

SERVICE AGREEMENT

This Service Agreement ("Agreement") is dated 20 June, 2023 and is between Advanced Medical Management, Inc., a California Corporation ("Contractor"), and the County of Fresno, a political subdivision of the State of California ("County").

Recitals

A. County established the Emergency Medical Services Fund (EMSF) Program in accordance with California Health and Safety Code Section 1797.98a.

B. A portion of the EMSF is designated as the Physicians' Allocation.

C. The parties wish to provide equitable reimbursement of those providing EMSF Program services with a minimum of administrative costs.

D. The parties desire to state their respective rights and responsibilities related to providing, claiming, and reimbursing EMSF Program services.

E. Contractor currently provides fiscal intermediary services for EMSF Program services to the County through County Agreement No. 21-360, dated September 7, 2021, which will terminate on June 30, 2023.

F. County wishes to continue to contract with Contractor for the provision of fiscal intermediary services for EMSF Program services described herein to the residents of Fresno County.

G. Contractor is agreeable to rendering of such services on the terms and conditions in 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 are not allocated, then the County, upon at least 30 days' advance written notice to the
2 Contractor, may:

- 3 (A) Modify the services provided by the Contractor under this Agreement; or
- 4 (B) Terminate this Agreement.

5 **6.2 Termination for Breach.**

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

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

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

- 14 (1) Obtained or used funds illegally or improperly;
- 15 (2) Failed to comply with any part of this Agreement;
- 16 (3) Submitted a substantially incorrect or incomplete report to the County; or
- 17 (4) Improperly performed any of its obligations under this Agreement.

18 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
19 County may terminate this Agreement by giving at least 30 days advance written notice to the
20 Contractor.

21 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
22 under this Article 6 is without penalty to or further obligation of the County.

23 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article
24 6, the County may demand repayment by the Contractor of any monies disbursed to the
25 Contractor under this Agreement that, in the County's sole judgment, were not expended in
26 compliance with this Agreement. The Contractor shall promptly refund all such monies upon
27 demand. This section survives the termination of this Agreement.

1 **Article 7**

2 **Independent Contractor**

3 7.1 **Status.** In performing under this Agreement, the Contractor, including its officers,
4 agents, employees, and volunteers, is at all times acting and performing as an independent
5 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
6 venturer, partner, or associate of the County.

7 7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
8 manner or method of the Contractor's performance under this Agreement, but the County may
9 verify that the Contractor is performing according to the terms of this Agreement.

10 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no
11 right to employment rights or benefits available to County employees. The Contractor is solely
12 responsible for providing to its own employees all employee benefits required by law. The
13 Contractor shall save the County harmless from all matters relating to the payment of
14 Contractor's employees, including compliance with Social Security withholding and all related
15 regulations.

16 7.4 **Services to Others.** The parties acknowledge that, during the term of this
17 Agreement, the Contractor may provide services to others unrelated to the County.

18 **Article 8**

19 **Indemnity and Defense**

20 8.1 **Indemnity.** The Contractor shall indemnify and hold harmless and defend the
21 County (including its officers, agents, employees, and volunteers) against all claims, demands,
22 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
23 liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to
24 the performance or failure to perform by the Contractor (or any of its officers, agents,
25 subcontractors, or employees) under this Agreement. The County may conduct or participate in
26 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or
27 defend the County.

28 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

1 **Article 9**

2 **Insurance**

3 9.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this
4 Agreement.

5 **Article 10**

6 **Inspections, Audits, and Public Records**

7 10.1 **Inspection of Documents.** The Contractor shall make available to the County, and
8 the County may examine at any time during business hours and as often as the County deems
9 necessary, all of the Contractor's records and data with respect to the matters covered by this
10 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
11 request by the County, permit the County to audit and inspect all of such records and data to
12 ensure the Contractor's compliance with the terms of this Agreement.

13 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this
14 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
15 California State Auditor, as provided in Government Code section 8546.7, for a period of three
16 years after final payment under this Agreement. This section survives the termination of this
17 Agreement.

