

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is dated August 20, 2024, and is between Occu-Med, Ltd., a Delaware corporation, whose address is 2121 West Bullard Avenue, Fresno, CA 93711, (“Contractor”), and the COUNTY OF FRESNO, a political subdivision of the State of California (“County”).

Recitals

A. WHEREAS, the County is in need of DMV, pre-employment, and periodic medical screening and evaluation services to be conducted by qualified licensed Physicians as required by the State of California; and

B. WHEREAS, the County issued Request for Proposal No. 24-049 on March 18, 2024, (“RFP No. 24-049”) for the provision of these medical screening and evaluation services; and received two vendor proposals by the closing deadline; and

C. WHEREAS, the County evaluated all proposals and determined the Contractor to be the most responsive, responsible bidder whose proposal is the most advantageous to the County; and

D. WHEREAS, the Contractor represents that it is willing and able to provide these services to the County pursuant to the terms of this Agreement.

The parties therefore agree as follows:

Article 1

Contractor’s Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

1.4 **Confidentiality and Data Security.** Contractor shall comply with all provisions of Exhibit E to this Agreement, titled “Confidentiality and Data Security.”

1 3.4 **Payment.** The County shall pay each correctly completed and timely submitted invoice within
2 45 days after receipt. The County shall remit any payment to the Contractor’s address specified in the
3 invoice.

4 3.5 **Incidental Expenses.** The Contractor is solely responsible for all of its costs and expenses
5 that are not specified as payable by the County under this Agreement.

6 **Article 4**

7 **Term of Agreement**

8 4.1 **Term.** This Agreement is effective on September 1, 2024 and terminates on August 31,
9 2027, except as provided in section 4.2, “Extension,” or Article 6, “Termination and Suspension,” below.

10 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-year
11 periods only upon written approval of both parties at least 30 days before the first day of the next one-
12 year extension period. The Director of Human Resources or his or her designee is authorized to sign the
13 written approval on behalf of the County based on the Contractor’s satisfactory performance. The
14 extension of this Agreement by the County is not a waiver or compromise of any default or breach of this
15 Agreement by the Contractor existing at the time of the extension whether or not known to the County.

16 **Article 5**

17 **Notices**

18 5.1 **Contact Information.** The persons and their addresses having authority to give and receive
19 notices provided for or permitted under this Agreement include the following:

20 **For the County:**
21 Department of Human Resources
22 County of Fresno
23 2220 Tulare St, 14th Floor
24 Fresno, CA 93721
25 Email: HREmploymentServices@fresnocountyca.gov

26 **For the Contractor:**
27 Occu-Med
28 2121 West Bullard
Fresno, CA 93711
info@occu-med.com

5.2 **Change of Contact Information.** Either party may change the information in section 5.1 by
giving notice as provided in section 5.3.

1 (A) Upon determining that a breach (as defined in paragraph (C) below) has occurred, the
2 County may give written notice of the breach to the Contractor. The written notice may suspend
3 performance under this Agreement, and must provide at least 30 days for the Contractor to cure
4 the breach.

5 (B) If the Contractor fails to cure the breach to the County's satisfaction within the time stated
6 in the written notice, the County may terminate this Agreement immediately.

7 (C) For purposes of this section, a breach occurs when, in the determination of the County,
8 the Contractor has:

9 (1) Obtained or used funds illegally or improperly;

10 (2) Failed to comply with any part of this Agreement;

11 (3) Submitted a substantially incorrect or incomplete report to the County; or

12 (4) Improperly performed any of its obligations under this Agreement.

13 **6.3 Termination without Cause.** In circumstances other than those set forth above, the County
14 may terminate this Agreement by giving at least 30 days advance written notice to the Contractor.

15 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County under
16 this Article 6 is without penalty to or further obligation of the County.

17 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article 6, the
18 County may demand repayment by the Contractor of any monies disbursed to the Contractor under this
19 Agreement that, in the County's sole judgment, were not expended in compliance with this Agreement.
20 The Contractor shall promptly refund all such monies upon demand. This section survives the
21 termination of this Agreement.

22 **Article 7**

23 **Independent Contractor**

24 **7.1 Status.** In performing under this Agreement, the Contractor, including its officers, agents,
25 employees, and volunteers, is at all times acting and performing as an independent contractor, in an
26 independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or
27 associate of the County.
28

1 all of the Contractor's records and data with respect to the matters covered by this Agreement,
2 excluding attorney-client privileged communications. The Contractor shall, upon request by the County,
3 permit the County to audit and inspect all of such records and data to ensure the Contractor's
4 compliance with the terms of this Agreement.

5 **10.2 State Audit Requirements.** If the compensation to be paid by the County under this
6 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the California
7 State Auditor, as provided in Government Code section 8546.7, for a period of three years after final
8 payment under this Agreement. This section survives the termination of this Agreement.

9 **10.3 Public Records.** The County is not limited in any manner with respect to its public disclosure
10 of this Agreement or any record or data that the Contractor may provide to the County. The County's
11 public disclosure of this Agreement or any record or data that the Contractor may provide to the County
12 may include but is not limited to the following:

13 (A) The County may voluntarily, or upon request by any member of the public or
14 governmental agency, disclose this Agreement to the public or such governmental agency.

15 (B) The County may voluntarily, or upon request by any member of the public or
16 governmental agency, disclose to the public or such governmental agency any record or data
17 that the Contractor may provide to the County, unless such disclosure is prohibited by court
18 order.

19 (C) This Agreement, and any record or data that the Contractor may provide to the County, is
20 subject to public disclosure under the Ralph M. Brown Act (California Government Code, Title 5,
21 Division 2, Part 1, Chapter 9, beginning with section 54950).

22 (D) This Agreement, and any record or data that the Contractor may provide to the County, is
23 subject to public disclosure as a public record under the California Public Records Act (California
24 Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA").

25 (E) This Agreement, and any record or data that the Contractor may provide to the County, is
26 subject to public disclosure as information concerning the conduct of the people's business of
27 the State of California under California Constitution, Article 1, section 3, subdivision (b).
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1 (F) Any marking of confidentiality or restricted access upon or otherwise made with respect
2 to any record or data that the Contractor may provide to the County shall be disregarded and
3 have no effect on the County's right or duty to disclose to the public or governmental agency any
4 such record or data.

