

**AGREEMENT**

THIS AGREEMENT is made and entered into this 12th day of June, 2018, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and **Godfred L. Masinde**, PhD, an individual, whose address is 700 Cabada Drive, Brentwood, California, 94513, hereinafter referred to as "CONTRACTOR".

**WITNESSETH:**

WHEREAS, COUNTY, through its Department of Public Health (DPH), operates a Public Health Laboratory (PHL) which provides both clinical and dairy testing; and

WHEREAS, DPH PHL is in need of a Laboratory Director to perform the duties and responsibilities of the Laboratory Director and meets all required qualifications to oversee clinical and dairy testing as well as the COUNTY's DPH Level-B Bioterrorism Laboratory and a Regional Level-2 Laboratory for the State and National Laboratory Response Network (NLRN); and

WHEREAS, it is common practice for California counties to utilize an independent contractor to perform the duties and responsibilities of its Laboratory Director; and

WHEREAS, CONTRACTOR represents that he has all required qualifications and is willing to provide such services, pursuant to the terms and conditions of this Agreement; and

WHEREAS, CONTRACTOR currently provides Laboratory Director services to COUNTY, under Agreement No. P-17-330-L, which expires June 30, 2018; and

WHEREAS, CONTRACTOR and COUNTY have developed this successor Agreement to become effective upon expiration of the existing Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto agree as follows:

**1. OBLIGATIONS OF THE CONTRACTOR**

A. CONTRACTOR shall meet and maintain the required certifications for Clinical Laboratory Improvement Amendments (CLIA) and all state, federal and local required qualifications throughout the term of this Agreement.

B. Under the terms and conditions of this Agreement, CONTRACTOR shall provide services for the DPH PHL, encompassing Laboratory Director activities and oversight as

1 follows:

2 1. Provide general consultation on state and federal CLIA requirements for  
3 licensing and assist with preparations for inspections, reviews and applications related to laboratory  
4 certifications as required;

5 2. Review of PHL operations, procedures, and protocol to verify  
6 compliance with applicable regulations and consult with COUNTY DPH Director or designee  
7 (Department designee) regarding findings and recommendations, as needed;

8 3. Evaluate, analyze, and develop of policies, procedures, and reports, as  
9 required, to ensure compliance with state and federal requirements;

10 4. Provide consultation on evaluation of a Laboratory Information  
11 Management System;

12 5. Provide consultation in organizing the PHL to meet Lean Principles  
13 throughout physical work environment and systems of operation;

14 6. Train laboratory staff on laboratory methodologies and techniques, as  
15 required;

16 7. May perform the duties of the technical supervisor, clinical consultant,  
17 and testing personnel;

18 8. Consult in the event of an emergency in the PHL and/or local  
19 emergencies requiring modified or accelerated testing, protocols and/or processes;

20 9. Be accessible to the Department via cell phone, landline phone, pager,  
21 email or facsimile 24 hours, 7 days a week during the term of this Agreement. If CONTRACTOR is  
22 not available during these time periods, it must be prearranged by Department designee; and

23 10. Perform site visits of PHL to evaluate operations are efficient and  
24 compliant with applicable State and Federal regulations. Onsite visits will be coordinated with  
25 Department designee.

26 **2. TERM**

27 The term of this Agreement shall be for a period of two (2) years, commencing on July  
28 1, 2018 through and including June 30, 2020. This Agreement may be extended for two (2) additional

1 consecutive twelve (12) month periods upon written approval of both parties not later than thirty (30)  
2 days prior to the first day of the next twelve (12) months extension period. The DPH Director or his  
3 or her designee is authorized to execute such written approval on behalf of COUNTY based on  
4 CONTRACTOR'S satisfactory performance.

5 **3. TERMINATION**

6 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be  
7 provided thereunder, are contingent on the approval of funds by the appropriating government agency.  
8 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement  
9 terminated at any time by giving CONTRACTOR thirty (30) days advance written notice.

