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W I T N E S S E T H:

WHEREAS, the COUNTY has a need to secure the services of a qualified firm to perform third party claims administration for its self-insured workers' compensation program; and

WHEREAS, the COUNTY has a need to secure ancillary program services including bill review, utilization review, CMS/MMSEA Section 111 reporting, Nurse Case Management/Advocate, and Medical Provider Network (MPN) administration in connection with the administration of its self-insured workers' compensation program; and

WHEREAS, the COUNTY issued Request for Proposal No. 17-084 on July 11, 2017, hereinafter referred to as "RFP", for the purpose of securing said services; and

WHEREAS, the CONTRACTOR responded to the Request for Proposal stating that it is qualified and willing to perform said services,

WHEREAS, the COUNTY has a need to secure the services of a qualified firm to perform party claims administration for its self-insured workers' compensation program; and

WHEREAS, the COUNTY has a need to secure ancillary program services including bill review, utilization review, CMS/MMSEA Section 111 reporting, Nurse Case Management/Advocate, and Medical Provider Network (MPN) administration in connection with the administration of its self-insured workers' compensation program; and

WHEREAS, the COUNTY issued Request for Proposal No. 17-084 on July 11, 2017, hereinafter referred to as "RFP", for the purpose of securing said services; and

WHEREAS, the CONTRACTOR responded to the Request for Proposal stating that it is qualified and willing to perform said services,

NOW, THEREFORE, it is agreed by both parties as follows:

A. CONTRACTOR's General Obligations – Contractor shall perform services to employers' compensation claims administration, bill review, utilization review, CMS/MMSEA reporting, Nurse Case Management/Advocate and Medical Provider Network management as specified by COUNTY in accordance with the specifications, requirements, terms, and conditions as set forth in COUNTY's Request for Proposal No. 17-084, which includes the Workers' Compensation Claims Administration Guidelines, and Addendum 1 to Proposal No. 17-084, (collectively referred to as RFP No. 17-084), the

1 CONTRACTOR's response to Request for Proposal No. 17-084; and all applicable portions of
2 Title 8 of the California Code of Regulations and the Labor Code and all other applicable laws,
3 rules, and regulations. RFP No. 17-084 and CONTRACTOR's response to RFP No. 17-084 are
4 incorporated herein by reference. Fresno County Human Resources shall maintain copies of RFP
5 No. 17-084 and CONTRACTOR's response to RFP No. 17-084 during the term of this Agreement
6 and make a copy available to CONTRACTOR at its request.

7 Additionally, CONTRACTOR shall:

- 8 1. Consult with and assist COUNTY personnel in the development and
9 maintenance of procedures, practices and the coordination of the
10 COUNTY's self-insured workers' compensation program within legal
11 requirements established by state and federal law.
- 12 2. At request of COUNTY, conduct or assist in conducting training
13 sessions for COUNTY personnel involved directly or indirectly in the
14 administration and/or processing of industrial injury claims.
- 15 3. Update COUNTY with respect to all changes or proposed changes
16 relating to any and all statutes, rules or regulations affecting the
17 COUNTY's rights and obligations relating to COUNTY's self-insured
18 workers' compensation plan.
- 19 4. Review with COUNTY Risk Management staff at least quarterly the
20 then current status of the self-insured program, including identification of
21 areas of concern and recommended changes for the purpose of
22 improving the program. At a minimum, an annual Stewardship Report
23 will be prepared and reviewed with COUNTY that supports this process.
24 Quarterly reports are preferred as a means of facilitating effective
25 ongoing analysis of program efficacy.
- 26 5. Establish and implement procedures to accurately, efficiently and timely
27 pay all costs associated with the operation of COUNTY's self-insured
28 workers' compensation program and provide appropriate supporting

1 documentation for all payments.

- 2 6. Maintain fiscal records supporting all payments processed for a period
3 of at least five (5) years from the date of payment and make such
4 records available to the COUNTY, its auditors, or designees for review
5 within ten (10) working days of receiving a written request.
- 6 7. Adhere to Accounting Principles Generally Accepted in the United
7 States (GAAP) and best-practice internal controls in processing of all
8 payments related workers' compensation claims.
- 9 8. Provide COUNTY Risk Management staff with access to the
10 CONTRACTOR's risk management information system, or successor
11 risk management information system, and any affiliated reporting
12 system. CONTRACTOR shall provide appropriate training relating to
13 the operation of each system including, but not limited to, the generation
14 of reports associated with COUNTY's workers' compensation program.
15 Easy to use ad hoc reporting capabilities shall be included for COUNTY
16 Risk Management staff to access and utilize.
- 17 9. Provide online access to Employer's Report of Occupational Injury or
18 Illness, Form 5020, for designated COUNTY staff, and provide
19 appropriate training relating to the use of the online 5020 to COUNTY
20 staff as requested and/or required.
- 21 10. Ensure that detailed claim notes are annotated in each individual claim
22 in the CONTRACTOR's risk management information system. At a
23 minimum, any paperless process will ensure that adequate claim note
24 annotations indicate the contents of all documents scanned into the
25 system, any issues related to the claim summarized from the scanned
26 document, and provide an updated status of the claim and/or claimant
27 work status as appropriate.
- 28 11. Ensure Claims Management Reviews in the CONTRACTOR'S risk

1 management information system are updated and approved by
2 CONTRACTOR'S staff every 45 days for active claims and every 90
3 days for future medical claims.