5 10.4 **Public Records Act Requests.** If the County receives a written or oral request under the
6 CPRA to publicly disclose any record that is in the Contractor's possession or control, and which the
7 County has a right, under any provision of this Agreement or applicable law, to possess or control, then
8 the County may demand, in writing, that the Contractor deliver to the County, for purposes of public
9 disclosure, the requested records that may be in the possession or control of the Contractor. Within five
10 business days after the County's demand, the Contractor shall (a) deliver to the County all of the
11 requested records that are in the Contractor's possession or control, together with a written statement
12 that the Contractor, after conducting a diligent search, has produced all requested records that are in the
13 Contractor's possession or control, or (b) provide to the County a written statement that the Contractor,
14 after conducting a diligent search, does not possess or control any of the requested records. The
15 Contractor shall cooperate with the County with respect to any County demand for such records. If the
16 Contractor wishes to assert that any specific record or data is exempt from disclosure under the CPRA
17 or other applicable law, it must deliver the record or data to the County and assert the exemption by
18 citation to specific legal authority within the written statement that it provides to the County under this
19 section. The Contractor's assertion of any exemption from disclosure is not binding on the County, but
20 the County will give at least 10 days' advance written notice to the Contractor before disclosing any
21 record subject to the Contractor's assertion of exemption from disclosure. The Contractor shall
22 indemnify the County for any court-ordered award of costs or attorney's fees under the CPRA that
23 results from the Contractor's delay, claim of exemption, failure to produce any such records, or failure to
24 cooperate with the County with respect to any County demand for any such records.

25 **Article 11**

26 **Disclosure of Self-Dealing Transactions**

27 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a corporation, or
28 changes its status to operate as a corporation.

1 11.2 **Duty to Disclose.** If any member of the Contractor’s board of directors is party to a self-
2 dealing transaction, he or she shall disclose the transaction by completing and signing a “Self-Dealing
3 Transaction Disclosure Form” (Exhibit C to this Agreement) and submitting it to the County before
4 commencing the transaction or immediately after.

5 11.3 **Definition.** “Self-dealing transaction” means a transaction to which the Contractor is a party
6 and in which one or more of its directors, as an individual, has a material financial interest.

7 **Article 12**

8 **General Terms**

9 12.1 **Modification.** Except as provided in Article 6, “Termination and Suspension,” this Agreement
10 may not be modified, and no waiver is effective, except by written agreement signed by both parties.
11 The Contractor acknowledges that County employees have no authority to modify this Agreement
12 except as expressly provided in this Agreement.

13 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations under this
14 Agreement without the prior written consent of the other party.

15 12.3 **Governing Law.** The laws of the State of California govern all matters arising from or related
16 to this Agreement.

17 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno County,
18 California. Contractor consents to California jurisdiction for actions arising from or related to this
19 Agreement, and, subject to the Government Claims Act, all such actions must be brought and
20 maintained in Fresno County.

21 12.5 **Construction.** The final form of this Agreement is the result of the parties’ combined efforts.
22 If anything in this Agreement is found by a court of competent jurisdiction to be ambiguous, that
23 ambiguity shall not be resolved by construing the terms of this Agreement against either party.

24 12.6 **Days.** Unless otherwise specified, “days” means calendar days.

25 12.7 **Headings.** The headings and section titles in this Agreement are for convenience only and
26 are not part of this Agreement.

27 12.8 **Severability.** If anything in this Agreement is found by a court of competent jurisdiction to be
28 unlawful or otherwise unenforceable, the balance of this Agreement remains in effect, and the parties

1 shall make best efforts to replace the unlawful or unenforceable part of this Agreement with lawful and
2 enforceable terms intended to accomplish the parties' original intent.

3 12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall not
4 unlawfully discriminate against any employee or applicant for employment, or recipient of services,
5 because of race, religious creed, color, national origin, ancestry, physical disability, mental disability,
6 medical condition, genetic information, marital status, sex, gender, gender identity, gender expression,
7 age, sexual orientation, military status or veteran status pursuant to all applicable State of California and
8 federal statutes and regulation.

9 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation of the
10 Contractor under this Agreement on any one or more occasions is not a waiver of performance of any
11 continuing or other obligation of the Contractor and does not prohibit enforcement by the County of any
12 obligation on any other occasion.

13 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement between
14 the Contractor and the County with respect to the subject matter of this Agreement, and it supersedes
15 all previous negotiations, proposals, commitments, writings, advertisements, publications, and
16 understandings of any nature unless those things are expressly included in this Agreement. If there is
17 any inconsistency between the terms of this Agreement without its exhibits and the terms of the exhibits,
18 then the inconsistency will be resolved by giving precedence first to the terms of this Agreement without
19 its exhibits, and then to the terms of the exhibits.

20 12.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to create any
21 rights or obligations for any person or entity except for the parties.

22 12.13 **Authorized Signature.** The Contractor represents and warrants to the County that:

23 (A) The Contractor is duly authorized and empowered to sign and perform its obligations
24 under this Agreement.

25 (B) The individual signing this Agreement on behalf of the Contractor is duly authorized to do
26 so and his or her signature on this Agreement legally binds the Contractor to the terms of this
27 Agreement.
28

1 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
2 electronic signature as provided in this section.

3 (A) An “electronic signature” means any symbol or process intended by an individual signing
4 this Agreement to represent their signature, including but not limited to (1) a digital signature; (2)
5 a faxed version of an original handwritten signature; or (3) an electronically scanned and
6 transmitted (for example by PDF document) version of an original handwritten signature.

7 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent
8 to a valid original handwritten signature of the person signing this Agreement for all purposes,
9 including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2)
10 has the same force and effect as the valid original handwritten signature of that person.

11 (C) The provisions of this section satisfy the requirements of Civil Code section 1633.5,
12 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5,
13 beginning with section 1633.1).

14 (D) Each party using a digital signature represents that it has undertaken and satisfied the
15 requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and
16 agrees that each other party may rely upon that representation.

