

# AGREEMENT

THIS AGREEMENT is made and entered into effective January 1, 2018, by and between the COUNTY OF FRESNO, hereinafter referred to as "COUNTY", and Hourglass Systems, Inc., a California corporation, hereinafter referred to as "CONTRACTOR".

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

## 1. OBLIGATIONS OF THE CONTRACTOR

A. The CONTRACTOR will provide benefit related management functions as outlined in Exhibit "A".

B. The CONTRACTOR will provide the COUNTY with general administrative services that include, but are not limited to:

- 1) Necessary training to assist the COUNTY in utilizing the CONTRACTOR'S services.
- 2) Furnish the COUNTY with any available information from the CONTRACTOR's records which the COUNTY may need.
- 3) Resolve any issues raised by COUNTY with due diligence. Any questionable enrollment or service requests will be referred to COUNTY for clarification

## 2. OBLIGATIONS OF THE COUNTY

A. The COUNTY is solely responsible for compliance with the Internal Revenue Code and other Federal, State or local laws.

B. The COUNTY is solely responsible for the accuracy and integrity of COUNTY data.

## 3. TERM

This Agreement shall become effective on the 1<sup>st</sup> day of January, 2018 and shall terminate on the 31<sup>st</sup> day of December, 2018.

## 4. TERMINATION

1                   A. Non-Allocation of Funds - The terms of this Agreement, and the services to  
2 be provided thereunder, are contingent on the approval of funds by the COUNTY. Should  
3 sufficient funds not be allocated, the services provided may be modified, or this Agreement  
4 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

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

- 7                   1) An illegal or improper use of funds;
- 8                   2) A failure to comply with any term of this Agreement;
- 9                   3) A substantially incorrect or incomplete report submitted to the  
10 COUNTY;
- 11                  4) Improperly performed service.

12                  In no event shall any payment by the COUNTY constitute a waiver by the COUNTY  
13 of any breach of this Agreement or any default which may then exist on the part of the  
14 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the  
15 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of  
16 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR  
17 under this Agreement, which in the judgment of the COUNTY were not expended in accordance  
18 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon  
19 demand.

20                  C. Without Cause - Under circumstances other than those set forth above,  
21 this Agreement may be terminated by COUNTY upon the giving of sixty (60) days advance written  
22 notice of an intention to terminate to CONTRACTOR.

23                  5. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and  
24 CONTRACTOR agrees to receive compensation as described in Exhibit B to this Agreement. The  
25 Per Retiree Per Month (PRPM) fee described in Exhibit B will be paid monthly throughout the term  
26 of the Agreement per the compiled monthly transmittals prepared by CONTRACTOR for funding  
27 disbursement. The PRPM fees are based on the actual number of eligible retirees as determined  
28 by the COUNTY. CONTRACTOR will invoice COUNTY for services related to Affordable Care

1 Act reporting as described in Exhibit B.

2 6. OWNERSHIP OF DATA: All data delivered by the COUNTY to  
3 CONTRACTOR, or which is created by either party for the COUNTY in connection with the  
4 performance of this Agreement shall be the exclusive property of the COUNTY. CONTRACTOR  
5 shall be the custodian of such data and will immediately make such data available to the COUNTY  
6 upon request during normal working hours. CONTRACTOR shall return all personnel/payroll raw  
7 data collected or generated in connection with the performance of the Agreement within thirty (30)  
8 days of the termination of this Agreement and shall not access said data for any purpose other  
9 than in connection with the performance of this Agreement.

10 7. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

11 A. The parties to this Agreement shall be in strict conformance with all  
12 applicable Federal and State of California laws and regulations, including but not limited to  
13 Sections 5328, 10850, and 14100.2 et seq. of the Welfare and Institutions Code, Sections 2.1 and  
14 431.300 et seq. of Title 42, Code of Federal Regulations (CFR), Section 56 et seq. of the  
15 California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations,  
16 and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to  
17 Section 1320 D et seq. of Title 42, United States Code (USC) and its implementing regulations,  
18 including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health  
19 Information Technology for Economic and Clinical Health Act (HITECH) regarding the  
20 confidentiality and security of patient information, and the Genetic Information Nondiscrimination  
21 Act (GINA) of 2008 regarding the confidentiality of genetic information.

22 Except as otherwise provided in this Agreement, CONTRACTOR, as a  
23 Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to  
24 perform functions, activities or services for or on behalf of COUNTY, as specified in this  
25 Agreement, provided that such use or disclosure shall not violate the Health Insurance Portability  
26 and Accountability Act (HIPAA), 42 USC 1320d et seq. The uses and disclosures of PHI may not  
27 be more expansive than those applicable to COUNTY, as the "Covered Entity" under the HIPAA  
28

1 Privacy Rule (45 CFR 164.500 et seq.), except as authorized for management, administrative or  
2 legal responsibilities of the Business Associate.