18 10.3 **Public Records.** The County is not limited in any manner with respect to its public
19 disclosure of this Agreement or any record or data that the Contractor may provide to the
20 County. The County's public disclosure of this Agreement or any record or data that the
21 Contractor may provide to the County may include but is not limited to the following:

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

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

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

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

8 (E) This Agreement, and any record or data that the Contractor may provide to the
9 County, is subject to public disclosure as information concerning the conduct of the
10 people's business of the State of California under California Constitution, Article 1,
11 section 3, subdivision (b).

12 (F) Any marking of confidentiality or restricted access upon or otherwise made with
13 respect to any record or data that the Contractor may provide to the County shall be
14 disregarded and have no effect on the County's right or duty to disclose to the public or
15 governmental agency any such record or data.

16 **10.4 Public Records Act Requests.** If the County receives a written or oral request
17 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
18 and which the County has a right, under any provision of this Agreement or applicable law, to
19 possess or control, then the County may demand, in writing, that the Contractor deliver to the
20 County, for purposes of public disclosure, the requested records that may be in the possession
21 or control of the Contractor. Within five business days after the County's demand, the
22 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's
23 possession or control, together with a written statement that the Contractor, after conducting a
24 diligent search, has produced all requested records that are in the Contractor's possession or
25 control, or (b) provide to the County a written statement that the Contractor, after conducting a
26 diligent search, does not possess or control any of the requested records. The Contractor shall
27 cooperate with the County with respect to any County demand for such records. If the
28 Contractor wishes to assert that any specific record or data is exempt from disclosure under the

1 CPRA or other applicable law, it must deliver the record or data to the County and assert the
2 exemption by citation to specific legal authority within the written statement that it provides to
3 the County under this section. The Contractor's assertion of any exemption from disclosure is
4 not binding on the County, but the County will give at least 10 days' advance written notice to
5 the Contractor before disclosing any record subject to the Contractor's assertion of exemption
6 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs
7 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,
8 failure to produce any such records, or failure to cooperate with the County with respect to any
9 County demand for any such records.

10 **Article 11**

11 **Disclosure of Self-Dealing Transactions**

12 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a corporation,
13 or changes its status to operate as a corporation.

14 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
15 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
16 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to
17 the County before commencing the transaction or immediately after.

18 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
19 a party and in which one or more of its directors, as an individual, has a material financial
20 interest.

21 **Article 12**

22 **Federal Provisions**

23 12.1 **Health Insurance Portability and Accountability Act.**

24 A. The parties to this Agreement shall be in strict conformance with all applicable
25 Federal and State of California laws and regulations, including but not limited to Sections 5328,
26 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.*
27 of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code and
28 the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section

1 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including,
2 but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information
3 Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and
4 security of patient information, and the Genetic Information Nondiscrimination Act (GINA) of 2008
5 regarding the confidentiality of genetic information.

6 Except as otherwise provided in this Agreement, Contractor, as a Business Associate of
7 County, may use or disclose Protected Health Information (PHI) to perform functions, activities or
8 services for or on behalf of County, as specified in this Agreement, provided that such use or
9 disclosure shall not violate the Health Insurance Portability and Accountability Act (HIPAA), USC
10 1320d *et seq.* The uses and disclosures of PHI may not be more expansive than those applicable
11 to County, as the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except
12 as authorized for management, administrative or legal responsibilities of the Business Associate.

13 B. Contractor, including its subcontractors and employees, shall protect, from
14 unauthorized access, use, or disclosure of names and other identifying information, including
15 genetic information, concerning persons receiving services pursuant to this Agreement, except
16 where permitted in order to carry out data aggregation purposes for health care operations [45
17 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any
18 and all persons receiving services pursuant to a County funded program. This requirement applies
19 to electronic PHI. Contractor shall not use such identifying information or genetic information for
20 any purpose other than carrying out Contractor’s obligations under this Agreement.

21 C. Contractor, including its subcontractors and employees, shall not disclose any such
22 identifying information or genetic information to any person or entity, except as otherwise
23 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law,
24 required by the Secretary, or authorized by the client/patient in writing. In using or disclosing PHI
25 that is permitted by this Agreement or authorized by law, Contractor shall make reasonable efforts
26 to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or
27 request.
28

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

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

9 F. Contractor shall provide access, at the request of County, and in the time and
10 manner designated by County, to PHI in a designated record set (as defined in 45 CFR Section
11 164.501), to an individual or to County in order to meet the requirements of 45 CFR Section
12 164.524 regarding access by individuals to their PHI. With respect to individual requests,
13 access shall be provided within thirty (30) days from request. Access may be extended if
14 Contractor cannot provide access and provides individual with the reasons for the delay and the
15 date when access may be granted. PHI shall be provided in the form and format requested by
16 the individual or County.