17 (E) This Agreement is not conditioned upon the parties conducting the transactions under it
18 by electronic means and either party may sign this Agreement with an original handwritten
19 signature.

20 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an original,
21 and all of which together constitute this Agreement.

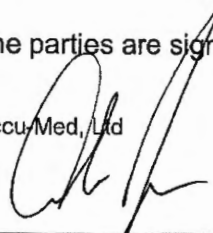
22 ***[SIGNATURE PAGE FOLLOWS]***


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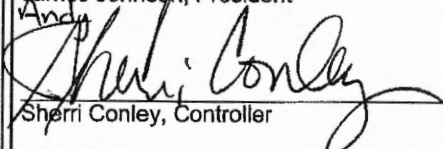
1 The parties are signing this Agreement on the date stated in the introductory clause.

2 Occu Med, Ltd

COUNTY OF FRESNO

3
4 
5 James Johnson, President


Nathan Magsig, Chairman of the Board of Supervisors of
the County of Fresno

6 
7 Sherri Conley, Controller

Attest:
Bernice Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

8 2121 W. Bullard Avenue
Fresno, CA 93711

By: 
Deputy

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10 For accounting use only:

11 Org No.:
12 Account No.:
13 Fund No.:
14 Subclass No.

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Exhibit A

SCOPE OF SERVICES

I. Background

Contractor shall perform medical examinations, screenings, and evaluations for certain job classifications selected by the County and develop job-related medical standards/guidelines.

All information developed including, but not limited to, job analyses, guidelines, screenings, and evaluations will become the property of the County and may be utilized by the County in any way, even after termination of Agreement with the Contractor. The County will also require copies of any guidelines, screenings, and evaluations developed for use as part of the administration of the medical standards process.

The County requires medical screening and examinations for job classifications that are physically demanding, and/or are required in compliance with applicable laws and regulations.

A. Medical standards, guidelines, and evaluations developed for use with the County's medical provider's medical screening and examination results will be used to:

- 1) Detect and document pre-existing medical conditions;
- 2) Ensure that the requisite physical requirements for proper job performance are met so as to promote safety with regard to the employee/job applicant, other employees, and members of the public;
- 3) Provide a legally defensible tool for making decisions about medical screening, rehabilitation, transfer and promotion; and establish the potential to identify applicants and job classifications in need of reasonable accommodation to satisfy the legal requirements of applicable laws and statutes including the Vocational Rehabilitation Act and the Americans with Disabilities Act.

B. Consistent with the County's current practice, the Contractor shall:

- 1) Conduct a medical exam and provide a medical review and evaluation program for all identified job profiles including, but not limited to, the following series': Communications Dispatcher; Community Service Officer; Correctional Officer; Deputy Coroner; Deputy Probation Officer; Deputy Sheriff; District Attorney Investigator; Forensic Autopsy Technician; and Juvenile Correctional Officer. The medical review and evaluation program may include revisions to full analyses;
- 2) Conduct job analyses and update existing medical standards and medical examination profiles, as needed, to comply with legal requirements including, but not limited to, the Americans with Disabilities Act, California Commission on Peace Officer Standards and Training, and California Board of State and Community Corrections – Standards and Training for Corrections;

Exhibit A

- 3) Develop medical exam profiles, standards, and screening guidelines for additional job classifications as designated by the County;
- 4) Ensure complete, thorough, and accurate information is obtained through the screening and examination process, evaluate the information with the medical standards/guidelines for the job classification, and make the final recommendation regarding medical qualification for placement decisions;
- 5) Be available to assist in the interpretation of existing and/or new laws and regulations affecting the medical examination standards and guidelines.

Medical examinations are administered to ensure that: 1) an individual is medically qualified to perform effectively the duties normally associated with a position in a specific job classification; and 2) an individual, in performing a position's duties, does not present a hazard to the health and safety of self, co-workers, or the public.

The medical examination program applies to permanent positions in both the classified and unclassified service:

- Classified service includes those positions which entitle incumbents to civil service status, which gives them the right of appeal from certain disciplinary actions including dismissal, once they've successfully completed the probationary period. Selection and retention for these positions are on the basis of merit principles.
- Unclassified service includes positions in which incumbents are exempt from civil service status.

Additionally, under certain specific situations, medical examinations may be administered to extra-help (temporary) employment prospects. This is generally the case with those job classification series' regulated by the California Commission on Peace Officer Standards and Training and California Board of State and Community Corrections – Standards and Training for Corrections.

C. Medical Groups Defined

Each classification is assigned by the Director of Human Resources to one of five medical group descriptions based upon the usual working conditions and duties of positions in the classification. The medical examinations shall utilize the appropriate medical group description information applying the medical standards to an individual examinee.

As defined by Fresno County Personnel Rule 8 (Located at <https://www.fresnocountyca.gov/Departments/Human-Resources/References>) The following are the medical group descriptions and the distinguishing criteria:

- 1) **Medical Group I – Light Physical Activity:** This group includes positions which require only light physical effort and may include lifting of small, light objects and some bending, stooping, squatting, twisting, and reaching. Considerable walking or standing may be involved.

Exhibit A

- 2) **Medical Group II – Moderate Physical Activity:** This group includes positions which require moderate physical effort using arms, legs, back, and trunk in frequent lifting, pushing, or pulling of objects weighing (or offering resistance equivalent to) 10-25 pounds, and occasionally over 25 pounds. Generally, bending, stooping, squatting, twisting, reaching, as well as standing and walking are involved.
- 3) **Medical Group III - Heavy Physical Activity:** This group includes positions which require heavy physical effort using arms, legs, back, and trunk in frequent lifting, pushing, or pulling objects weighing (or offering resistance equivalent to) over 25 pounds. Generally, considerable bending, stooping, squatting, twisting, reaching, as well as standing and walking are involved. Physical stamina is usually required and explosive strength using bursts of energy may be required, depending upon specific position assignments.
- 4) **Medical Group IV – Safety Officer:** This group includes law enforcement positions which are covered by the Safety Officer provisions of the County's retirement plan. Sound physical condition in all respects is required because of exposure to and need to counteract and control violent action or behavior. Heavy physical activity as described in Medical Group III may be encountered occasionally to frequently, depending upon specific assignments and emergency situations.
- 5) **Medical Group V – Safety Officer (Sworn):** This group includes law enforcement positions which are covered by the Safety Officer provisions of the County's retirement plan. The same physical fitness requirements exist as for Group IV. However, positions within Group V are exposed more frequently to hostile environments in which heavy physical demands such as running, jumping, and climbing occur. Also, positions within Group V more frequently are involved in situations in which the incumbent must be able to handle specific physical actions individually without immediate assistance.

