per month)		2	\$2.30	\$4.6	\$55.20
Telephony License		2	\$20.00	\$40.00	\$480
Telephony Initial Set Up		1			\$3,000

**Note: County reserves right to reduce quantity or cancel order for items not already in transit.**

**No material adjustments made to the Scope of Work will be authorized without prior written approval of the County. Non-material adjustments may be made with the written approval of the County assigned Deputy Purchasing Agent.**

## ATTACHMENT B

### COMPENSATION AND INVOICING

1. **Compensation:** This is a fixed price Contract not to exceed the amount of \$16,000,000 for the Term of Contract.

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. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.

2. **Fees and Charges:** County will pay the following fees in accordance with Attachment A of this Contract.
3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
4. **Firm Discount and 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 services of equal or lesser scope. 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.
5. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
6. **Payment Terms:** Invoices are to be submitted 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.

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
- a. Contractor's name and address
  - b. Contractor's remittance address
  - c. Contractor's Taxpayer ID Number
  - d. Name of County Agency/Department
  - e. Delivery/service address
  - f. Master Agreement (MA) or Purchase Order (PO) number
  - g. Agency/Department's Account Number, if applicable
  - h. Date of invoice
  - i. Product/service description, quantity, and prices
  - j. Sales tax, if applicable
  - k. Freight/delivery charges, if applicable
  - l. Total

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

Invoice and support documentation are to be emailed to [HCAAccountsPayable@ochca.com](mailto:HCAAccountsPayable@ochca.com) OR forwarded to:

Orange County Health Care Agency  
Accounts Payable  
PO Box 689  
Santa Ana, CA 92702

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

**ATTACHMENT C**  
**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 MA-042-22010749 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 MA-042-22010749, 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 MA-042-22010749.

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 MA-042-22010749 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-22010749.



## 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.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

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

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

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

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the

guidance issued on the HHS Web site.

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

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-042-CONTRACT NUMBER, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner

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

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-042-22010749, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

#### D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with 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 to the County Privacy Officer at:

OCIT   CEO   SECURITY	HCA INFORMATION TECHNOLOGY
<p><b>Linda Le, CHPC, CHC, CHP</b></p> <p><b>County Privacy Officer</b>                  1501 E. St. Andrews Place, 2<sup>nd</sup> Fl.                  Santa Ana, CA 92705                  Office: (714) 834-4082</p> <p>E-Mail: <a href="mailto:linda.le@ceoit.ocgov.com">linda.le@ceoit.ocgov.com</a>  <a href="mailto:privacyofficerinbox@ceoit.ocgov.com">privacyofficerinbox@ceoit.ocgov.com</a></p>	<p><b>David Castellanos</b></p> <p><b>IT Security Officer</b>                  200 W. Santa Ana Blvd., Ste. 1000                  Santa Ana, CA 92701                  Office: (714) 834-3433</p> <p>E-Mail: <a href="mailto:dcastellanos@ochca.com">dcastellanos@ochca.com</a></p>

a. Contractor’s notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

(1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

(4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

(5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

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

## F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-042-CONTRACT NUMBER, 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 notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

## G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that



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

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

#### H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract MA-042-22010749, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-22010749 is feasible.

2. Upon termination of the Contract MA-042-22010749, 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 MA-042-22010749.