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

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

24 G. Contractor shall report to County, in writing, any knowledge or reasonable belief
25 that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of
26 unsecured PHI not permitted by this Agreement of which it becomes aware, immediately and
27 without reasonable delay and in no case later than two (2) business days of discovery. Immediate
28 notification shall be made to County's Information Security Officer and Privacy Officer and County's

1 DPH HIPAA Representative, within two (2) business days of discovery. The notification shall
2 include, to the extent possible, the identification of each individual whose unsecured PHI has been,
3 or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached.

4 Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to
5 such unauthorized disclosure required by applicable Federal and State Laws and regulations.

6 Contractor shall investigate such breach and is responsible for all notifications required by law and
7 regulation or deemed necessary by County and shall provide a written report of the investigation
8 and reporting required to County's Information Security Officer and Privacy Officer and County's
9 DPH HIPAA Representative. This written investigation and description of any reporting necessary
10 shall be postmarked within the thirty (30) working days of the discovery of the breach to the

11 addresses below:

12 County of Fresno	County of Fresno	County of Fresno
13 Dept. of Public Health	Dept. of Public Health	Information Technology Services
HIPAA Representative	Privacy Officer	Information Security Officer
14 (559) 600-6439	(559) 600-6405	(559) 600-5800
P.O. Box 11867	P.O. Box 11867	333 W. Pontiac Way
15 Fresno, CA 93775	Fresno, CA 93775	Clovis, CA 93612

16
17 H. Contractor shall make its internal practices, books, and records relating to the use
18 and disclosure of PHI received from County, or created or received by the Contractor on behalf of
19 County, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set
20 forth in Title 45, CFR, Sections 160 and 164. Contractor shall make its internal practices, books,
21 and records relating to the use and disclosure of PHI received from County, or created or received
22 by the Contractor on behalf of County, available to the United States Department of Health and
23 Human Services (Secretary) upon demand.

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

I. Safeguards

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

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

- 17 1. Passwords must not be:
- 18 a. Shared or written down where they are accessible or recognizable
19 by anyone else; such as taped to computer screens, stored under keyboards, or visible in a
20 work area;
- 21 b. A dictionary word; or
22 c. Stored in clear text
- 23 2. Passwords must be:
- 24 a. Eight (8) characters or more in length;
25 b. Changed every ninety (90) days;
26 c. Changed immediately if revealed or compromised; and
27 d. Composed of characters from at least three (3) of the following
28 four (4) groups from the standard keyboard:

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

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

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

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

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

22 J. Mitigation of Harmful Effects

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

27 K. Contractor's Subcontractors

28 Contractor shall ensure that any of its contractors, including subcontractors, if applicable,

1 to whom Contractor provides PHI received from or created or received by Contractor on behalf
2 of County, agree to the same restrictions, safeguards, and conditions that apply to Contractor
3 with respect to such PHI and to incorporate, when applicable, the relevant provisions of these
4 provisions into each subcontract or sub-award to such agents or subcontractors.

5 L. Employee Training and Discipline

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

11 M. Termination for Cause

12 Upon County's knowledge of a material breach of these provisions by Contractor,
13 County shall either:

- 14 1. Provide an opportunity for Contractor to cure the breach or end the
15 violation and terminate this Agreement if Contractor does not cure the breach or end the
16 violation within the time specified by County; or
- 17 2. Immediately terminate this Agreement if Contractor has breached a
18 material term of these provisions and cure is not possible.
- 19 3. If neither cure nor termination is feasible, the County's Privacy Officer
20 shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

21 N. Judicial or Administrative Proceedings

22 County may terminate this Agreement in accordance with the terms and conditions of
23 this Agreement as written hereinabove, if: (1) Contractor is found guilty in a criminal proceeding
24 for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or
25 stipulation that the Contractor has violated a privacy or security standard or requirement of the
26 HITECH Act, HIPAA or other security or privacy laws in an administrative or civil proceeding in
27 which the Contractor is a party.