D. Medical Examinations Required

Medical examinations are used by the County to make employment decisions consistent with business necessity and specifically related to the job for which an applicant or employee is being considered. Medical examinations are utilized by the County to determine if an applicant/employee can perform the essential functions of the job classification safely, with or without reasonable accommodation as defined by applicable laws and regulations.

II. Medical Examinations

The County's medical examination program includes pre-placement (post-offer of employment) medical exams, Department of Motor Vehicle (DMV) exams, and periodic exams. The medical examination shall consist of a physical exam to ensure that applicants/employees are both medically qualified to perform the essential functions of the positions, and are able to perform their duties without endangering the health and safety of themselves, co-workers, or the public. On average, the County requires approximately 22 medical examinations be conducted per month, for all types of exams as enumerated below.

Exhibit A

A. Types of Exams:

- 1) Pre-placement exams are for all persons selected for prospective employment (new hires, promotions, etc.) within certain job classifications. These applicants/employees are required to complete a pre-employment medical history form and undergo a medical examination before beginning work.
- 2) DMV exams are for all persons occupying job classifications that are required to drive certain types of vehicles (based on gross weight, passenger ability of 16 or more, or transports certain hazardous materials) requiring DMV Class A or B licensure pursuant to the Code of Federal regulations, Title 49. Affected classification series' may include, but are not limited to, Agricultural Standards Specialist, Correctional Officer, Deputy Sheriff, Driver, Juvenile Correctional Officer, Parks Groundskeeper, Road Equipment Operator, Stock Clerk, and Traffic Equipment Operator.
- 3) Periodic exams may be required for all persons within safety officer job classifications that are medically examined: employees under age 45 may be examined every third year after employment; employees 45 years and older may be examined annually. (Note – periodic exams are not currently conducted, however, approximately 300 per year would be conducted should they be requested.)

The County's medical examination program is subject to the federal Americans with Disabilities Act and California's Fair Employment and Housing Act. These laws require employers to afford any "qualified individual with a disability" equal opportunity to compete for, secure, and retain employment. Barring undue hardship or health and safety issues, this includes providing reasonable accommodations to applicants and candidates, while ensuring that any medical criteria is job-related, reflect only what is required to perform the essential functions of a position, and do not screen out otherwise qualified individuals simply due to the presence of a disease or disability. The medical criteria for County classifications differ depending upon the demands of the job. The most stringent apply to law enforcement classifications which include, but are not limited to, positions in the Correctional Officer, Deputy Sheriff, Deputy Probation Officer, District Attorney Investigator, and Juvenile Correctional Officer classification series'. The County's medical criteria for these classifications combine applicable standards from the California Commission on Peace Officer Standards and Training, California Board of State and Community Corrections – Standards and Training for Corrections, federal Department of Transportation regulations (for DMV exams), and County job descriptions and essential functions of positions.

III. Goals

The specific goals in applying comprehensive job-related medical standards/guidelines and a medical review program are to:

- 1) Provide a valid and legally defensible job analysis of the critical and essential functions performed, and the physically demanding tasks associated with each of the designated classifications. The County expects job analyses to be conducted using techniques which are generally professionally acceptable and

Exhibit A

consistent with either the Uniform Guidelines on Employee Selection Procedure or other standards developed by recognized professional groups specializing in issues of selection and industrial or organizational psychology or ergonomics.

- 2) Provide a set of medical screening standards or medical screening guidelines that contain those medical conditions likely to be found in the applicant population. Special emphasis should be placed on those medical conditions likely to lead to serious disability, e.g., musculoskeletal, respiratory, or cardiovascular body system.
- 3) Define the specific medical protocols (examination procedures and laboratory tests) which should be used in examining applicants/employees for each of the identified classifications; recommend new medical history forms and provide other necessary reporting forms.
- 4) Describe and recommend a medical screening procedure and process which includes the ability to reasonably accommodate individuals with disabilities in accordance with the regulations including, but not limited to, the Vocational Rehabilitation Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, the Civil Rights Act, and the Uniform Guidelines on Employee Selection Procedures.
- 5) Ensure the medical screening program, medical protocols, procedures, and medical standards/guidelines work to ensure that applicants/employees who are eventually hired/selected will be able to perform in their position without endangering the health or safety of self, other employees, or the general public.
- 6) Implement a medical review program for identified classifications to include a review of all medical examinations and the application of medical standards to medical examination results.

IV. Description of Work/Services to be Performed

- 1) Develop medical standards and/or guidelines that will assist the examining physician in determining applicant/employee ability to perform safely and with a minimal level of risk of injury to him/herself or others. Each medical standard/guideline must be linked to the job classification or position requirements and essential functions as measured by the job analysis.
- 2) Ensure the resulting medical screening standards/guidelines are acceptable and legally defensible under applicable laws and regulations. Schedule and conduct medical examinations within ten (10) County business days from the date of request, unless agreed upon by County and contracted vendor.
- 3) Provide applicant /employee medical recommendations to designated County staff within three (3) County business days from the date of completed medical exam. Should the information be incomplete or require additional follow up, contractor will notify designated County staff of delay within three (3) County business days from the date of medical exam.