3 B. CONTRACTOR, including its subcontractors and employees, shall protect,  
4 from unauthorized access, use, or disclosure of names and other identifying information, including  
5 genetic information, concerning persons receiving services pursuant to this Agreement, except  
6 where permitted in order to carry out data aggregation purposes for health care operations [45  
7 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any  
8 and all persons receiving services pursuant to a COUNTY funded program. This requirement  
9 applies to electronic PHI. CONTRACTOR shall not use such identifying information or genetic  
10 information for any purpose other than carrying out CONTRACTOR's obligations under this  
11 Agreement.

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

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

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

27 F. CONTRACTOR shall provide access, at the request of COUNTY, and in  
28 the time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45

1 CFR Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45  
2 CFR Section 164.524 regarding access by individuals to their PHI. With respect to individual  
3 requests, access shall be provided within thirty (30) days from request. Access may be extended  
4 if CONTRACTOR cannot provide access and provides individual with the reasons for the delay  
5 and the date when access may be granted. PHI shall be provided in the form and format  
6 requested by the individual or COUNTY.

7 CONTRACTOR shall make any amendment(s) to PHI in a designated record set at  
8 the request of COUNTY or individual, and in the time and manner designated by COUNTY in  
9 accordance with 45 CFR Section 164.526.

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

14 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or  
15 reasonable belief that there has been unauthorized access, viewing, use, disclosure, security  
16 incident, or breach of unsecured PHI not permitted by this Agreement of which it becomes aware,  
17 immediately and without reasonable delay and in no case later than two (2) business days of  
18 discovery. Immediate notification shall be made to COUNTY's Information Security Officer and  
19 Privacy Officer and COUNTY's DPH HIPAA Representative, within two (2) business days of  
20 discovery. The notification shall include, to the extent possible, the identification of each individual  
21 whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired,  
22 used, disclosed, or breached. CONTRACTOR shall take prompt corrective action to cure any  
23 deficiencies and any action pertaining to such unauthorized disclosure required by applicable  
24 Federal and State Laws and regulations. CONTRACTOR shall investigate such breach and is  
25 responsible for all notifications required by law and regulation or deemed necessary by COUNTY  
26 and shall provide a written report of the investigation and reporting required to COUNTY's  
27 Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA Representative. This  
28

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

3  
4 County of Fresno  
5 Dept. of Public Health  
6 HIPAA Representative  
7 (559) 600-6439  
8 P.O. Box 11867  
9 Fresno, CA 93775

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

County of Fresno  
Dept. of Internal Services  
Information Security Officer  
(559) 600-5800  
333 W. Pontiac Way  
Clovis, CA 93612

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

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

#### 24 I. Safeguards

25 CONTRACTOR shall implement administrative, physical, and technical safeguards  
26 as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and  
27 appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI,  
28 that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized  
access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement.

1 CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and  
2 vulnerabilities to the confidential, integrity and availability of electronic PHI. CONTRACTOR shall  
3 develop and maintain a written information privacy and security program that includes  
4 administrative, technical and physical safeguards appropriate to the size and complexity of  
5 CONTRACTOR's operations and the nature and scope of its activities. Upon COUNTY's request,  
6 CONTRACTOR shall provide COUNTY with information concerning such safeguards.

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

12 1. Passwords must not be:

- 13 a. Shared or written down where they are accessible or recognizable by  
14 anyone else; such as taped to computer screens, stored under keyboards,  
15 or visible in a work area;
- 16 b. A dictionary word; or
- 17 c. Stored in clear text

18 2. Passwords must be:

- 19 a. Eight (8) characters or more in length;
- 20 b. Changed every ninety (90) days;
- 21 c. Changed immediately if revealed or compromised; and
- 22 d. Composed of characters from at least three (3) of the following four (4)  
23 groups from the standard keyboard:
  - 24 1) Upper case letters (A-Z);
  - 25 2) Lowercase letters (a-z);
  - 26 3) Arabic numerals (0 through 9); and
  - 27 4) Non-alphanumeric characters (punctuation symbols).

28 CONTRACTOR shall implement the following security controls on each workstation

1 or portable computing device (e.g., laptop computer) containing confidential,  
2 personal, or sensitive data:

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

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

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

17 J. Mitigation of Harmful Effects

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

23 K. CONTRACTOR's Subcontractors

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



1 subcontractors.