28 O. Effect of Termination

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

10 P. Disclaimer

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

17 Q. Amendment

18 The parties acknowledge that Federal and State laws relating to electronic data security
19 and privacy are rapidly evolving and that amendment of these provisions may be required to
20 provide for procedures to ensure compliance with such developments. The parties specifically
21 agree to take such action as is necessary to amend this agreement in order to implement the
22 standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and other
23 applicable laws relating to the security or privacy of PHI. County may terminate this Agreement
24 upon thirty (30) days written notice in the event that Contractor does not enter into an
25 amendment providing assurances regarding the safeguarding of PHI that County in its sole
26 discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA
27 regulations and the HITECH Act.

28 R. No Third-Party Beneficiaries

1 Nothing express or implied in the terms and conditions of these provisions is intended to
2 confer, nor shall anything herein confer, upon any person other than County or Contractor and
3 their respective successors or assignees, any rights, remedies, obligations or liabilities
4 whatsoever.

5 S. Interpretation

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

11 T. Regulatory References

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

14 U. Survival

15 The respective rights and obligations of Contractor as stated in this Section shall survive
16 the termination or expiration of this Agreement.

17 V. No Waiver of Obligations

18 No change, waiver or discharge of any liability or obligation hereunder on any one or
19 more occasions shall be deemed a waiver of performance of any continuing or other obligation,
20 or shall prohibit enforcement of any obligation on any other occasion.

21
22 **Article 13**

23 **General Terms**

24 13.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
25 Agreement may not be modified, and no waiver is effective, except by written agreement signed
26 by both parties. The Contractor acknowledges that County employees have no authority to
27 modify this Agreement except as expressly provided in this Agreement.

1 13.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
2 under this Agreement without the prior written consent of the other party.

3 13.3 **Governing Law.** The laws of the State of California govern all matters arising from
4 or related to this Agreement.

5 13.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
6 County, California. Contractor consents to California jurisdiction for actions arising from or
7 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
8 brought and maintained in Fresno County.

9 13.5 **Construction.** The final form of this Agreement is the result of the parties' combined
10 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
11 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
12 against either party.

13 13.6 **Days.** Unless otherwise specified, "days" means calendar days.

14 13.7 **Headings.** The headings and section titles in this Agreement are for convenience
15 only and are not part of this Agreement.

16 13.8 **Severability.** If anything in this Agreement is found by a court of competent
17 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
18 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
19 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
20 intent.

21 13.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
22 not unlawfully discriminate against any employee or applicant for employment, or recipient of
23 services, because of race, religious creed, color, national origin, ancestry, physical disability,
24 mental disability, medical condition, genetic information, marital status, sex, gender, gender
25 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
26 all applicable State of California and federal statutes and regulation.

27 13.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
28 of the Contractor under this Agreement on any one or more occasions is not a waiver of

1 performance of any continuing or other obligation of the Contractor and does not prohibit
2 enforcement by the County of any obligation on any other occasion.

3 **13.11 Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
4 between the Contractor and the County with respect to the subject matter of this Agreement,
5 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
6 publications, and understandings of any nature unless those things are expressly included in
7 this Agreement. If there is any inconsistency between the terms of this Agreement without its
8 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
9 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
10 exhibits.

11 **13.12 No Third-Party Beneficiaries.** This Agreement does not and is not intended to
12 create any rights or obligations for any person or entity except for the parties.

13 **13.13 Authorized Signature.** The Contractor represents and warrants to the County that:

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

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

19 **13.14 Electronic Signatures.** The parties agree that this Agreement may be executed by
20 electronic signature as provided in this section.

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

26 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
27 equivalent to a valid original handwritten signature of the person signing this Agreement
28 for all purposes, including but not limited to evidentiary proof in any administrative or

1 judicial proceeding, and (2) has the same force and effect as the valid original
2 handwritten signature of that person.

3 (C) The provisions of this section satisfy the requirements of Civil Code section
4 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
5 Part 2, Title 2.5, beginning with section 1633.1).