Exhibit A

- 4) Maintain effective verbal and written communication with designated County staff.
- 5) Provide updates to the County regarding significant medical and legal issues relating to medical screening; make recommendations regarding the need for updates and modifications to job analysis and medical exam profiles.
- 6) Train physicians and ancillary staff conducting medical examinations about the requirements of the County, including information about the job profile and medical examination requirements; training shall include written guidelines for medical exam staff as well as on-site training on an as-needed basis as determined by contractor, medical exam staff, and/or County.
- 7) Provide a medical examination review and quality assurance process that includes a review of the medical examination documentation, application of medical standards, a disqualification report, and recommendations for reasonable accommodation if appropriate and consistent with the medical profile.
- 8) Contractor must retain a physician on staff who participates in the development and update of medical standards/guidelines process as well as the review of medical examination results provided by the medical examination staff.
- 9) Upon request, provide detailed reports including information such as utilization, types of medical examinations reviewed, job profiles updated/developed, cost, etc.
- 10) Provide monthly invoices (same date each month) for services rendered with the following information:
 - Invoice date
 - Invoice/account number
 - Amount due
 - Payment due date (invoice terms are net 45 days)
 - Addressed to Human Resources, 2220 Tulare St, 14th Floor, Fresno, CA 93721
 - Payment remittance address; contact information
 - List of services provided for invoice period including the following, as applicable:
 - Examinee name
 - Type of examination
 - Job classification
 - Date service rendered
 - Medical profiles/screening guidelines developed or updated

Exhibit B

Compensation

The Contractor will be compensated for performance of its services under this Agreement as provided in this Exhibit B. The Contractor is not entitled to any compensation except as expressly provided in this Exhibit B.

Medical Examination (cost per exam)

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Pre-Placement					
Chief Probation Officer	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Probation Division Director	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Probation Services Manager	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Deputy Probation Officer III/IV	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Deputy Probation Officer I	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Supervising Juvenile Correctional Officer	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Senior Juvenile Correctional Officer	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Juvenile Correctional Officer II	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Juvenile Correctional Officer I	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Sheriff's Captain	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Sheriff's Lieutenant	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Sheriff's Sergeant	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Deputy Sheriff III	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Deputy Sheriff II	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Deputy Sheriff I	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Reserve Officer	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Uniform Field Division Reserve Deputy Sheriff (UFD)					
Reserve Deputy Sheriff (Special Guard – 108)	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Communications Dispatcher	\$182.00	\$191.10	\$200.66	\$210.69	\$221.22
Community Service Officer	\$235.75	\$247.54	\$259.91	\$272.91	\$286.56

Exhibit B

Correctional Officer Lieutenant	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Correctional Officer Sergeant	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Correctional Officer IV	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Correctional Officer I/II/III	\$643.60	\$675.78	\$709.57	\$745.05	\$782.30
Supervising District Attorney Investigator	\$458.60	\$481.53	\$505.61	\$530.89	\$557.43
District Attorney Investigator I/II/Sr	\$644.20	\$697.41	\$732.28	\$768.89	\$807.34
Deputy Coroner I	\$256.35	\$269.17	\$282.63	\$296.76	\$311.60
Forensic Autopsy Technician	\$256.35	\$269.17	\$282.63	\$296.76	\$311.60
DMV	\$105.00	\$110.25	\$115.76	\$121.55	\$127.63
Periodic	Same as Pre-Placement	Same as Pre-Placement	Same as Pre-Placement	Same as Pre-Placement	Same as Pre-Placement

Medical Examination Review (cost per exam)

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Pre-Placement	\$80.00	\$84.00	\$88.20	\$92.61	\$97.24
DMV	\$40.00	\$42.00	\$44.10	\$46.31	\$48.62
Periodic	\$80.00	\$84.00	\$88.20	\$92.61	\$97.24

Medical Profiles/Screening Guidelines

- Updates of current medical profile per classification
- Development of new medical profiles per classification

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Job Analysis	\$2,000/day	\$2,000/day	\$2,000/day	\$2,000/day	\$2,000/day

Additional Services

Service	Year 1	Year 2	Year 3	Year 4	Year 5
MECP Creation	\$50 each	\$50 each	\$50 each	\$50 each	\$50 each

Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("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 used 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.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

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

Exhibit D

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (D) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (E) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor's obligations under to maintain the security of County's data; (iv) system failure; (v) data recover; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix)

Exhibit D

infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.
- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
 - (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
 - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

Exhibit D

- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

Exhibit E

Confidentiality and Data Security

1. Definitions

13.16 Capitalized terms used in this Exhibit E have the meanings set forth in this section 1.

- a. **“Authorized Employees”** means the Contractor’s employees who have access to Personal Information or Privileged Information.
- b. **“Authorized Persons”** means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit E.
- c. **“Director”** means the County’s Director Internal Services/Chief Information officer or their designee.
- d. **“Disclose”** or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.
- e. **“Person”** means any natural person, corporation, partnership, limited liability company, firm, or association.
- f. **“Personal Information”** means any and all information, including any data, provided, or to which access is provided, to the Contractor by or upon the authorization of the County, under this Agreement, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or (iii) is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e). Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- g. **“Privacy Practices Complaint”** means a complaint received by the County relating to the Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit E.
- h. **“Privileged Information”** means any and all information, including any data, provided, or to which access is provided, to the Contractor by or upon the authorization of the County or any attorney of the County, under this agreement, including but not limited to any or all of the following: (i) records pertaining to pending litigation to which the County

Exhibit E

is party, or to claims made pursuant to the Government Claims Act (Gov. Code, Tit. 1, Div. 3.6, beginning with section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled, which are exempt from disclosure under Government Code section 6254, subdivision (b); (ii) any information that is subject to the attorney-client privilege, which includes but is not limited to a “confidential communication between client and lawyer,” as that term is defined in Evidence Code section 952, where the County is the client and any attorney of the County is the lawyer, and the Contractor may be serving as a representative of the County, as an intermediate representative for communication between the County and any attorney of the County, or both; or (iii) both (i) and (ii).

For purposes of a “confidential communication between client and lawyer” under this Agreement, the Contractor is presumed to be present to further the interest of the County in its consultation with an attorney of the County, reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the attorney of the County is consulted, or both.

The Contractor acknowledges that the attorney-client privilege protecting Privileged Information belongs to the County and may only be waived by the County’s Board of Supervisors, and may not be waived by any other County official. The Contractor has no right or authority to waive the attorney-client privilege that belongs to the County.