- 4 12. Assume control and custodial responsibility for all existing hard copies
5 of COUNTY workers' compensation files.

6 B. CONTRACTOR's Fiscal Obligations

7 CONTRACTOR shall:

- 8 1. Provide statistical reports and any other information as required by
9 COUNTY for preparation of actuarial reports and allocation of workers'
10 compensation costs among County Departments.
11 2. Prepare the Public Self-Insurer's Annual Report and submit to the State
12 of California at least four (4) weeks prior to the deadline submission.
13 3. At COUNTY's request, provide listing of open claims by location
14 including information on injuries sustained and costs incurred in the
15 administration of the claim as well as any other reports required for
16 program fiscal management activities.
17 4. Prepare in a timely manner the information necessary to issue Federal
18 form 1099 notices to vendors paid and provide information to the
19 COUNTY Auditor/Controller in an acceptable format.
20 5. Provide in a timely manner Form W-9 and California Form 590 to the
21 COUNTY Auditor/Controller in and acceptable format.
22 6. Provide to COUNTY in a timely manner monthly check registers and
23 any other financial reports related to COUNTY's workers' compensation
24 program requested in the format acceptable to COUNTY.

25 C. CONTRACTOR's Claims Procedures Obligations

26 CONTRACTOR shall:

- 27 1. Receive, review, and administer all workers' compensation claims in
28 accordance with the provisions of the California Labor Code and the

1 State Department of Industrial Relations rules and regulations, as well
2 as any other applicable state and federal laws and regulations, and
3 COUNTY requirements.

- 4 2. Perform all claims management procedures in accordance with the then
5 current CSAC-EIA Workers' Compensation Claims Administration
6 Guidelines the current version of these guidelines can be found as
7 Exhibit 1 in the RFP. 3. Discuss with COUNTY Risk Management
8 staff any compensability decisions that are other than routine in nature.
- 9 4. Assist COUNTY with the integration of temporary disability payments by
10 ensuring delivery of temporary disability checks to the COUNTY Payroll
11 Division on Wednesday and Friday of each week via courier system or
12 other reliable method of delivery.
- 13 5. Utilize information provided by and cooperate in the enforcement of any
14 Medical Provider Network implemented for COUNTY claims including
15 but not limited to obtaining pre-certification for medical providers
16 through utilization review and requesting case management as needed
17 or at COUNTY's request.
- 18 6. Maintain close liaison with medical providers to assure that injured
19 employees receive proper care and that providers treating such injured
20 workers are compliant with any and all rules and regulations governing
21 the treatment of injured workers and immediately report any incidents of
22 non-compliance to COUNTY Risk Management.
- 23 7. Notify COUNTY Risk Management within three (3) working days from
24 the date of the receipt of notice of an employee having reached
25 Maximum Medical Improvement (MMI), or otherwise being declared
26 Permanent and Stationary (P&S), and consult with COUNTY Risk
27 Management and the Department prior to any offer of permanent
28 modified/alternate work or disbursement of supplemental job

displacement benefits.

8. Make examiners and supervisors available for participation in claims reviews with representatives of COUNTY departments and Risk Management as requested.
9. Consult with, and seek authorization from, COUNTY Risk Management prior to referral of any claim to outside investigators
10. Forward copies of all investigation reports and invoices prepared by outside investigators along with any invoice to COUNTY Risk Management.
11. At COUNTY's request provide any and all reports associated with the workers' compensation program accessible by a risk management information system and provide appropriate training to Risk Management staff relating to the generation of such reports.
12. Provide monthly claims summary detailing aggregate of new claims opened, stipulated, and closed.
13. Provide monthly claims summary detailing all claims that have been identified with subrogation potential that have been unresolved.
14. Ensure that Risk Management is timely provided with copies of all Applications for Adjudication of Claim, Declarations of Readiness to Proceed, Hearing Notices, Settlements Concluded and Findings and Awards rendered by the Workers' Compensation Appeals Board.
15. Upon approval of COUNTY and as needed, refer claims requiring the assistance of counsel to attorneys approved by COUNTY and review and control litigation expense.
16. Seek authorization for all settlements, including stipulations, which exceed CONTRACTOR established authority level. Request for authorization shall be submitted to Risk Management on an agreed upon Settlement Evaluation Worksheet (SEW). Pursuit of settlement

1 shall be undertaken when a final report of medical/legal quality or other
2 similar information is received wherein no further issues are in dispute.
3 A settlement demand will be solicited from the applicant attorney on
4 represented claims and consensus by the parties on settlement terms
5 must be achieved prior to the processing of the SEW. Settlement
6 should be achieved prior to any scheduled Mandatory Settlement
7 Conference. Exceptions to this posture shall be discussed with
8 COUNTY.