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

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

13 13.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
14 original, and all of which together constitute this Agreement.

15 [SIGNATURE PAGE FOLLOWS]
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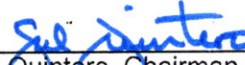
The parties are signing this Agreement on the date stated in the introductory clause.

Advanced Medical Management, Inc.

COUNTY OF FRESNO



(Authorized Signature)



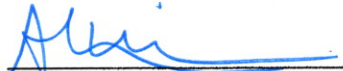
Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

Hank Lee, CEO

Print Name and Title

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

5000 Airport Plaza Drive, Suite 150
Long Beach, CA 90815

By: 

Deputy

For accounting use only:

Org No.: 5244
Account No.: 7295
Fund No.: 0130
Subclass No.: 10000

Exhibit A

Scope of Services

I. Contractor shall provide the following services:

A. Fully adjudicate claims received on a monthly basis received from authorized providers within forty-five (45) business days after receipt of correctly submitted claims or invoices, and supporting documentation (when applicable), at the rate specified by the County, and make other required payments.

B. Contractor shall continuously provide sufficient staffing including production, supervisory and management staff to ensure timely and efficient performance of the services herein.

C. Receive, maintain, collect, and account for funds.

D. Review all claims to ensure County responsibility is verified including but not limited to checking against Medi-Cal eligibility lists and verifying physician efforts to collect payments. Ensure that the County is the payor of last resort.

E. Apply industry standard procedures for claims review. Request supporting claims documentation from authorized providers when appropriate. Deny all claims that do not meet the conditions and requirements for claims submission, processing, and reimbursement.

F. Notify providers in writing of the reason for any denial of a Claim(s).

G. Receive, compile, preserve, and report information and data to the County on a monthly schedule to be agreed upon between the County and the Contractor. Reports shall be provided as a Microsoft Excel spreadsheet or format mutually agreed upon by all parties, and/or shall be available to the County via a secure web-based reporting tool/portal. General types of reports for all programs shall include, but not be limited to:

1. Claims Detail Report and Claims Summary Report
2. Claims Status Report and Claims Status Summary Report
3. Fund Reconciliation Report
4. Account Statement
5. Service Utilization Report

Exhibit A

1 6. Recovery Account Status Report

2 7. Denial Report

3 8. Ad-hoc Reports

4 H. Implement HIPAA compliant encryption security measures for authorized
5 providers to submit electronic claims data; provide training to providers on those security
6 measures, and ensure those security measures are adhered to

7 I. Designate a primary and alternate contact persons dedicated to facilitating
8 communication with authorized providers submitting claims, County staff, and authorized
9 patient representatives, and ensure all parties have the relevant phone number and
10 email address.

11 J. Retain and maintain all records relating to patient care unless Agreement is
12 terminated in which Contractor will forward all records to the appropriate vendor or return
13 to County upon County's instruction.

14 K. Review and pay claims based on the date services are provided; and in strict
15 accordance with Maddy Emergency Medical Services Fund requirements enumerated
16 by the State of California and County.

17 L. Authorized providers shall have up to one hundred twenty (120) days of the date
18 of service to submit claims for services; however, they cannot bill for services prior to
19 ninety (90) days following the date of service as they must be able to demonstrate, if
20 audited, that they have made three (3) attempts to collect from the patient and/or other
21 insurance providers and have been unsuccessful in that collection effort.

22 M. Pay claims up to the maximum amount an authorized provider may be paid, as
23 specified by law. At Final Payout, authorized providers are paid at a percentage of
24 Resource Base Relative Value Scale (RBRVS) determined by the County, or 50% of
25 allowable charges, whichever is less. The rate shall be based upon the total dollars
26 available divided by the total value of all claims. The maximum payment limits apply at
27 Final Settlement.

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Exhibit A

1 N. If it is determined after March 31st, for each Period that continued payment of the
2 established RBRVS through June 30th, for each Period, will exceed available Funds,
3 County may direct Contractor to pay Claims up to the amount of remaining available
4 Funds at the presently established RBRVS, less estimated administrative costs for
5 Contractor, County, and any other Agreements in support of the EMSF Program;
6 suspend payment of all remaining Claims submitted through June 30th; or pay those
7 suspended Claims in the following Fiscal Year at the RBRVS established for that
8 following Fiscal Year. County shall use best efforts to notify Contractor sixty (60) days
9 prior to March 31st if available funds will be exceeded to ensure timely suspension of
10 claims payment.