- i. **“Security Safeguards”** means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in section 3(C) of this Exhibit E.
 - j. **“Security Breach”** means (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, any Personal Information.
 - k. **“Use”** or any derivative of that word means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.
2. **Standard of Care**
- a. The Contractor acknowledges that, in the course of its engagement by the County under this Agreement, the Contractor, or any Authorized Persons, may Use Personal Information and Privileged Information only as permitted in this Agreement.
 - b. The Contractor acknowledges that Personal Information and Privileged Information is deemed to be confidential information of, or owned by, the County (or persons from whom the County receives or has received Personal Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information or the Privileged Information remains in the County (or persons from whom the County receives or has received Personal Information or Privileged Information)

Exhibit E

regardless of the Contractor's, or any Authorized Person's, Use of that Personal Information or that Privileged Information.

- c. The Contractor agrees and covenants in favor of the County that the Contractor shall:
 - i. keep and maintain all Personal Information and all Privileged Information in strict confidence, using such degree of care under this section 2 as is reasonable and appropriate to avoid a Security Breach;
 - ii. Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit E;
 - iii. Use Privileged Information exclusively for the purposes for which the Privileged Information is made accessible to the Contractor pursuant to the terms of this Exhibit E;
 - iv. not Use, Disclose, sell, rent, license, or otherwise make available Personal Information or Privileged Information for the Contractor's own purposes or for the benefit of anyone other than the County, without the County's express prior written consent, which the County may give or withhold in its sole and absolute discretion;
 - v. not, directly or indirectly, Disclose Personal Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to this Agreement, without the express prior written consent the Director; and
 - vi. not, directly or indirectly, Disclose Privileged Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to this Agreement, without the express prior written consent of the County's Board of Supervisors.
- d. Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information or Privileged Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, Contractor shall (i) immediately notify the County of the specific demand for, and legal authority for the disclosure, including providing County with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in relation to any legal proceeding, and (ii) promptly notify the County before such Personal Information is offered by the Contractor for such disclosure so that the County may have sufficient time to obtain a court order or take any other action the County may deem necessary to protect the Personal Information or the Privileged Information from such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such disclosure of such Personal Information or Privileged Information.
- e. The Contractor shall remain liable to the County for the actions and omissions of any Unauthorized Third Party concerning its Use of such Personal Information or Privileged Information as if they were the Contractor's own actions and omissions.

Exhibit E

3. Information Security

- a. The Contractor covenants, represents and warrants to the County that the Contractor's Use of Personal Information and Privileged Information under this Agreement does and will at all times comply with all applicable federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor Uses credit, debit or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- b. The Contractor covenants, represents and warrants to the County that, as of the effective date of this Agreement, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by, any government regulatory authority regarding same.
- c. Without limiting the Contractor's obligations under section 3(A) of this Exhibit E, the Contractor's (or Authorized Person's) Security Safeguards shall be no less rigorous than accepted industry practices and, at a minimum, include the following:
 - i. limiting Use of Personal Information and Privileged Information strictly to the Contractor's and Authorized Persons' personnel, including technical and administrative personnel, who are necessary for the Contractor's or Authorized Persons' Use of the Personal Information or Privileged pursuant to this Agreement;
 - ii. ensuring that all of the Contractor's connectivity to County computing systems will only be through the County's security gateways and firewalls, and only through security procedures approved upon the express prior written consent of the Director;
 - iii. to the extent that they contain or provide access to Personal Information or Privileged Information, (a) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all mobile devices and other equipment, operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures, both internally and externally, to protect (1) the Personal Information and the Privileged Information from potential loss or misappropriation, or unauthorized Use, and (2) the County's operations from disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within media, computing equipment, operating systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld devices a secure internet

Exhibit E

connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled, all of which is subject to express prior written consent of the Director;

- iv. encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher when Personal Information is (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection, all of which is subject to express prior written consent of the Director);
 - v. strictly segregating Personal Information and Privileged Information from all other information of the Contractor, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that Personal Information and Privileged Information is not commingled with any other types of information;
 - vi. having a patch management process including installation of all operating system and software vendor security patches;
 - vii. maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent with applicable law; and
 - viii. providing appropriate privacy and information security training to Authorized Employees.
- d. During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit E. The Contractor shall maintain a disciplinary process to address any unauthorized Use of Personal Information or Privileged Information by any Authorized Employee.
- e. The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information and Privileged Information received from the County, and the County shall have immediate, real time access, at all times, to such backups via a secure, remote access connection provided by the Contractor, through the Internet.
- f. The Contractor shall provide the County with the name and contact information for each Authorized Employee (including such Authorized Employee's work shift, and at least one alternate Authorized Employee for each Authorized Employee during such work shift) who shall serve as the County's primary security contact with the Contractor and shall be available to assist the County twenty-four (24) hours per day, seven (7) days per week as a contact in resolving the Contractor's and any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.
- g. The Contractor shall not knowingly include or authorize any Trojan Horse, back door, time bomb, drop dead device, worm, virus, or other code of any kind that may disable,

Exhibit E

erase, display any unauthorized message within, or otherwise impair any County computing system, with or without the intent to cause harm.

4. Security Breach Procedures

- a. Immediately upon the Contractor's awareness or reasonable belief of a Security Breach, the Contractor shall (i) notify the Director of the Security Breach, such notice to be given first by telephone at the following telephone number, followed promptly by email at the following email address: (559) 600-6200 / incidents@fresnocountyca.gov (which telephone number and email address the County may update by providing notice to the Contractor), and (ii) preserve all relevant evidence (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall include, to the extent reasonably possible, the identification of each type and the extent of Personal Information, Privileged Information, or both, that has been, or is reasonably believed to have been, breached, including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction, corruption, or damage.
- b. Immediately following the Contractor's notification to the County of a Security Breach, as provided pursuant to section 4(A) of this Exhibit E, the Parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the County, including, without limitation:
 - i. assisting the County in conducting any investigation;
 - ii. providing the County with physical access to the facilities and operations affected;
 - iii. facilitating interviews with Authorized Persons and any of the Contractor's other employees knowledgeable of the matter; and
 - iv. making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the County.

To that end, the Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications required by law and regulation, or deemed reasonably necessary by the County, and the Contractor shall provide a written report of the investigation and reporting required to the Director within 30 days after the Contractor's discovery of the Security Breach.