- 9 17. CONTRACTOR shall establish a courier system between its local
10 office and COUNTY Risk Management for the exchange of
11 documentation on at least a twice weekly basis.

12 D. CONTRACTOR's Medical Management Obligations

13 CONTRACTOR shall:

- 14 1. Consult with COUNTY to ensure that proper procedures are in place
15 for the timely and efficient transfer of all billings for review in
16 accordance with the guidelines set forth in the most current CSAC-
17 EIA Workers' Compensation Claims Administration Guidelines.
- 18 2. Ensure that all billings subject to review are adjusted to reflect any
19 and all pertinent fee schedules and any savings generated by
20 utilization of any Preferred Provider Organization. Ensure all billings
21 paid are from authorized providers for approved services.
- 22 3. Address and resolve all provider complaints/appeals as it pertains to
23 the review and adjustment of billings. If a complaint or dispute cannot
24 be resolved, provide documentation to substantiate and defend the
25 billing reviewed including provision of expert witnesses if necessary.
- 26 4. Provide COUNTY with monthly reporting detailing utilization and
27 savings realized for the month prior and year-to-date totals.
28

5. Conform to all Utilization Review Standards set forth in the California Labor Code and the California Code of Regulations.
6. Collaborate with COUNTY to develop referral criteria to determine the types of issues that should be referred to utilization review.
7. Consult with COUNTY to ensure that proper procedures are in place for the efficient referral and processing of requests for utilization review.
8. Address and resolve all appeals and provide all required notices in a timely manner.
9. Provide monthly reporting to COUNTY detailing number of reviews conducted, costs, savings, and any other information requested by COUNTY subject to system limitations.
10. Administer the existing COUNTY Medical Provider Network (MPN) while working with COUNTY to improve the current MPN. The CONTRACTOR will designate and make available a specific individual to assist COUNTY with MPN administration, modification, and development.
11. Designate a specific liaison for purposes of administration and improvement of the current MPN and/or development, and implementation of a new MPN as is necessary.
12. While administering and working to improve current MPN, assist COUNTY to develop, establish and attain State approval of a new custom MPN which meets all the needs of the County. CONTRACTOR must ensure any custom MPN must comply with the California Labor Code and the California Code of Regulations including all actions required to gain state approval of the Network. This process shall include processing all required communications with COUNTY employees, and providing any printed materials or

1 notifications required. As appropriate, any resulting MPN shall belong
2 to the COUNTY with CONTRACTOR acting in an administrative and
3 representative status.

4 13. Assist COUNTY with maintenance of the current or any new MPN as
5 it relates to the addition or removal of providers within the MPN.

6 14. Monitor providers to ensure that COUNTY injured workers are
7 receiving appropriate health care and that all providers are compliant
8 with all rules and regulations governing MPN's.

9 15. Address COUNTY concerns with providers as necessary.

10 16. Provide COUNTY with reporting as requested detailing utilization of
11 the Network.

12 17. Prepare and distribute annual reminders to all County employees
13 regarding the existence of the County MPN and the requirements for
14 obtaining medical care under the auspices of the MPN.

15 E. CONTRACTOR's Subrogation Obligations – CONTRACTOR will
16 administer Subrogation activities for all cases wherein a third party may be responsible for an
17 injury to a COUNTY employee in accordance with the guidelines set forth in the CSAC-EIA
18 Workers' Compensation Claims Administration Guidelines. CONTRACTOR shall consult with
19 County to determine whether or not legal representation is needed for subrogation activities.
20 CONTRACTOR shall provide a monthly summary of all cases wherein a third party may be
21 responsible for an injury to a County employee and current recovery status.

22 F. CONTRACTOR's Medical Case Management Obligations

23 CONTRACTOR shall:

- 24 1. Consult with COUNTY to develop criteria for referral of claims
25 requiring nurse case management to contracted medical case
26 management provider for nurse intervention.
27 2. Consult with COUNTY and contracted medical case management
28 provider to develop processes for timely and efficient referral of claims

1 requiring nurse case management.

2 G. CONTRACTOR's CMS/MMSEA Section 111 Reporting Obligations

3 CONTRACTOR shall:

- 4 1. Agree to be COUNTY's designated reporting agent for CMS/MMSEA
5 Section 111 reporting compliance.
6 2. Develop reporting protocols and tracking mechanisms to ensure all
7 required claims for reporting under CMS/MMSEA Section 111
8 reporting requirements are in fact reported in a timely and accurate
9 manner with comports with the applicable regulatory guidelines.
10 3. Ensure that Medicare/Medicaid eligibility information is appropriately
11 entered into claim system to ensure such status is taken into
12 consideration for claims administration and settlement activities.
13 4. Discuss any CMS/MMSEA Section 111 reporting issues with COUNTY
14 when identified.

