



# **Request for Proposal No. RMG119-RMADM-3157 Workers' Compensation Bill Review Services**

**San Bernardino County  
Department of Risk Management  
222 W. Hospitality Lane, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415  
November 9, 2018**

## I. INTRODUCTION

### A. Purpose

The San Bernardino County Department of Risk Management, hereafter referred to as the "County" or "Department", is seeking proposals from interested and qualified Proposers to provide Workers' Compensation Bill Review Services.

### B. RFP Contact

All correspondence, including proposals and questions, are to be submitted to the RFP contact:

San Bernardino County  
Purchasing Department  
Attn: Richard Chudanski, Buyer  
777 E. Rialto, Ave.  
San Bernardino, CA 92415  
(909) 387-2065 Phone  
Email: Richard.Chudanski@pur.sbcounty.gov

Fax number and e-mail address may be used to submit questions only. Proposals will not be accepted by email or facsimile. Proposals must be submitted electronically through the County Electronic Procurement Network (ePro), and/or via hard copy with original signature submitted to the address indicated above. **All Proposers must register with the ePro system prior to the date and time to submit the proposal or they will be disqualified.**

### C. Contract Term

Specific services to be provided under this Request for Proposals (RFP) are outlined under Section V, Scope of Work. The term of any contract awarded as a result of this RFP will be for a period of five (5) years, beginning on March 12, 2018 through March 11, 2023.

### D. Assistance to Proposers with a Disability

Proposers with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the San Bernardino County Purchasing Agent no later than ten (10) days prior to the deadline for receipt of proposals.

## II. PROPOSAL TIMELINE

Release of RFP	November 9, 2018
Optional Proposal Conference	<b>November 15, 2018 at 9:00 AM PST</b>
Deadline for submission of questions	<b>November 30, 2018 prior to 4:00 PM PST</b>
Tentative date for response to questions	December 10, 2018
Deadline to submit proposals	<b>December 21, 2018 prior to 4:00 PM PST</b>
Tentative dates for proposers' presentations	January 14, 2019 through January 18, 2019
Tentative date for Intent to Award Notifications	February 1, 2019
Tentative date for Contracts to be approved by the Board of Supervisors	March 12, 2019

### Proposal Conference:

An optional Proposal Conference will be held:

#### **Thursday, November 15, 2018 at 9:00 AM PST**

4<sup>th</sup>. Floor Conference Room  
Department of Risk Management  
222 W. Hospitality Lane, 4<sup>th</sup>. Fl.  
San Bernardino, CA 92415

Attendance at the conference is optional; however, we will be handing out a set of sample bills to be processed by Proposer. The Proposer must include in their proposal response an explanation of bill review for each bill, and a summary of savings analysis (Showing original bill amounts, reductions, allowances, and charges).

Questions regarding the contents of this RFP must be submitted in **writing prior to 4:00 PM PST on Friday, November 30, 2018** through ePro or by email, and directed to the RFP Contact listed in Section I, Paragraph B – RFP Contact. All questions will be answered, and both the question and answer will be posted on San Bernardino County's ePro website.

### III. DEFINITIONS

Capitalized terms used in this RFP shall have the meanings given to them in the RFP and as defined below:

Board: The San Bernardino County Board of Supervisors.

Contract: The Contract between the County and the Proposer resulting from the award issued pursuant to this RFP to the successful Proposer.

Contractor: Any individual, company, firm, corporation, partnership or other organization to whom a contract award is made by the County.

Facilitator: A County Purchasing Department buyer tasked with managing the processes of the evaluation panel.

Proposal: The offer to provide specific goods or services at specified prices and/or other conditions specified in the RFP.

Purchasing Agent: The Director of the County Purchasing Department.

Request for Proposal (RFP): The request for an offer from Proposers interested in providing the identified services sought to be procured by the County. The RFP specifies the evaluation factors to be used, and contains or incorporates by reference contractual terms and conditions applicable to the procurement.

Services: The requested services described in this RFP.

Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

### IV. PROPOSAL CONDITIONS

#### A. Authorized Signatures

All proposals must be signed by an individual authorized to bind the Proposer to the provisions of the RFP.

#### B. Term of Offer

Proposals shall remain open, valid and subject to acceptance anytime within nine (9) months after the proposal submission.

#### C. Required Review

Proposers should carefully review this RFP for defects and questionable or objectionable material. Comments from Proposers concerning defects and objectionable material in this RFP must be made in

writing and received by the RFP contact prior to the deadline for submission of questions identified in Section II, or at least ten (10) calendar days before the deadline to submit proposal (whichever occurs last). This will allow issuance of any necessary amendments or addendums to the RFP. It will also help prevent the opening of a defective RFP and exposure of proposals upon which an award could not be made. Protests based on any omission or error, or on the content of this RFP, may be disallowed if not submitted in writing to the attention of the RFP Contact in Section I, Paragraph B, prior to the deadline to submission of questions identified in Section II, or at least ten (10) calendar days before the deadline to submit proposals (whichever occurs last).