11 O. Final Payout Procedures

12 1. At Final Payout, if adjustments to reduce the RBRVS were made during
13 the Fiscal Year, funds shall be first used to pay those Physicians who received
14 payment at an RBRVS less than that paid to any Physicians at any other time
15 during the Fiscal Year, up to the maximum RBRVS paid during the year. Any
16 other remaining Funds shall then be distributed as provided below.

17 a) Final Payout is defined as the final reimbursement of Physicians
18 at the close of a given fiscal year.

19 2. No later than July 31st following each Period:

20 a) County shall perform a final reconciliation of Funds remaining in
21 the EMSF Trust Fund, Contractor's Account, and the Recovery Accounts
22 for the purpose of determining the amount to distribute to Physicians as
23 Final Pay after all other obligations provided through this Agreement are
24 met.

25 b) Contractor shall report to County, the value of any pending Claims
26 and the date the claims are anticipated to be paid

27 c) County shall report to Contractor the Fund balance, if any, to be
28 distributed through Final Payout. Contractor shall invoice County for this

Exhibit A

1 amount, which amount County shall pay, and Contractor shall deposit in
2 the Account. Contractor shall disburse such Funds, the balance of all
3 other monies in the Account and any other accounts maintained for the
4 purposes of the Agreement, and any earned interest, to Physicians in the
5 manner specified in the Agreement. Funds shall be distributed
6 proportionately, based on the dollar amount of Claims submitted and paid
7 to all physicians and surgeons who submitted qualifying claims during the
8 year, in accordance with Health and Safety Code Section 1797.98a(d).

9 d) As recovery funds are received, Contractor shall deposit any
10 Recovery Account balance into the Fund.

11 P. Complete the Final Settlement process within six months following the end of the
12 fiscal year if funds remain in the Account, to distribute the balance of the funds
13 proportionate to the claims paid during the contract period.

14 Q. Maintain a physician registration system acceptable to County, and only
15 reimburse physicians that are registered

16 1. The registration system shall include "Conditions of Participation" (COPs)
17 that registered providers must agree to in order to participate in the EMS
18 Program, and certain of these COPs may require specific acceptance/agreement
19 by the provider before moving on in the registration process.

20 2. Conditions of Participation shall include, at minimum:

21 a. Services must be provided in a basic or comprehensive general
22 acute care hospital emergency department.

23 b. The physician or surgeon may not be an employee of the hospital

24 c. Reimbursement from the program is sought by the hospital or the
25 hospital's designee, as the billing and collection agent for the emergency
26 physician and surgeon, or an emergency physician group.

27 d. The physician may not utilize the program if the County has
28 separately established any other billing mechanism to permit the

Exhibit A

1 physician to bill the County for his/her services.

2 R. Provide directly, or through a County-approved subcontract arrangement, third-
3 party recovery services to actively pursue reimbursement of claims paid from the
4 Physician Services Account (PSA) fund that are later determined to be eligible for Medi-
5 Cal, other insurance or third-party payment. If services are provided directly, Contractor
6 shall be reimbursed twenty percent (20%) of the recovered payments and refunds.

7 S. Recovery payments and refunds on claims shall be deposited into a recovery
8 account.

9 T. Contractor agrees to provide the resources necessary to address any backlog
10 claims processing or an increased influx of claims within the time periods specified
11 herein.

12 U. Contractor shall review Claims and may provide a medical review, as
13 appropriate, in accordance with its Operations Manual. Contractor shall keep a copy of
14 its current Operations Manual at its main facility which shall include CONTRACTOR's
15 policies and procedures relating to its operations, including, but not limited to the
16 activities specified herein.

17 V. Contractor shall deny all Claims that do not meet the conditions and
18 requirements of the Agreement and/or state regulations for Claim submission,
19 processing, and reimbursement.