15 2. TERM

16 This Agreement shall become effective on the 1st day of January, 2018, and
17 shall terminate on the 31th day of December, 2020. This Agreement may be extended for two (2)
18 additional consecutive twelve (12) month periods upon written approval of both parties no later
19 than one hundred and eighty (180) days prior to the first day of the next twelve (12) month
20 extension period. The Director of Human Resources or his designee is authorized to execute
21 such written approval on behalf of COUNTY based on CONTRACTOR's satisfactory performance.

22 3. TERMINATION

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

28 B. Breach of Contract - The COUNTY may immediately suspend or terminate

1 this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 2 1) An illegal or improper use of funds;
- 3 2) A failure to comply with any term of this Agreement;
- 4 3) A substantially incorrect or incomplete report submitted to the
- 5 COUNTY;
- 6 4) Improper performance of service;
- 7 5) Improper use and/or disclosure of COUNTY confidential
- 8 information/data.

9 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY

10 of any breach of this Agreement or any default which may then exist on the part of the

11 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the

12 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of

13 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR

14 under this Agreement, which in the judgment of the COUNTY were not expended in accordance

15 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon

16 demand.

17 C. Without Cause - Under circumstances other than those set forth above,

18 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written

19 notice of an intention to terminate to CONTRACTOR.

20 **4. COMPENSATION/INVOICING:**

21 A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to

22 receive compensation as follows:

SUMMARY OF MAXIMUM COMPENSATION FOR 3 YEAR AGREEMENT TERM				
	YEAR 1	YEAR 2	YEAR 3	3 YEAR
FEE DESCRIPTION	2017	2018	2019	MAXIMUM
Claims Administration	\$1,337,909.00	\$1,378,046.00	\$1,419,388.00	\$4,135,343.00
Ancillary Services	\$913,156.00	\$913,156.00	\$913,156.00	\$2,739,468.00
Medical Provider Network	\$42,000.00	\$42,000.00	\$42,000.00	\$126,000.00
Conversion Fee	\$15,000	\$0	\$0	\$0
	<u>\$2,308,065.00</u>	<u>\$2,333,202.00</u>	<u>\$2,374,544.00</u>	<u>\$7,015,811.00</u>

28 The services covered in the annual costs cited in this section include, but are not limited to, fees

1 for claims administration, bill review, utilization review, CMS/MMSEA Section 111 reporting, Nurse
2 Case Management/Advocate, medical provider network services, and transition costs. The
3 maximum amount over the term of the three (3) year Agreement shall not exceed Seven Million,
4 Eight Hundred Eleven Dollars (\$7,015,811). Annual costs shall include all services required in the
5 RFP and included in the CONTRACTOR's response and contained in this Agreement.

6 Payment for services shall be processed as follows:

7 A one-time conversion fee will be paid at a rate of Fifteen Thousand Dollars (\$15,000) and will be
8 billed at the initiation of the contract. Claims Administration Services will be paid monthly at a rate
9 of One Hundred Eleven Thousand, Four Hundred Ninety Two Dollars and Forty Two Cents
10 (\$111,492.42) for the first eleven (11) months of the first year and at One Hundred Eleven
11 Thousand, Four Hundred Ninety Two Dollars and Thirty Eight Cents (\$111,492.38) for the last
12 month of the first year. Claims Administration Services will be paid monthly at the rate of One
13 Hundred Eleven Thousand, Eight Hundred Thirty Seven Dollars and Seventeen Cents
14 (\$114,837.17) for the first eleven (11) months of the second year and at One Hundred Eleven
15 Thousand, Eight Hundred Thirty Seven Dollars and Thirteen Cents (\$114,837.13) for the last
16 month of the second year; and paid at monthly rate of One Hundred Eighteen Thousand, Two
17 Hundred Eighty Two Dollars and Thirty Four Cents (\$118,282.34) for the first eleven (11) months
18 of the third year and at One Hundred Eighteen Thousand, Two Hundred Eighty Two Dollars and
19 Twenty Six Cents (\$118,282.26) for the last month of the third year. Ancillary services shall be
20 billed to the workers' compensation trust account at a monthly rate of Seventy Six Thousand
21 Ninety Six Dollars and Thirty Four Cents (\$76,096.34) for the first eleven (11) months of the year,
22 and at of Seventy Six Thousand Ninety Six Dollars and Twenty Six Cents (\$76,096.26) for the last
23 month of the year, and shall be allocated to individual claims processed during that month. MPN
24 services will be paid monthly at the rate of Three Thousand Five Hundred Dollars (\$3,500) for the
25 term of the contract.