10 B. Breach of Contract - COUNTY may immediately suspend or terminate this  
11 Agreement in whole or in part, where in the determination of COUNTY there is:

- 12 1) An illegal or improper use of funds;
- 13 2) A failure to comply with any term of this Agreement;
- 14 3) A substantially incorrect or incomplete report submitted to COUNTY;
- 15 4) Improperly performed service.

16 In no event shall any payment by COUNTY constitute a waiver by COUNTY of any  
17 breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither  
18 shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach  
19 or default. COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY  
20 of any funds disbursed to CONTRACTOR under this Agreement, which in the judgment of COUNTY  
21 were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly  
22 refund any such funds upon demand or, at COUNTY's option, such repayment shall be deducted from  
23 future payments owing to CONTRACTOR under this Agreement.

24 C. Without Cause - Under circumstances other than those set forth above, this  
25 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice  
26 of an intention to terminate to CONTRACTOR.

27 **4. COMPENSATION**

28 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive

1 compensation as follows:

2 For the period of July 1, 2018 through and including June 30, 2019, Seven Thousand,  
3 Seven Hundred and No/100 (\$7,700.00) per month. In no event shall actual services performed under  
4 this Agreement be in excess of Ninety-two Thousand, Four Hundred and No/100 (\$92,400.00) during  
5 the period of July 1, 2018 through June 30, 2019 of this Agreement.

6 For the period of July 1, 2019 through and including June 30, 2020, and each subsequent  
7 twelve month period thereafter, Eight Thousand, Eighty-five and No/100 (\$8,085.00) per month. In  
8 no event shall actual services performed under this Agreement be in excess of Ninety-seven Thousand,  
9 Twenty and No/100 (\$97,020.00) during the period of July 1, 2019 through and including June 30,  
10 2020 of this Agreement, and each subsequent twelve month period thereafter.

11 It is understood that all expenses incidental to CONTRACTOR's performance of actual  
12 services under this Agreement shall be borne by CONTRACTOR.

13 Payments by COUNTY shall be in arrears, for services provided during the preceding  
14 month, within forty-five (45) days after receipt and verification of CONTRACTOR's invoices by  
15 COUNTY's Department of Public Health. If CONTRACTOR should fail to comply with any  
16 provision of this Agreement, COUNTY shall be relieved of its obligation for further compensation.

17 If notice is given to terminate this Agreement within the calendar month, the base  
18 monthly compensation shall be calculated by the COUNTY on a prorated basis for actual days of  
19 service provided by the CONTRACTOR. The CONTRACTOR agrees to receive compensation in  
20 accordance with the prorated calculation.

21 **5. INVOICING**

22 CONTRACTOR shall invoice COUNTY monthly, addressed to the County of Fresno,  
23 Department of Public Health, Community Health, P.O. Box. 11867, Fresno, CA 93775, Attention:  
24 Community Health Division Manager.

25 **6. INDEPENDENT CONTRACTOR**

26 In performance of the work, duties, and obligations assumed by CONTRACTOR under  
27 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of  
28 CONTRACTOR's officers, agents, and employees will at all times be acting and performing as an

1 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,  
2 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have  
3 no right to control or supervise or direct the manner or method by which CONTRACTOR shall  
4 perform its work and function. However, COUNTY shall retain the right to administer this  
5 Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the  
6 terms and conditions thereof.

7 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and  
8 the rules and regulations, if any, of governmental authorities having jurisdiction over matters which  
9 are directly or indirectly the subject of this Agreement.

10 Because of its status as an independent contractor, CONTRACTOR shall have  
11 absolutely no right to employment rights and benefits available to COUNTY employees.  
12 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees  
13 all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and  
14 save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees,  
15 including compliance with Social Security, withholding, and all other regulations governing such  
16 matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be  
17 providing services to others unrelated to the COUNTY or to this Agreement.

18 **7. MODIFICATION**

19 Any matters of this Agreement may be modified from time to time by the written  
20 consent of all the parties without, in any way, affecting the remainder.

21 **8. NON-ASSIGNMENT**

22 Neither party shall assign, transfer or subcontract this Agreement nor their rights or  
23 duties under this Agreement without the prior written consent of the other party.