20 W. Contractor shall use its best efforts to collect any monies paid, in any form, for
21 non-reimbursable services or for payment to any Physician or other entity not entitled
22 under the Agreement to such payment if the result of inaccurate or inappropriate
23 processing by Contractor. Contractor shall send a collection notice to the Physician or
24 other entity. If the initial notice is not successful, Contractor shall send a second notice. If
25 the second notice is unsuccessful Contractor shall send a third and final notice. Upon
26 becoming aware that such payments are uncollectible, Contractor shall submit to County
27 a plan of corrective action. Upon review by County, Contractor may be subject to
28 disallowances for said payments.

Exhibit A

1 X. Contractor shall make every effort to resolve appeals within forty-five (45) days of
2 receipt through discussion with physician billing staff. For those appeals that cannot be
3 resolved to the satisfaction of the physician or group, Contractor shall establish a
4 process by which physicians or groups may escalate appeals to County no later than
5 thirty (30) days following notification of denial. If appeal is not received by County within
6 this timeframe Contractor decision shall be considered final.

7 II. Contractor shall ensure the following minimum standards are adhered to in the adjudication
8 of claims.

9 A. ELIGIBLE SERVICES

10 Funding Criteria - Reimbursements of physician claims must meet specific criteria, which
11 are outlined in the California Health and Safety Code and the Welfare & Institutions
12 Code. The eligibility requirements for the program are as follows:

13 1. Traffic Fines and Penalties - Emergency services within 48 hours

14 These funds allow for reimbursement for emergency care prior to stabilization.

15 For the purposes of reimbursement from this program, the point of stabilization is
16 48 hours of continuous service to the patient from the point of emergency
17 department contact or receipt of transfer. This includes medical screening
18 examinations required by law to determine whether an emergency condition
19 exists.

20 2. Emergency Medical Condition - Defined as a medical condition

21 manifesting itself by acute symptoms of sufficient severity, including severe pain,
22 which in the absence of immediate medical attention could reasonably be
23 expected to result in any of the following:

24 a) Placing the patient's health in serious jeopardy;

25 b) Serious impairment to bodily functions; or,

26 c) Serious dysfunction to any bodily organ or part.

27 3. Location of Service - Emergency medical services must have been

28 provided by a physician in a general acute care hospital which meets one of the

Exhibit A

1 following conditions:

- 2 a) The hospital has a permit to provide basic or comprehensive
3 emergency medical services; or,
4 b) The hospital has a permit for standby emergency services prior to
5 July 1, 1991, and meets the criteria as a "small and rural hospital" as
6 defined in Section 124840 of the Health and Safety Code.

7 B. PATIENT ELIGIBILITY

8 Reimbursement under this claiming process shall be limited to services for which the
9 physician, following reasonable billing efforts has not received any payment from a patient or
10 responsible party, and the patient does not have health insurance for emergency services and
11 care, cannot afford to pay for those services, and for whom payment will not be made through
12 any private coverage or by any program funded in whole or in part by the federal government
13 with the exception of claims submitted for reimbursement through Section 1011 of the federal
14 Medicare Prescription Drug, Improvement and Modernization Act of 2003.

15 These procedures shall not be applied or interpreted so as to prevent a physician from
16 seeking or accepting payment from a patient or responsible third-party payor, or arranging a
17 repayment schedule for the costs of services rendered prior to receiving payment from this fund.

18 C. CLAIM ELIGIBILITY

19 Physicians must make reasonable efforts to bill for services provided. Claims are eligible
20 for reimbursement through this fund if all of the following conditions are met:

- 21 1. The physician has inquired if there is a responsible third-party source of
22 payment.
23 2. The physician has billed the patient and, if identified, a responsible third
24 party for payment of services.
25 3. The physician has made reasonable efforts to collect payment (the
26 physician's records should maintain evidence of such effort). For purposes of the
27 PSA, reasonable efforts shall be defined as one of the following:
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Exhibit A

1 a. A period of not less than three (3) months has passed since the
2 initial billing, and there has been a minimum of three (3) billings by the
3 physician (the three-billing requirement is waived if a billing is returned by
4 postal authorities marked "no known forwarding address" or "addressee
5 unknown" and the physician made reasonable efforts to discover a
6 correct billing address); or

7 b. The physician has received actual notification from the patient or
8 responsible third party that no payment will be made for the services
9 rendered by the physician.