26 CONTRACTOR shall submit monthly invoices to the County of Fresno, Department
27 of Human Resources, Risk Management Division, 2220 Tulare Street, 16th Floor, Fresno, CA
28 93721. COUNTY will issue payment within forty five (45) days of receipt of an approved invoice.

1 **Initial Three (3) Year Term Maximum Compensation:** In no event shall services
2 performed under this Agreement be in excess of Seven Million Fifteen Thousand Eight Hundred
3 Eleven Dollars (\$7,015,811.00) during the initial three (3) year term of this Agreement.

4 **Renewal Period Maximum Compensation:** Should the term of this
5 Agreement be extended for the additional two one year renewals, the cost for all services,
6 including Claims Administration, Ancillary Services and Medical Provider Network, shall not
7 exceed Two Million Four Hundred and Seventeen Thousand One Hundred Twenty Five Dollars
8 (\$2,417,125) for the first renewal year and Two Million Four Hundred and Sixty Nine Hundred
9 and Eighty One Dollars (\$2,460,981) for the second renewal year period. During any renewal
10 period, payment for services shall be processed as follows:

11 Claims Administration Services will be paid monthly at a rate of Two Hundred One Thousand
12 Four Hundred and Twenty Eight Dollars (\$201,428) for the first eleven (11) months of first
13 renewal year and at Two Hundred One Thousand Four Hundred and Seventeen Dollars
14 (\$201,417) for the last month of the first renewal year. Claims Administration Services will be
15 paid monthly at the rate of Two Hundred Five Thousand and Eighty Two Dollars (\$205,082) for
16 the first eleven (11) months of the second renewal year and at Two Hundred Five Thousand and
17 Seventy Nine (\$205,079) for the last month of the second renewal year. Ancillary services shall
18 be billed to the workers' compensation trust account at a monthly rate of Seventy Six Thousand
19 Ninety Six Dollars and Thirty Four Cents (\$76,096.34) for the first eleven (11) months of a
20 renewal year, and at of Seventy Six Thousand Ninety Six Dollars and Twenty Six Cents
21 (\$76,096.26) for the last month of a renewal year, and shall be allocated to individual claims
22 processed during that month. MPN services will be paid monthly at the rate of Three Thousand
23 Five Hundred Dollars (\$3,500) during any renewal year. It is understood that all expenses
24 incidental to CONTRACTOR's performance of services and obligations under this Agreement
25 shall be borne by CONTRACTOR.

26 B. Allocated Loss Expense including fees imposed by the Workers'
27 Compensation Appeals Board or the courts, fees for service of process, costs associated with
28 attorneys, independent investigators, expert witnesses, photographs, diagrams, video tape,

1 transcripts, copying of subpoenaed records, court reporters, depositions, medical case
2 management or any other cost necessarily incurred in the defense of claims and payment of
3 services or supplies not provided in this Agreement, is not included in the compensation set
4 forth herein and are agreed by the parties to be expenses incidental to CONTRACTOR's
5 performance of services and obligations under this Agreement and shall be the responsibility of
6 CONTRACTOR.

7 **5. INDEPENDENT CONTRACTOR:** In performance of the work, duties and
8 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and
9 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
10 employees will at all times be acting and performing as an independent contractor, and shall act in
11 an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or
12 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
13 direct the manner or method by which CONTRACTOR shall perform its work and function.
14 However, COUNTY shall retain the right to administer this Agreement so as to verify that
15 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

16 CONTRACTOR and COUNTY shall comply with all applicable provisions of
17 law and the rules and regulations, if any, of governmental authorities having jurisdiction over
18 matters the subject thereof.

19 Because of its status as an independent contractor, CONTRACTOR shall have
20 absolutely no right to employment rights and benefits available to COUNTY employees.
21 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
22 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
23 responsible and save COUNTY harmless from all matters relating to payment of
24 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
25 regulations governing such matters. It is acknowledged that during the term of this Agreement,
26 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
27 Agreement.

28 **6. MODIFICATION:** Any matters of this Agreement may be modified from time to

1 time by the written consent of all the parties without, in any way, affecting the remainder.

2 **7. NON-ASSIGNMENT:** Neither party shall assign, transfer or sub-contract this
3 Agreement nor their rights or duties under this Agreement without the prior written consent of the
4 other party.