2 L. Employee Training and Discipline

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

8 M. Termination for Cause

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

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

19 N. Judicial or Administrative Proceedings

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

26 O. Effect of Termination

27 Upon termination or expiration of this Agreement for any reason, CONTRACTOR  
28 shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR

1 on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall retain no copies  
2 of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the  
3 protections of these provisions to such information, and limit further use of such PHI to those  
4 purposes that make the return or destruction of such PHI infeasible. This provision shall apply to  
5 PHI that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If  
6 CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be  
7 provided to the COUNTY by CONTRACTOR.

8 P. Disclaimer

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

15 Q. Amendment

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

26 R. No Third-Party Beneficiaries

27 Nothing express or implied in the terms and conditions of these provisions is intended to confer,  
28 nor shall anything herein confer, upon any person other than COUNTY or CONTRACTOR and

1 their respective successors or assignees, any rights, remedies, obligations or liabilities  
2 whatsoever.

3 S. Interpretation

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

9 T. Regulatory References

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

12 U. Survival

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

15 V. No Waiver of Obligations

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

19 8. INDEPENDENT CONTRACTOR: In performance of the work, duties and  
20 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and  
21 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and  
22 employees will at all times be acting and performing as an independent contractor, and shall act in  
23 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or  
24 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or  
25 direct the manner or method by which CONTRACTOR shall perform its work and function.  
26 However, COUNTY shall retain the right to administer this Agreement so as to verify that  
27 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

28 CONTRACTOR and COUNTY shall comply with all applicable provisions of

1 law and the rules and regulations, if any, of governmental authorities having jurisdiction over  
2 matters the subject thereof.

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

12           9.     MODIFICATION: Any matters of this Agreement may be modified from time to  
13 time by the written consent of all the parties without, in any way, affecting the remainder.

14           10.    NON-ASSIGNMENT: Neither party may assign, transfer or sub-contract this  
15 Agreement nor their rights or duties under this Agreement without the prior written consent of the  
16 other party.

17           11.    HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold  
18 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees  
19 from any and all costs and expenses (including attorney's fees and costs), damages, liabilities,  
20 claims, and losses occurring or resulting to COUNTY in connection with the performance, or  
21 failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement,  
22 and from any and all costs and expenses (including attorney's fees and costs), damages,  
23 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be  
24 injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers,  
25 agents, or employees under this Agreement.

26           12.    INSURANCE

27               Without limiting the COUNTY's right to obtain indemnification from  
28 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full

1 force and effect, the following insurance policies or a program of self-insurance, including but not  
2 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the  
3 term of the Agreement:

4 A. Commercial General Liability

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

11 B. Professional Liability

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

16 C. Worker's Compensation

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

19 D. Technology Professional Liability (Errors and Omissions)

20 Technology professional liability (errors and omissions) insurance with limits  
21 of not less than Five Million Dollars (\$5,000,000.00) annual aggregate. Coverage shall  
22 encompass all of the CONTRACTOR's duties and obligations that are the subject of this  
23 Agreement. Coverage shall include, but not be limited to, any and all claims, damages, costs,  
24 fees, regulatory fines and penalties, or forms of legal action involving Cyber Risks.

25 E. Cyber Liability

26 Cyber liability insurance with limits of not less than Five Million Dollars  
27 (\$5,000,000.00) annual aggregate. Coverage shall include, but not be limited to, any and all  
28 claims, damages, costs, fees, regulatory fines and penalties, or forms of legal action involving

1 Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement value of,  
2 damage to, alteration of, loss of, theft of, ransom of, or destruction of intangible property  
3 (including but not limited to information or data) that is in the care, custody, or control of  
4 CONTRACTOR.

5 For purposes of the technology professional liability insurance and the  
6 cyber liability insurance required under this Agreement, Cyber Risks include, but are not limited  
7 to, (i) security breaches, which include disclosure of, whether intentional or unintentional,  
8 information provided by COUNTY, information provided by or obtained from any employee, or  
9 personal-identifying information relating to any employee, to an unauthorized third party; (ii)  
10 breach of any of CONTRACTOR's obligations under this Agreement relating to data security,  
11 protection, preservation, usage, storage, transmission, and the like; (iii) infringement of  
12 intellectual property including, but not limited to, infringement of copyright, trademark, and trade  
13 dress; (iv) invasion of privacy, including any release of private information; (v) information theft  
14 by any person or entity, whatsoever; (vi) damage to or destruction or alteration of electronic  
15 information; (vii) extortion related to CONTRACTOR's obligations under this Agreement  
16 regarding electronic information, including information provided by COUNTY, information  
17 provided by or obtained from any employee, or personal-identifying information relating to any  
18 employee; (viii) network security; (ix) data breach response costs, including security breach  
19 response costs; (x) regulatory fines and penalties related to CONTRACTOR's obligations under  
20 this Agreement regarding electronic information, including information provided by COUNTY,  
21 information provided by or obtained from an employee, or personal-identifying information  
22 relating to any employee; and (xi) credit monitoring expenses.