- c. County shall promptly notify the Contractor of the Director's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of that notification, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit E, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's

Exhibit E

receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the matter is a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to require corrective action and the reason for that determination.

- d. The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. The Contractor shall reimburse the County for all reasonable costs incurred by the County in responding to, and mitigating damages caused by, any Security Breach, including all costs of the County incurred relation to any litigation or other action described section 4(E) of this Exhibit E.
- e. The Contractor agrees to cooperate, at its sole expense, with the County in any litigation or other action to protect the County's rights relating to Personal Information, Privileged Information, or both, including the rights of persons from whom the County receives Personal Information.

5. Oversight of Security Compliance

- a. The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
- b. Upon the County's written request, to confirm the Contractor's compliance with this Exhibit E, as well as any applicable laws, regulations and industry standards, the Contractor grants the County or, upon the County's election, a third party on the County's behalf, permission to perform an assessment, audit, examination or review of all controls in the Contractor's physical and technical environment in relation to all Personal Information and Privileged Information that is Used by the Contractor pursuant to this Agreement. The Contractor shall fully cooperate with such assessment, audit or examination, as applicable, by providing the County or the third party on the County's behalf, access to all Authorized Employees and other knowledgeable personnel, physical premises, documentation, infrastructure and application software that is Used by the Contractor for Personal Information, Privileged Information, or both, pursuant to this Agreement. In addition, the Contractor shall provide the County with the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information Used by the Contractor or Authorized Persons during the course of this Agreement under this Exhibit E.
- c. The Contractor shall ensure that all Authorized Persons who Use Personal Information, Privileged Information, or both, agree to the same restrictions and conditions in this Exhibit E. that apply to the Contractor with respect to such Personal Information and Privileged Information by incorporating the relevant provisions of this Exhibit E into a valid and binding written agreement between the Contractor and such Authorized Persons, or amending any written agreements to provide same.

Exhibit E

6. **Return or Destruction of Personal Information.** Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the County all Personal Information and all Privileged Information, whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a machine readable form used by the County at the time of such return, or upon the express prior written consent of the Director, securely destroy all such Personal Information and all Privileged Information, and certify in writing to the County that such Personal Information and Privileged Information have been returned to the County or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information or Privileged Information, as provided in this Exhibit E, such certification shall state the date, time, and manner (including standard) of disposal and by whom, specifying the title of the individual. The Contractor shall comply with all reasonable directions provided by the Director with respect to the return or disposal of Personal Information and Privileged Information and copies of Personal Information and Privileged Information. If return or disposal of such Personal Information or Privileged Information, or copies of Personal Information or Privileged Information, is not feasible, the Contractor shall notify the County according, specifying the reason, and continue to extend the protections of this Exhibit E to all such Personal Information and Privileged Information, and copies of Personal Information and Privileged Information. The Contractor shall not retain any copy of any Personal Information or any Privileged Information after returning or disposing of Personal Information and Privileged Information as required by this section 6. The Contractor's obligations under this section 6 survive the termination of this Agreement and apply to all Personal Information and Privileged Information that the Contractor retains if return or disposal is not feasible and to all Personal Information and Privileged Information that the Contractor may later discover in its possession or control.

7. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit E may cause the County irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the County is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the County may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available to the County at law or in equity or under this Agreement.

8. **Indemnity.** The Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and agents, (each, a "**County Indemnitee**") from and against any and all infringement of intellectual property including, but not limited to infringement of copyright, trademark, and trade dress, invasion of privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, Personal Information or Privileged Information, Security Breach response and remedy costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, fines and penalties (including regulatory fines and penalties), costs or expenses of whatever kind, including attorneys' fees and costs, the cost of enforcing any right to indemnification or defense under this Exhibit E and the cost of pursuing any insurance providers, arising out of or resulting from any third party claim or action against any County Indemnitee in relation to the Contractor's, its officers, employees, or agents, or any Authorized Employee's or Authorized Person's, performance or failure to perform under this Exhibit E or

Exhibit E

arising out of or resulting from the Contractor's failure to comply with any of its obligations under this section 8. The provisions of this section 8 do not apply to the acts or omissions of the County. The provisions of this section 8 are cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any County Indemnitee under this Agreement. The provisions of this section 8 shall survive the termination of this Agreement.

9. **Survival.** The respective rights and obligations of the Contractor and the County as stated in this Exhibit E shall survive the termination of this Agreement.

10. **No Third Party Beneficiary.** Nothing express or implied in the provisions of in this Exhibit E is intended to confer, nor shall anything in this Exhibit E confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

11. **No County Warranty.** The County does not make any warranty or representation whether any Personal Information or Privileged Information in the Contractor's (or any Authorized Person's) possession or control, or Use by the Contractor (or any Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.

Exhibit F

Health Insurance Portability and Accountability Act

1. The County is a “Covered Entity,” and the Contractor is a “Business Associate,” as these terms are defined by 45 CFR 160.103. In connection with providing services under the Agreement, the parties anticipate that the Contractor will create and/or receive Protected Health Information (“PHI”) from or on behalf of the County. The parties enter into this Business Associate Agreement (BAA) to comply with the Business Associate requirements of HIPAA, to govern the use and disclosures of PHI under this Agreement. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

The parties to this Agreement shall be in strict conformance with all applicable federal and State of California laws and regulations, including, but not limited to California Welfare and Institutions Code sections 5328, 10850, and 14100.2 *et seq.*; 42 CFR 2; 42 CFR 431; California Civil Code section 56 *et seq.*; the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), including, but not limited to, 45 CFR Parts 160, 45 CFR 162, and 45 CFR 164; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) regarding the confidentiality and security of patient information, including, but not limited to 42 USC 17901 *et seq.*; and the Genetic Information Nondiscrimination Act (“GINA”) of 2008 regarding the confidentiality of genetic information.

Except as otherwise provided in this Agreement, the Contractor, as a business associate of the County, may use or disclose Protected Health Information (“PHI”) to perform functions, activities or services for or on behalf of the County, as specified in this Agreement, provided that such use or disclosure shall not violate HIPAA Rules. The uses and disclosures of PHI may not be more expansive than those applicable to the County, as the “Covered Entity” under the HIPAA Rules, except as authorized for management, administrative or legal responsibilities of the Contractor.