5 **8. HOLD HARMLESS:**
6 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's
7 request, defend the COUNTY, its officers, agents, and employees from any and all costs and
8 expenses (to include attorneys fees and court costs), damages, liabilities, claims, and losses
9 occurring or resulting to COUNTY in connection with the performance, or failure to perform, by
10 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
11 costs and expenses (to include attorneys fees and court costs), damages, liabilities, claims, and
12 losses occurring or resulting to any person, firm, or corporation who may be injured or
13 damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or
14 employees under this Agreement. Any penalty assessed against the COUNTY'S self-insurance
15 plan by the State of California pursuant to an audit or payable without audit under the California
16 Labor Code (including but not limited to late payments for: temporary disability, permanent
17 disability, medical bills, medical mileage and vocational rehabilitation temporary disability) shall
18 be reimbursed by CONTRACTOR if the infraction on which the penalty is based is attributable
19 in whole or in part to CONTRACTOR. If the penalty is based upon an infraction attributable
20 wholly to COUNTY, assessment shall be paid by COUNTY. CONTRACTOR shall cooperate
21 with COUNTY in the challenging of any infraction or penalty. The obligations of the
22 CONTRACTOR under this hold harmless and indemnification provision shall survive the
23 termination of this Agreement.

24 **9. INSURANCE**
25 Without limiting the COUNTY's right to obtain indemnification from
26 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
27 force and affect the following insurance policies throughout the term of this Agreement:
28

1 A. Commercial General Liability

2 Commercial General Liability Insurance with limits of not less than One Million
3 Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000).
4 This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages
5 including completed operations, products liability, contractual liability, Explosion-Collapse-
6 Underground, fire legal liability or any other liability insurance deemed necessary because of the
7 nature of this contract.

8 B. Automobile Liability

9 Comprehensive Automobile Liability Insurance with limits for bodily injury of
10 not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred
11 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty
12 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred
13 Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used
14 in connection with this Agreement.

15 C. Professional Liability

16 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,
17 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less
18 than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)
19 annual aggregate.

20 D. Worker's Compensation

21 A policy of Worker's Compensation insurance as may be required by the
22 California Labor Code.

23 E. General Insurance Provisions

24 CONTRACTOR shall obtain endorsements to the Commercial General
25 Liability insurance naming the County of Fresno, its officers, agents, and employees, individually
26 and collectively, as additional insured, but only insofar as the operations under this Agreement are
27 concerned. Such coverage for additional insured shall apply as primary insurance and any other
28 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be

1 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
2 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
3 written notice given to COUNTY.

4 Within Thirty (30) days from the date CONTRACTOR signs and executes this
5 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
6 above for all of the foregoing policies, as required herein, to the County of Fresno, ATTN: Risk
7 Management, 2220 Tulare Street, 16th Floor, Fresno, CA 93721, stating the following: that such
8 insurance coverages have been obtained and are in full force; that the County of Fresno, its
9 officers, agents and employees will not be responsible for any premiums on the policies; that such
10 Commercial General Liability insurance names the County of Fresno, its officers, agents and
11 employees, individually and collectively, as additional insured, but only insofar as the operations
12 under this Agreement are concerned; that such coverage for additional insured shall apply as
13 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its
14 officers, agents and employees, shall be excess only and not contributing with insurance provided
15 under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed
16 without a minimum of thirty (30) days advance, written notice given to COUNTY.

17 In the event CONTRACTOR fails to keep in effect at all times insurance
18 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
19 suspend or terminate this Agreement upon the occurrence of such event.

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

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

1 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
2 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
3 after final payment under contract (Government Code Section 8546.7).

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

5 A. The parties to this Agreement shall be in strict conformance with all
6 applicable Federal and State of California laws and regulations, including but not limited to
7 Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1
8 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the
9 California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations,
10 and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to
11 Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations,
12 including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, and The Health
13 Information Technology for Economic and Clinical Health Act (HITECH) regarding the
14 confidentiality and security of patient information.

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

23 B. ATTORNEY shall protect, from unauthorized access, use, or disclosure of
24 names and other identifying information concerning persons receiving services pursuant to this
25 Agreement, except where permitted in order to carry out data aggregation purposes for health
26 care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]
27 This pertains to any and all persons receiving services pursuant to a COUNTY funded program.
28

1 ATTORNEY shall not use such identifying information for any purpose other than carrying out
2 ATTORNEY's obligations under this Agreement.

3 C. ATTORNEY shall not disclose any such identifying information to any person
4 or entity, except as otherwise specifically permitted by this Agreement, authorized by law, or
5 authorized by the client/patient

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

9 E. ATTORNEY shall provide access, at the request of COUNTY, and in the
10 time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45
11 CFR Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45
12 CFR Section 164.524 regarding access by individuals to their PHI.

13 ATTORNEY shall make any amendment(s) to PHI in a designated record
14 set at the request of COUNTY, and in the time and manner designated by COUNTY in
15 accordance with 45 CFR Section 164.526.

16 ATTORNEY shall provide to COUNTY or to an individual, in a time and
17 manner designated by COUNTY, information collected in accordance with 45 CFR Section
18 164.528, to permit COUNTY to respond to a request by the individual for an accounting of
19 disclosures of PHI in accordance with 45 CFR Section 164.528.