#### 23 Additional Requirements Relating to Insurance

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

1 and not contributing with insurance provided under CONTRACTOR's policies herein. This  
2 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written  
3 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, (Paul Nerland, Director  
7 of Human Resources, 2220 Tulare Street, 16<sup>th</sup> Floor, Fresno, CA 93721), stating that such  
8 insurance coverage have been obtained and are in full force; that the COUNTY, officers, agents  
9 and employees will not be responsible for any premiums on the policies; that such Commercial  
10 General Liability insurance names the COUNTY, its officers, agents and employees, individually  
11 and collectively, as additional insured, but only insofar as the operations under this Agreement are  
12 concerned; that such coverage for additional insured shall apply as primary insurance and any  
13 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,  
14 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies  
15 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)  
16 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               13.     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 to  
27 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance  
28 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 14. NOTICES: The persons and their addresses having authority to give and  
5 receive notices under this Agreement include the following:

6 COUNTY

7 Paul Nerland,  
8 Director of Human Resources  
2220 Tulare Street, 16<sup>th</sup> Floor  
Fresno, CA 93721

CONTRACTOR

Greg Kinder, President/CEO  
Hourglass Systems, Inc.  
2307 N. Fine Ave.  
Fresno, CA 93727

9  
10 Any and all notices between the COUNTY and the CONTRACTOR provided  
11 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly  
12 served when personally delivered to one of the parties, or in lieu of such personal services, when  
13 deposited in the United States Mail, postage prepaid, addressed to such party.

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

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

18 16. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
19 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and  
20 supersedes all previous Agreement negotiations, proposals, commitments, writings,  
21 advertisements, publications, and understanding of any nature whatsoever unless expressly  
22 included in this Agreement.



## **EXHIBIT "A"**

CONTRACTOR will provide the following Administrative Services for the COUNTY:

1. Provide AdminDirect Benefits Management and Enrollment System Access – self service
2. Provide system technical support to end users
3. Produce Eligibility Electronic Data Interface (EDI) files to carriers
4. Weekly COBRA data feed to Administrative Solutions, Inc. (ASI)
5. EDI Monitoring and discrepancy resolution with carriers
6. Multiple eligibility/billing scheme management and closings
7. Active and Retiree payroll deduction imports and premium applications
8. Compile transmittal worksheets and accounting breakouts
9. Assist with reconciliation of member accounts and benefits that appear on accounting discrepancy reports
10. Manual PGP Encryption and SFTP of all files uploaded/downloaded
11. Full ad-hoc requests from COUNTY staff, ASI, and consultant (e.g. custom queries, etc.)
12. Import Retiree payroll deductions into SQL tables and perform monthly comparisons to eligibility; take query results and compile a change file for Fresno County Employee Retirement Association to send to State Street Bank for Retiree deduction processing
13. Modify AdminDirect benefit setups at renewal to comply with changes made by COUNTY for new plan years
14. At plan year changes, complete any employee/dependent data migrations necessary within database to meet plan year changes
15. Review and break down rates provided by COUNTY consultant into component pieces necessary for completing transmittals; work with consultant to verify rate breakouts, and provide approved premiums and breakouts to COUNTY and ASI
16. Input new plan year rates into AdminDirect rate tables
17. Coordinate and complete programming required to support new carriers and/or benefit changes for EDI transmittals
18. Provide Affordable Care Act required health insurance reporting to the IRS

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**1. CONTRACTOR agrees to perform retiree eligibility services for COUNTY retirees.**

a. Retirees enrolled in the Hartford plan will have a fee of \$2.65 PRPM. These fees will be forwarded monthly to CONTRACTOR.

**These fees will be forwarded monthly to CONTRACTOR.**

a. Preparation and filing of each 1094C/1095C form will have a fee of \$3.60 per form.

-18-

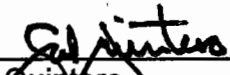
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
2 day and year first hereinabove written.

3 **CONTRACTOR**

4  
5 By:   
6 Greg Kinder  
7 President

8 Date: 6/19/2018  
9

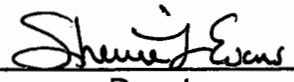
**COUNTY OF FRESNO**

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

Date: 6/25/18

**ATTEST:**

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

By:   
Deputy

21 **FOR ACCOUNTING USE ONLY:**

22 Fund No: 1060  
23 Subclass: 10000  
24 ORG No: 89250200  
25 Account No: 7185  
26  
27  
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