24 **9. HOLD-HARMLESS**

25 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's request,  
26 defend the COUNTY, its officers, agents and employees from any and all costs and expenses,  
27 including attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to  
28 COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers,

1 agents or employees under this Agreement, and from any and all costs and expenses, including  
2 attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to any  
3 person, firm or corporation who may be injured or damaged by the performance, or failure to perform,  
4 of CONTRACTOR, its officers, agents or employees under this Agreement.

5 **10. INSURANCE**

6 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR  
7 or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the  
8 following insurance policies throughout the term of this Agreement. CONTRACTOR's liability is not  
9 to exceed the insurance coverage limits defined below:

10 A. Commercial General Liability

11 Commercial General Liability Insurance with limits of not less than One Million  
12 Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million  
13 Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis.  
14 COUNTY may require specific coverage including completed operations,  
15 product liability, contractual liability, Explosion, Collapse, and Underground  
16 (XCU), fire legal liability or any other liability insurance deemed necessary  
17 because of the nature of the Agreement.

18 B. Automobile Liability

19 Comprehensive Automobile Liability Insurance with limits for bodily injury of  
20 not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five  
21 Hundred Thousand Dollars (\$500,000) per accident and for property damages of  
22 not less than Two Hundred Fifty Thousand Dollars (\$250,000), or such coverage  
23 with a combined single limit of Five Hundred Thousand Dollars (\$500,000).  
24 Coverage should include owned and non-owned vehicles used in connection with  
25 this Agreement.

26 C. Professional Liability

27 If CONTRACTOR employs licensed professional staff (*e.g.* Ph.D., R.N.,  
28 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with  
limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three  
Million Dollars (\$3,000,000) annual aggregate.

If any of the required policies provide coverage on a claims-made basis:

1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract services.

1                   3.     If coverage is canceled or non-renewed, and not replaced with another  
2                   claims-made policy form with a retroactive date prior to the contract  
3                   effective date, the CONTRACTOR must purchase “extended reporting”  
4                   coverage for a minimum of three (3) years after completion of contract  
5                   work.

6                   D.     Worker's Compensation

7                   A policy of Worker's Compensation Insurance as may be required by the  
8                   California Labor Code.

9                   CONTRACTOR shall obtain endorsements to the Commercial General Liability  
10                  insurance naming the County of Fresno, its officers, agents, and employees, individually and  
11                  collectively, as additional insured, but only insofar as the operations under this Agreement are  
12                  concerned. Such coverage for additional insured shall apply as primary insurance and any other  
13                  insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees shall be  
14                  excess only and not contributing with insurance provided under the CONTRACTOR's policies herein.  
15                  This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance  
16                  written notice given to COUNTY.

17                  Within thirty (30) days from the date CONTRACTOR executes this Agreement,  
18                  CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of the  
19                  foregoing policies, as required herein, to the County of Fresno, Department of Public Health, P.O. Box  
20                  11867, Fresno, California, 93775, Attention: Contracts Section – 6<sup>th</sup> Floor, stating that such insurance  
21                  coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and  
22                  employees will not be responsible for any premiums on the policies; that such Commercial General  
23                  Liability insurance names the County of Fresno, its officers, agents and employees, individually and  
24                  collectively, as additional insured, but only insofar as the operations under this Agreement are  
25                  concerned; that such coverage for additional insured shall apply as primary insurance and any other  
26                  insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees, shall be  
27                  excess only and not contributing with insurance provided under the CONTRACTOR's policies herein;  
28                  and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days  
                    advance, written notice given to COUNTY.

                    In the event CONTRACTOR fails to keep in effect at all times insurance coverage as

1 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate  
2 this Agreement upon the occurrence of such event.

3 All policies shall be with admitted insurers licensed to do business in the State of  
4 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating  
5 of A FSC VII or better.