20 F. ATTORNEY shall report to COUNTY, in writing, any knowledge or
21 reasonable belief that there has been unauthorized access, viewing, use, disclosure, or breach of
22 Protected Information not permitted by this Agreement, and any breach of unsecured PHI of
23 which it becomes aware, immediately and without reasonable delay and in no case later than two
24 (2) business days of discovery. Immediate notification shall be made to COUNTY's Information
25 Security Officer and Privacy Officer and COUNTY's Human Resources HIPAA Representative,
26 within two (2) business days of discovery. The notification shall include, to the extent possible,
27 the identification of each individual whose unsecured PHI has been, or is reasonably believed to
28 have been, accessed, acquired, used, disclosed, or breached. ATTORNEY 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. ATTORNEY shall investigate such breach and is responsible for all notifications required by law and regulation or deemed necessary by COUNTY and shall provide a written report of the investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer and COUNTY's Human Resources 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 Human Resources HIPAA Representative (559) 600-1800 2220 Tulare St 16 th Floor Fresno, CA 93723	County of Fresno Dept. of Public Health Privacy Officer (559) 445-3249 1221 Fulton Mall Fresno, CA 93728	County of Fresno Information Technology Services Information Security Officer (559) 600-6200 333 W Pontiac Way Clovis, CA 93612
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G. ATTORNEY shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on behalf of COUNTY, available to the United States Department of Health and Human Services upon demand.

H. Safeguards

ATTORNEY shall implement administrative, physical, and technical safeguards as required by 45 CFR 164.308, 164.310, and 164.312 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 COUNTY; and to prevent access, use or disclosure of PHI other than as provided for by this Agreement. ATTORNEY 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 ATTORNEY's operations and the nature and scope of its activities. Upon COUNTY's request, ATTORNEY shall provide COUNTY with information concerning such safeguards.

ATTORNEY shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential,

1 personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions
2 shall include the following administrative and technical password controls for all systems used to
3 process or store confidential, personal, or sensitive data:

- 4 1. Passwords must not be:
 - 5 a. Shared or written down where they are accessible or
6 recognizable by anyone else; such as taped to computer screens, stored under keyboards, or
7 visible in a work area;
 - 8 b. A dictionary word; or
 - 9 c. Stored in clear text
- 10 2. Passwords must be:
 - 11 a. Eight (8) characters or more in length;
 - 12 b. Changed every ninety (90) days;
 - 13 c. Changed immediately if revealed or compromised; and
 - 14 d. Composed of characters from at least three of the following
15 four groups from the standard keyboard:
 - 16 1) Upper case letters (A-Z);
 - 17 2) Lowercase letters (a-z);
 - 18 3) Arabic numerals (0 through 9); and
 - 19 4) Non-alphanumeric characters (punctuation symbols).

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

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

27 ATTORNEY shall utilize a commercial encryption solution that has
28 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).

ATTORNEY 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.

I. Mitigation of Harmful Effects

ATTORNEY shall mitigate, to the extent practicable, any harmful effect that is known to ATTORNEY of an unauthorized access, viewing, use, disclosure, or breach of PHI by ATTORNEY CONTRACTOR or its subcontractors in violation of the requirements of these provisions.

J. Contractor's Subcontractors

ATTORNEY shall ensure that any of its contractors, including subcontractors, if applicable, to whom ATTORNEY provides PHI received from or created or received by ATTORNEY on behalf of COUNTY, agree to the same restrictions and conditions that apply to ATTORNEY 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..

K. Employee Training and Discipline

ATTORNEY 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 COUNTY under this Agreement and use or disclose PHI and discipline such employees who intentionally violate any provisions of these provisions, including termination of employment.

L. Termination for Cause

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

1. Provide an opportunity for ATTORNEY to cure the breach or end the

violation and terminate this Agreement if ATTORNEY does not cure the breach or end the violation within the time specified by COUNTY; or

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

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

M. Judicial or Administrative Proceedings

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

N. Effect of Termination

Upon termination or expiration of this Agreement for any reason, ATTORNEY shall return or destroy all PHI received from COUNTY (or created or received by ATTORNEY on behalf of COUNTY) that ATTORNEY still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it 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 shall apply to PHI that is in the possession of subcontractors or agents, if applicable, of ATTORNEY. If ATTORNEY destroys the PHI data, a certification of date and time of destruction shall be provided to the COUNTY by ATTORNEY.

O. Disclaimer

COUNTY makes no warranty or representation that compliance by ATTORNEY with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for ATTORNEY's own purposes or that any information in

1 ATTORNEY's possession or control, or transmitted or received by ATTORNEY, is or will be
2 secure from unauthorized access, viewing, use, disclosure, or breach. ATTORNEY's is solely
3 responsible for all decisions made by ATTORNEY regarding the safeguarding of PHI.