2. The Contractor, including its subcontractors and employees, shall protect from unauthorized access, use, or disclosure of names and other identifying information, including genetic information, concerning persons receiving services pursuant to this Agreement, except where permitted in order to carry out data aggregation purposes for health care operations [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A), and 164.504(e)(4)(i)]. This pertains to any and all persons receiving services pursuant to a County-funded program. This requirement applies to electronic PHI. The Contractor shall not use such identifying information or genetic information for any purpose other than carrying out the Contractor’s obligations under this Agreement.

3. The Contractor, including its subcontractors and employees, shall not disclose any such identifying information or genetic information to any person or entity, except as otherwise specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the Secretary of the United States Department of Health and Human Services (“Secretary”), or authorized by the client/patient in writing. In using or disclosing PHI that is permitted by this Agreement or authorized by law, the Contractor shall make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or request.

4. For purposes of the above sections, identifying information shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as fingerprint or voiceprint, or photograph.

Exhibit F

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

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

The Contractor shall make any amendment(s) to PHI in a designated record set at the request of the County or individual, and in the time and manner designated by the County in accordance with 45 CFR § 164.526.

The Contractor shall provide to the County or to an individual, in a time and manner designated by the County, information collected in accordance with 45 CFR § 164.528, to permit the County to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

7. The Contractor shall report to the County, in writing, any knowledge or reasonable belief that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of unsecured PHI not permitted by this Agreement of which the Contractor becomes aware, immediately and without reasonable delay and in no case later than two (2) business days of discovery. Immediate notification shall be made to the County's Information Security Officer and Privacy Officer and the County's Department of Public Health ("DPH") HIPAA Representative, within two (2) business days of discovery. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached. The Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and State laws and regulations. The Contractor shall investigate such breach and is responsible for all notifications required by law and regulation or deemed necessary by the County and shall provide a written report of the investigation and reporting required to the County's Information Security Officer and Privacy Officer and the County's DPH HIPAA Representative.

This written investigation and description of any reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

County of Fresno
Department of Public Health
HIPAA Representative
(559) 600-6439
P.O. Box 11867
Fresno, California 93775

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

County of Fresno
Department of Internal
Services
Information Security Officer
(559) 600-5800
2048 North Fine Street

Exhibit F

Fresno, California 93727

8. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the County, or created or received by the Contractor on behalf of the County, in compliance with Parts the HIPAA Rules. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the County, or created or received by the Contractor on behalf of the County, available to the Secretary upon demand.

The Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the Contractor's normal business hours; however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to the Contractor and in possession of a subcontractor of the Contractor, the Contractor must certify to the Secretary its efforts to obtain the information from the subcontractor.

9. **Safeguards**

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

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

- A. Passwords must **not** be:
 - (1) Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
 - (2) A dictionary word; or
 - (3) Stored in clear text
- B. Passwords must be:
 - (1) Eight (8) characters or more in length;
 - (2) Changed every ninety (90) days;
 - (3) Changed immediately if revealed or compromised; and
 - (4) Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
 - a) Upper case letters (A-Z);

Exhibit F

- b) Lowercase letters (a-z);
- c) Arabic numerals (0 through 9); and
- d) Non-alphanumeric characters (punctuation symbols).

The Contractor shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

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

The Contractor shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. The Contractor must apply appropriate sanctions against its employees who fail to comply with these safeguards. The Contractor must adopt procedures for terminating access to PHI when employment of employee ends.

10. Mitigation of Harmful Effects

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

11. The Contractor's Subcontractors

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

Nothing in this section 11 or this Exhibit F authorizes the Contractor to perform services under this Agreement using subcontractors.

12. Employee Training and Discipline

The Contractor shall train and use reasonable measures to ensure compliance with the requirements of these provisions by employees who assist in the performance of functions or activities on behalf of the County under this Agreement and use or disclose PHI, and discipline such employees who intentionally violate any provisions of these provisions, which may include termination of employment.

13. Termination for Cause

Upon the County's knowledge of a material breach of these provisions by the Contractor, the County will either:

Exhibit F

A. Provide an opportunity for the Contractor to cure the breach or end the violation, and the County may terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County; or

B. Immediately terminate this Agreement if the Contractor has breached a material term of this Exhibit F and cure is not possible, as determined by the County.

C. If neither cure nor termination is feasible, the County's Privacy Officer will report the violation to the Secretary of the U.S. Department of Health and Human Services.

14. **Judicial or Administrative Proceedings**

The County may terminate this Agreement if: (1) the Contractor is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation in an administrative or civil proceeding in which the Contractor is a party that the Contractor has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws.

15. **Effect of Termination**

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

16. **Compliance with Other Laws**

13.17 To the extent that other state and/or federal laws provide additional, stricter and/or more protective privacy and/or security protections to PHI or other confidential information covered under this BAA, the Contractor agrees to comply with the more protective of the privacy and security standards set forth in the applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA Rules or are otherwise more favorable to the individual.

17. **Disclaimer**

The County makes no warranty or representation that compliance by the Contractor with these provisions, the HITECH Act, or the HIPAA Rules, will be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

18. **Amendment**

The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit F may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to amend this agreement in order to implement the standards and requirements of the HIPAA Rules, the HITECH Act and other applicable laws relating to the security or privacy of PHI. The County may terminate this Agreement upon thirty

Exhibit F

(30) days written notice in the event that the Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that the County in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules, and the HITECH Act.

19. **No Third-Party Beneficiaries**

Nothing expressed or implied in the provisions of this Exhibit F is intended to confer, and nothing in this Exhibit F does confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

20. **Interpretation**

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

21. **Regulatory References**

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

22. **Survival**

The respective rights and obligations of the Contractor as stated in this Exhibit F survive the termination or expiration of this Agreement.

23. **No Waiver of Obligation**

Change, waiver or discharge by the County of any liability or obligation of the Contractor under this Exhibit F on any one or more occasions is not a waiver of performance of any continuing or other obligation of the Contractor and does not prohibit enforcement by the County of any obligation on any other occasion.