6 **11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

7 A. The parties to this Agreement shall be in strict conformance with all applicable  
8 Federal and State of California laws and regulations, including but not limited to Sections 5328,  
9 10850, and 14100.2 et seq. of the Welfare and Institutions Code, Sections 2.1 and 431.300 et seq. of  
10 Title 42, Code of Federal Regulations (CFR), Section 56 et seq. of the California Civil Code and the  
11 Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section  
12 1320 D et seq. of Title 42, United States Code (USC) and its implementing regulations, including, but  
13 not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information Technology for  
14 Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient  
15 information, and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the  
16 confidentiality of genetic information.

17 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business  
18 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions,  
19 activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such  
20 use or disclosure shall not violate the Health Insurance Portability and Accountability Act (HIPAA),  
21 USC 1320d et seq. The uses and disclosures of PHI may not be more expansive than those applicable  
22 to COUNTY, as the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 et seq.),  
23 except as authorized for management, administrative or legal responsibilities of the Business  
24 Associate.

25 B. CONTRACTOR, including its subcontractors and employees, shall protect, from  
26 unauthorized access, use, or disclosure of names and other identifying information, including genetic  
27 information, concerning persons receiving services pursuant to this Agreement, except where  
28 permitted in order to carry out data aggregation purposes for health care operations [45 CFR Sections

1 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any and all persons  
2 receiving services pursuant to a COUNTY funded program. This requirement applies to electronic  
3 PHI. CONTRACTOR shall not use such identifying information or genetic information for any  
4 purpose other than carrying out CONTRACTOR's obligations under this Agreement.

5 C. CONTRACTOR, including its subcontractors and employees, shall not disclose  
6 any such identifying information or genetic information to any person or entity, except as otherwise  
7 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law,  
8 required by the Secretary, or authorized by the client/patient in writing. In using or disclosing PHI  
9 that is permitted by this Agreement or authorized by law, CONTRACTOR shall make reasonable  
10 efforts to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or  
11 request.

12 D. For purposes of the above sections, identifying information shall include, but not  
13 be limited to name, identifying number, symbol, or other identifying particular assigned to the  
14 individual, such as finger or voice print, or photograph.

15 E. For purposes of the above sections, genetic information shall include genetic  
16 tests of family members of an individual or individual, manifestation of disease or disorder of family  
17 members of an individual, or any request for or receipt of, genetic services by individual or family  
18 members. Family member means a dependent or any person who is first, second, third, or fourth  
19 degree relative.

20 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the  
21 time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR  
22 Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR  
23 Section 164.524 regarding access by individuals to their PHI. With respect to individual requests,  
24 access shall be provided within thirty (30) days from request. Access may be extended if  
25 CONTRACTOR cannot provide access and provides individual with the reasons for the delay and the  
26 date when access may be granted. PHI shall be provided in the form and format requested by the  
27 individual or COUNTY.

28 CONTRACTOR shall make any amendment(s) to PHI in a designated record set

1 at the request of COUNTY or individual, and in the time and manner designated by COUNTY in  
2 accordance with 45 CFR Section 164.526.

3 CONTRACTOR shall provide to COUNTY or to an individual, in a time and  
4 manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528,  
5 to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI  
6 in accordance with 45 CFR Section 164.528.

7 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or  
8 reasonable belief that there has been unauthorized access, viewing, use, disclosure, security incident,  
9 or breach of unsecured PHI not permitted by this Agreement of which it becomes aware, immediately  
10 and without reasonable delay and in no case later than two (2) business days of discovery. Immediate  
11 notification shall be made to COUNTY's Information Security Officer and Privacy Officer and  
12 COUNTY's DPH HIPAA Representative, within two (2) business days of discovery. The notification  
13 shall include, to the extent possible, the identification of each individual whose unsecured PHI has  
14 been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached.  
15 CONTRACTOR shall take prompt corrective action to cure any deficiencies and any action pertaining  
16 to such unauthorized disclosure required by applicable Federal and State Laws and regulations.  
17 CONTRACTOR shall investigate such breach and is responsible for all notifications required by law  
18 and regulation or deemed necessary by COUNTY and shall provide a written report of the  
19 investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer  
20 and COUNTY's DPH HIPAA Representative. This written investigation and description of any  
21 reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the  
22 breach to the addresses below:

23 County of Fresno  
24 Dept. of Public Health  
25 HIPAA Representative  
26 (559) 600-6439  
P.O. Box 11867  
Fresno, CA 93775

County of Fresno  
Dept. of Public Health  
Privacy Officer  
(559) 600-6405  
P.O. Box 11867  
Fresno, CA 93775

County of Fresno  
Information Technology Services  
Information Security Officer  
(559) 600-5800  
2048 N. Fine Street  
Fresno, CA 93727

27 H. CONTRACTOR shall make its internal practices, books, and records relating to  
28 the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR

1 on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the  
2 requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its  
3 internal practices, books, and records relating to the use and disclosure of PHI received from  
4 COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, available to the  
5 United States Department of Health and Human Services (Secretary) upon demand.

6 CONTRACTOR shall cooperate with the compliance and investigation reviews  
7 conducted by the Secretary. PHI access to the Secretary must be provided during the  
8 CONTRACTOR's normal business hours, however, upon exigent circumstances access at any time  
9 must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to  
10 CONTRACTOR and in possession of a Subcontractor, it must certify efforts to obtain the information  
11 to the Secretary.

12 I. Safeguards

13 CONTRACTOR shall implement administrative, physical, and technical  
14 safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and  
15 appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI,  
16 that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized  
17 access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement.  
18 CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and  
19 vulnerabilities to the confidential, integrity and availability of electronic PHI. CONTRACTOR shall  
20 develop and maintain a written information privacy and security program that includes administrative,  
21 technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's  
22 operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR shall  
23 provide COUNTY with information concerning such safeguards.

24 CONTRACTOR shall implement strong access controls and other security  
25 safeguards and precautions in order to restrict logical and physical access to confidential, personal  
26 (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include  
27 the following administrative and technical password controls for all systems used to process or store  
28 confidential, personal, or sensitive data:

- 1                   1.     Passwords must not be:
- 2                   a.     Shared or written down where they are accessible or recognizable
- 3 by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
- 4                   b.     A dictionary word; or
- 5                   c.     Stored in clear text

- 6                   2.     Passwords must be:
- 7                   a.     Eight (8) characters or more in length;
- 8                   b.     Changed every ninety (90) days;
- 9                   c.     Changed immediately if revealed or compromised; and
- 10                  d.     Composed of characters from at least three (3) of the following

11 four (4) groups from the standard keyboard:

- 12                   1)     Upper case letters (A-Z);
- 13                   2)     Lowercase letters (a-z);
- 14                   3)     Arabic numerals (0 through 9); and
- 15                   4)     Non-alphanumeric characters (punctuation symbols).

16                  CONTRACTOR shall implement the following security controls on each

17 workstation or portable computing device (e.g., laptop computer) containing confidential,

18 personal, or sensitive data:

- 19                  1.     Network-based firewall and/or personal firewall;
- 20                  2.     Continuously updated anti-virus software; and
- 21                  3.     Patch management process including installation of all operating
- 22 system/software vendor security patches.

23                  CONTRACTOR shall utilize a commercial encryption solution that has received

24 FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable

25 electronic media (including, but not limited to, compact disks and thumb drives) and on portable

26 computing devices (including, but not limited to, laptop and notebook computers).

27                  CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-

28 mail or other internet transport protocol unless the data is encrypted by a solution that has been

1 validated by the National Institute of Standards and Technology (NIST) as conforming to the  
2 Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions  
3 against its employees who fail to comply with these safeguards. CONTRACTOR must adopt  
4 procedures for terminating access to PHI when employment of employee ends.

5 J. Mitigation of Harmful Effects

6 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that  
7 is suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or  
8 breach of PHI by CONTRACTOR or its subcontractors in violation of the requirements of these  
9 provisions. CONTRACTOR must document suspected or known harmful effects and the outcome.