4 P. Amendment

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

15 Q. No Third-Party Beneficiaries

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

20 R. Interpretation

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

26 S. Regulatory References

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

1 T. Survival

2 The respective rights and obligations of ATTORNEY as stated in this
3 Section shall survive the termination or expiration of this Agreement.

4 U. No Waiver of Obligations

5 No change, waiver or discharge of any liability or obligation hereunder on
6 any one or more occasions shall be deemed a waiver of performance of any continuing or
7 other obligation, or shall prohibit enforcement of any obligation on any other occasion.
8

9 **11. DISCLOSURE OF SELF-DEALING TRANSACTIONS:** This provision is
10 only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit
11 corporation) or if during the term of this Agreement, the CONTRACTOR changes its status to
12 operate as a corporation.

13 Members of the CONTRACTOR's Board of Directors shall disclose any self-
14 dealing transactions that they are a party to while CONTRACTOR is providing goods or
15 performing services under this Agreement. A self-dealing transaction shall mean a transaction to
16 which the CONTRACTOR is a party and in which one or more of its directors has a material
17 financial interest. Members of the Board of Directors shall disclose any self-dealing transactions
18 that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form*
19 (Exhibit Five, incorporated herein by reference) and submitting it to the COUNTY prior to
20 commencing with the self-dealing transaction or immediately thereafter.

21 **12. NOTICES:** The persons and their addresses having authority to give and
22 receive notices under this Agreement include the following:

23 COUNTY

24 COUNTY OF FRESNO

25 ATTN: Paul Nerland

26 Director of Human Resources

27 2220 Tulare St., 16th Floor

28 Fresno, CA 93721

CONTRACTOR

Acclamation Insurance Management
Services (AIMS)

ATTN: Dominic Russo

President & CEO

10445 Old Placerville Road

Sacramento, CA 95827

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

13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

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

14. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents which constitute this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Agreement; (2) County of Fresno Request for Proposal 17-084; (3) the COUNTY'S Addendum 1 to Request for Proposal No. 17-084; and (4) the CONTRACTOR'S quotation made in response to Request for Proposal No. 17-084.

15. COMPLIANCE WITH LAWS: CONTRACTOR shall, at its own cost, comply with all applicable federal, state, and local laws in performance of its services under this Agreement including but not limited to workers' compensation, labor code, and confidentiality laws and regulations.

16. CONFIDENTIAL INFORMATION: CONTRACTOR shall properly secure and maintain the highest level of privacy and confidentiality of any and all "Confidential Information" to which CONTRACTOR is privy under this Agreement, unless and until CONTRACTOR obtains the express written consent from the Director of Human Resources to release such information. Under this Agreement, the term "Confidential Information" shall mean any and all COUNTY workers' compensation confidential, sensitive, and/or private information and claims data in any form (oral, hard copy, or electronic) that CONTRACTOR comes in contact with in the course of

1 executing this Agreement, including, but not limited to COUNTY workers' compensation claims
2 health and fiscal data or any other personally identifiable data that should be reasonably
3 understood to be confidential and not generally known or subject to "public disclosure", or
4 otherwise exempt from public disclosure under the law. For purposes of this Agreement, "public
5 disclosure" shall mean disclosure to anyone (including COUNTY departments and employees)
6 outside of the COUNTY's Risk Management Division of Human Resources and its authorized
7 personnel and/or designee(s).

8 **17. COUNTY RECORDS:** Upon termination of this Agreement (regardless of the
9 reason for or timing of termination), CONTRACTOR shall return all COUNTY workers'
10 compensation case files, data, and related records/documentation (in both paper and electronic
11 format) to COUNTY and/or at the request of COUNTY, assist in the transfer of said files, data, and
12 documentation to any succeeding vendor within a reasonable time period. It is mutually
13 understood that any and all case file information, data, and related records/documentation are the
14 property of COUNTY and will remain so at termination of this Agreement.

15 **18. TIME OF ESSENCE:** CONTRACTOR acknowledges and agrees that time
16 shall be of the essence in performance of its obligations under this Agreement, including every
17 provision hereof.

18 ///

19 IN WITNESS WHEREOF, the undersigned Parties hereby acknowledge execution of this
20 Agreement by their signatures below.

21 ///

22 **CONTRACTOR:**

23 **Acclamation Insurance Management Services, Inc. (AIMS)**

24 Dominic Russo, President & CEO

25 
26 _____

Date: 10/5/17

27 ///

28 ///

1 **COUNTY OF FRESNO**

2
3
4
5 _____
6 Brian Pacheco, Chairman of the
7 Board of Supervisors of the County of Fresno
8
9
10

Date: _____

11 **ATTEST:**

12 Bernice E. Seidel
13 Clerk to the Board of Supervisors
14 County of Fresno, State of California
15
16

17 By: _____
18 Deputy

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 Fund/Subclass: 1060/10000

26 Organization: 89250100

27 Account/Program: 7295
28