10 4. The physician has not received reimbursement of any portion of the
11 amount billed to the patient. Deposits for services made by the patient or
12 responsible party are considered partial payments and result in the service not
13 being eligible for reimbursement under this program. Deposits for specific
14 services will apply only towards that specific service and will not affect other
15 claims for different services for that same patient on different dates.

16 5. Physicians must stop any current, and waive any future, collection efforts
17 to obtain reimbursement from the patient, upon receipt of funds from the PSA.

18 a. If a physician receiving payment under the program is later
19 reimbursed by a patient or responsible party, the physician shall notify the
20 Contractor. Contractor shall reduce the physician's future payment of
21 claims from the account. In the event there is not a subsequent
22 submission of a claim for reimbursement within one year, the physician
23 shall reimburse the account in an amount equal to the amount collected
24 from the patient or third-party payer, but not more than the amount of
25 reimbursement received from the account; or, Notify CONTRACTOR of
26 the payment and, reimburse the account in an amount equal to the
27 amount collected from the patient or third-party payer, but not more than
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Exhibit A

1 the amount of the reimbursement received from the account for that
2 patient's care.

3 b. In the event the physician receives payment from any source on a
4 claim that has been submitted to Contractor, but has not yet been
5 reimbursed from the PSA, the physician shall contact the Contractor and
6 request that the claim be withdrawn from the program.

7 6. If a pattern of incomplete, ineligible, or unsubstantiated claims is
8 determined by County and Contractor to be continuing, the Physician may be
9 excluded from submitting future requests for reimbursement.

10 7. Any refunds or penalties shall be paid to Contractor and deposited into
11 the account to fund future payments to physicians.

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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.

- A. \$5.00 per Claim adjudicated by Contractor from Physicians eligible to submit claims.
- B. Ad hoc reporting, consulting, and other administrative services provided upon written request of County shall be subject to a \$200/hour fee.
- C. The total of all compensation paid to Contractor for administrative fees in a given fiscal year, shall not exceed 9.5 percent of all deposits to and appropriations for the Emergency Medical Services Fund for each fiscal year. To the extent that the total of all compensation paid is less than the 9.5 percent maximum, the balance shall remain in the EMS Fund for later reallocation by County.
- D. For fiscal intermediary services provided by Contractor in accordance with this Agreement, the County shall, upon receipt of an appropriate invoice, pay Contractor monthly, in arrears.
- E. For purposes of reimbursement to Contractor, a Claim shall be reimbursed regardless of the adjudication result, including claims that are paid, denied, duplicated, and re-submitted.
- F. The County shall pay Contractor quarterly in an amount not to exceed the share of EMSF revenues received by County allocated for the reimbursement of physician claims as set forth in Health and Safety Code 1797.98a(b)(5)(A). Such funds shall be immediately deposited by Contractor into an interest-bearing account controlled by Contractor for reimbursement of Physician Claims received on or after July 1st of each fiscal year.
- G. If Contractor determines that the fees to maintain an interest-bearing account exceed the projected interest to be earned, Contractor shall recommend to

Exhibit B

1 County that such funds be maintained in a non-interest-bearing account.

2 Approval of the recommendation shall be at the sole discretion of the County.

3 H. Upon determination by Contractor that the account requires additional funds for
4 reimbursement of claims authorized in accordance with this Agreement,
5 Contractor shall submit a supplemental invoice to County, together with any
6 documentation that may be required by Count.

7 I. Monthly, Contractor shall forward to County an electronic copy of the most
8 current bank statement(s) and reconciliation with respect to all monies disbursed
9 pursuant to the Agreement.

10 J. All billings to County shall be supported by source documentation including, but
11 no limited to, provider claims, ledgers, journals, bank statements, canceled
12 checks, and records of services paid. In support of billing, Contractor shall submit
13 a Claims Processed Report in an electronic format acceptable to County.

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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) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (F) **Cyber Liability.** Cyber liability insurance with limits of not less than One Million Dollars (\$1,000,000) 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 Exhibit A of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) 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

Exhibit D

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 technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
 - (v) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, 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.
- (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

Exhibit D

possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

- (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.