10 K. CONTRACTOR's Subcontractors

11 CONTRACTOR shall ensure that any of its contractors, including  
12 subcontractors, if applicable, to whom CONTRACTOR provides PHI received from or created or  
13 received by CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards, and  
14 conditions that apply to CONTRACTOR with respect to such PHI and to incorporate, when  
15 applicable, the relevant provisions of these provisions into each subcontract or sub-award to such  
16 agents or subcontractors..

17 L. Employee Training and Discipline

18 CONTRACTOR shall train and use reasonable measures to ensure compliance  
19 with the requirements of these provisions by employees who assist in the performance of functions or  
20 activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such  
21 employees who intentionally violate any provisions of these provisions, including termination of  
22 employment.

23 M. Termination for Cause

24 Upon COUNTY's knowledge of a material breach of these provisions by  
25 CONTRACTOR, COUNTY shall either:

26 1. Provide an opportunity for CONTRACTOR to cure the breach or end the  
27 violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the  
28 violation within the time specified by COUNTY; or

1                   2.       Immediately terminate this Agreement if CONTRACTOR has breached a  
2 material term of these provisions and cure is not possible.

3                   3.       If neither cure nor termination is feasible, the COUNTY's Privacy  
4 Officer shall report the violation to the Secretary of the U.S. Department of Health and Human  
5 Services.

6                   N.       Judicial or Administrative Proceedings

7                   COUNTY may terminate this Agreement in accordance with the terms and  
8 conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a  
9 criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2)  
10 a finding or stipulation that the CONTRACTOR has violated a privacy or security standard or  
11 requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil  
12 proceeding in which the CONTRACTOR is a party.

13                  O.       Effect of Termination

14                  Upon termination or expiration of this Agreement for any reason,  
15 CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by  
16 CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall  
17 retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend  
18 the protections of these provisions to such information, and limit further use of such PHI to those  
19 purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI  
20 that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If  
21 CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be  
22 provided to the COUNTY by CONTRACTOR.

23                  P.       Disclaimer

24                  COUNTY makes no warranty or representation that compliance by  
25 CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be  
26 adequate or satisfactory for CONTRACTOR's own purposes or that any information in  
27 CONTRACTOR's possession or control, or transmitted or received by CONTRACTOR, is or will be  
28 secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely

1 responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

2 Q. Amendment

3 The parties acknowledge that Federal and State laws relating to electronic data  
4 security and privacy are rapidly evolving and that amendment of these provisions may be required to  
5 provide for procedures to ensure compliance with such developments. The parties specifically agree  
6 to take such action as is necessary to amend this agreement in order to implement the standards and  
7 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating  
8 to the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days  
9 written notice in the event that CONTRACTOR does not enter into an amendment providing  
10 assurances regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to  
11 satisfy the standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

12 R. No Third-Party Beneficiaries

13 Nothing express or implied in the terms and conditions of these provisions is intended to confer, nor  
14 shall anything herein confer, upon any person other than COUNTY or CONTRACTOR and their  
15 respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

16 S. Interpretation

17 The terms and conditions in these provisions shall be interpreted as broadly as  
18 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws.  
19 The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved  
20 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

21 T. Regulatory References

22 A reference in the terms and conditions of these provisions to a section in the  
23 HIPAA regulations means the section as in effect or as amended.

24 U. Survival

25 The respective rights and obligations of CONTRACTOR as stated in this Section  
26 shall survive the termination or expiration of this Agreement.

27 V. No Waiver of Obligations

28 No change, waiver or discharge of any liability or obligation hereunder on any

1 one or more occasions shall be deemed a waiver of performance of any continuing or other obligation,  
2 or shall prohibit enforcement of any obligation on any other occasion.

3 **12. DATA SECURITY**

4 For the purpose of preventing the potential loss, misappropriation or inadvertent  
5 access, viewing, use or disclosure of COUNTY data including sensitive or personal client information;  
6 abuse of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies  
7 that enter into a contractual relationship with the COUNTY for the purpose of providing services  
8 under this Agreement must employ adequate data security measures to protect the confidential  
9 information provided to CONTRACTOR by the COUNTY, including but not limited to the following:

10 A. CONTRACTOR-Owned Mobile, Wireless, or Handheld Devices

11 CONTRACTOR may not connect to COUNTY networks via personally-owned  
12 mobile, wireless or handheld devices, unless the following conditions are met:

- 13 1) CONTRACTOR has received authorization by COUNTY for  
14 telecommuting purposes;
- 15 2) Current virus protection software is in place;
- 16 3) Mobile device has the remote wipe feature enabled; and
- 17 4) A secure connection is used.

18 B. CONTRACTOR-Owned Computers or Computer Peripherals

19 CONTRACTOR may not bring CONTRACTOR-owned computers or computer  
20 peripherals into the COUNTY for use without prior authorization from the COUNTY's Chief  
21 Information Officer, and/or designee(s), including but not limited to mobile storage devices. If data is  
22 approved to be transferred, data must be stored on a secure server approved by the COUNTY and  
23 transferred by means of a Virtual Private Network (VPN) connection, or another type of secure  
24 connection. Said data must be encrypted.

25 C. COUNTY-Owned Computer Equipment

26 CONTRACTOR or anyone having an employment relationship with the  
27 COUNTY, may not use COUNTY computers or computer peripherals on non-COUNTY premises  
28 without prior authorization from the COUNTY's Chief Information Officer, and/or designee(s).

1 D. CONTRACTOR may not store COUNTY's private, confidential or sensitive  
2 data on any hard-disk drive, portable storage device, or remote storage installation unless encrypted.

3 E. CONTRACTOR shall be responsible to employ strict controls to ensure the  
4 integrity and security of COUNTY's confidential information and to prevent unauthorized access,  
5 viewing, use or disclosure of data maintained in computer files, program documentation, data  
6 processing systems, data files and data processing equipment which stores or processes COUNTY  
7 data internally and externally.

8 F. Confidential client information transmitted to one party by the other by means of  
9 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of  
10 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

11 G. CONTRACTOR is responsible to immediately notify COUNTY of any  
12 violations, breaches or potential breaches of security related to COUNTY's confidential information,  
13 data maintained in computer files, program documentation, data processing systems, data files and  
14 data processing equipment which stores or processes COUNTY data internally or externally.

15 H. COUNTY shall provide oversight to CONTRACTOR's response to all incidents  
16 arising from a possible breach of security related to COUNTY's confidential client information  
17 provided to CONTRACTOR. CONTRACTOR will be responsible to issue any notification to  
18 affected individuals as required by law or as deemed necessary by COUNTY in its sole discretion.  
19 CONTRACTOR will be responsible for all costs incurred as a result of providing the required  
20 notification.

21 **13. NON-DISCRIMINATION**

22 During the performance of this Agreement, CONTRACTOR shall not unlawfully  
23 discriminate against any employee or applicant for employment, or recipient of services, because of  
24 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical  
25 condition, genetic information, marital status, sex, gender, gender identity, gender expression, age,  
26 sexual orientation, or military or veteran status pursuant to all applicable State of California and  
27 Federal statutes and regulations.

28 ///

1           **14.    DISCLOSURE OF SELF-DEALING TRANSACTIONS**

2           This provision is only applicable if the CONTRACTOR is operating as a corporation (a  
3 for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR  
4 changes its status to operate as a corporation.

5           Members of the CONTRACTOR’s Board of Directors shall disclose any self-dealing  
6 transactions that they are a party to while CONTRACTOR is providing goods or performing services  
7 under this agreement. A self-dealing transaction shall mean a transaction to which the  
8 CONTRACTOR is a party and in which one or more of its directors has a material financial interest.  
9 Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to  
10 by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A  
11 and incorporated herein by reference, and submitting it to the COUNTY prior to commencing with the  
12 self-dealing transaction or immediately thereafter.

13           **15.    LICENSES/CERTIFICATION**

14           CONTRACTOR shall throughout the term of this Agreement, maintain all necessary  
15 licenses, permits, certificates, and board registrations necessary for the provision of the services  
16 hereunder and required by the laws and regulations of the United States of America, State of  
17 California, Fresno County and any other applicable government agencies. CONTRACTOR shall  
18 notify COUNTY immediately in writing of its inability to obtain or maintain such licenses, permits,  
19 certificates, and board registrations, irrespective of the pendency of any appeal related thereto.  
20 Additionally, CONTRACTOR shall comply with all other applicable laws, rules or regulations, as any  
21 may now exist or be hereafter changed.

22           **16.    AUDITS AND INSPECTIONS**

23           CONTRACTOR shall at any time during business hours, and as often as the COUNTY  
24 may deem necessary, make available to the COUNTY for examination all of its records and data with  
25 respect to the matters covered by this Agreement. CONTRACTOR shall, upon request by the  
26 COUNTY, permit the COUNTY to audit and inspect all such records and data necessary to ensure  
27 CONTRACTOR's compliance with the terms of this Agreement.

28           If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00),

1 CONTRACTOR shall be subject to the examination and audit of the State Auditor for a period of  
2 three (3) years after final payment under contract (Government Code Section 8546.7).

3 **17. NOTICES**

4 The persons and their addresses having authority to give and receive notices under this  
5 Agreement include the following:

6 COUNTY

7 Director, County of Fresno  
8 Department of Public Health  
9 P.O. Box 11867  
Fresno, CA 93775

CONTRACTOR

Godfred L. Masinde, PhD.  
700 Cabada Drive  
Brentwood, CA 94513

10 Any and all notices between the COUNTY and the CONTRACTOR provided for or  
11 permitted under this Agreement or by law shall be in writing and shall be deemed duly served when  
12 personally delivered to one of the parties, or in lieu of such personal service, when deposited in the  
13 United States Mail, postage prepaid, addressed to such party.

14 **18. GOVERNING LAW**

15 The parties agree, that for the purposes of venue, performance under this Agreement is  
16 to be in Fresno County, California.

17 The rights and obligations of the parties and all interpretation and performance of this  
18 Agreement shall be governed in all respects by the laws of the State of California.

19 **19. SEVERABILITY**

20 The provisions of this Agreement are severable. The invalidity or unenforceability of  
21 any one provision in the Agreement shall not affect the other provisions.

22 **20. ENTIRE AGREEMENT**

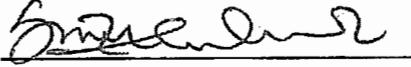
23 This Agreement, including all Exhibits, constitutes the entire agreement between the  
24 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous  
25 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and  
26 understanding of any nature whatsoever unless expressly included in this Agreement.

27 ///

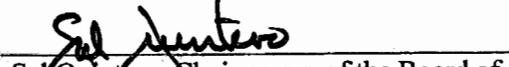
28 ///

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
2 day and year first hereinabove written.

3 **CONTRACTOR:**  
4 **GODFRED L. MASINDE, PhD**

5 

**COUNTY OF FRESNO:**

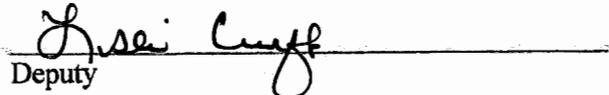
6   
7 Sal Quintero, Chairperson of the Board of  
8 Supervisors of the County of Fresno

9 Mailing Address:

10 ~~34467 Yale Street~~ *Am 5/23/18*  
11 ~~Yucaipa, CA 92399~~  
12 **700 CABADA DR**  
13 **BRENTWOOD, CA**  
14 **94513**

15 **ATTEST:**  
16 **BERNICE E. SEIDEL**  
17 **CLERK OF THE BOARD OF SUPERVISORS**  
18 **COUNTY OF FRESNO, STATE OF CALIFORNIA**

19 By:

20   
21 Deputy

22 **FOR ACCOUNTING USE ONLY:**

23 Fund No: 0001  
24 Subclass: 10000  
25 Organization: 56201620  
26 Account #: 7295  
27  
28

## SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest.”*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the Corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	