**D. Incurred Costs**

San Bernardino County is not obligated to pay any costs incurred by Proposer for the preparation of a proposal in response to this RFP. Proposers agree that all costs incurred in developing a proposal are the Proposer's responsibility.

**E. Amendments/Addenda to RFP**

San Bernardino County reserves the right to issue addenda or amendments to this RFP if San Bernardino County considers that changes are necessary or additional information is needed.

Changes to a proposal or withdrawal of proposals will only be allowed if acceptable requests are received prior to the deadline to submission of proposals. No amendments or withdrawals will be accepted after the deadline.

**F. Best Value Evaluation**

As established in this RFP, San Bernardino County realizes that criteria other than price are important, and will award contract(s) based on the proposal that best meets the needs of San Bernardino County. The San Bernardino County seeks the optimal combination of quality, price, and various qualitative elements of the required services that will provide San Bernardino County the greatest or best value for its money.

**G. Right of Rejection**

Offers must comply with all of the terms of the RFP, and all applicable local, state, and federal laws, codes, and regulations. San Bernardino County may reject as non-responsive any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP. Further, the San Bernardino County may reject a proposal from any entity that is a parent, affiliated, or subsidiary, or that is under common ownership, control, or management with any other entity submitting a proposal in response to this RFP.

A Proposer may not qualify the proposal nor restrict the rights of San Bernardino County. If Proposer does so, the proposal may be determined a non-responsive counteroffer, and the proposal may be rejected.

No proposal shall be rejected; however, if it contains a minor irregularity, defect or variation; if the irregularity, defect or variation is considered by the County to be immaterial or inconsequential, the County may choose to accept the proposal.

Minor informalities may be waived by the Purchasing Agent when they:

- Do not affect responsiveness;
- Are merely a matter of form or format;
- Do not change the relative standing or otherwise prejudice other offers;
- Do not change the meaning or scope of the RFP;
- Are trivial, negligible, or immaterial in nature;
- Do not reflect a material change in the work; or
- Do not constitute a substantial reservation against a requirement or provision;

In such cases, the Proposer will be notified of the deficiency in the proposal and given an opportunity to correct the irregularity, defect or variation, or alternatively, the County may elect to waive the deficiency and accept the proposal. The decision to provide a waiver shall in no way modify or compromise the overall purpose of the submittal, nor excuse the Proposer from compliance with all requirements if awarded a Contract.

This RFP does not commit San Bernardino County to award a contract. The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County also reserves the right to terminate this RFP process at any time.

#### **H. Local Preference**

San Bernardino County has adopted a preference for Vendors whose principal place of business is located within the boundaries of San Bernardino County. A five percent (5%) preference may be applied prior to approval of any purchase or acquisition of services, equipment, goods or supplies.

For purposes of the application of the local preference policy (County Policy 11-10), "principal place of business" is defined as the Vendor's main office (or headquarters) or a major regional office. A "major regional office" is defined as a business location apart from the Vendor's main office (or headquarters) which:

1. Has been issued a business license, if required, and has been established and open for a minimum of six months prior to the date that the approval authority authorizes the circulation of a RFP/RFQ/Quote for any contract, agreement, or purchase order to which it responds; and
2. Can demonstrate ongoing business activity in the field of endeavor on which the Vendor is proposing from that office during the preceding six months; and
3. Has a minimum of twenty-five percent (25%) of the Vendor's full time management employees and twenty-five percent (25%) of its full time regular employees working from the San Bernardino County location(s).

San Bernardino County's Local Preference Policy means for example, if two Proposers are responding to this RFP, and if quality, service and ability to meet San Bernardino County's needs are equal, County staff must determine if one of the Proposers is a local Vendor. If one of the Proposers is a local Vendor, and its quoted price or cost for services, equipment, goods or supplies does not exceed five percent (5%) of the other Proposer's quoted price or cost, unless it is determined that an exemption applies, staff should recommend the Local Vendor for the contract award.

#### **I. Clarification of Offers**

In order to determine if a proposal is reasonably susceptible for award, communications by the Facilitator for the Evaluation Panel are permitted with a Proposer to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the Facilitator may be adjusted as a result of a clarification under this section.

#### **J. Public Records Act**

All proposals and other material submitted within the proposal or in response for additional information become the property of the County and are subject to disclosure under the provisions of the California Public Records Act (Government Code Section 6250 et seq.). All proposal information, including cost information, will be held in confidence during the evaluation and negotiation process. Thereafter, proposals are subject to becoming a non-exempt public record.

If a Proposer believes that any portion of its proposal is exempt from public disclosure, it must indicate the specific portions believed to be confidential and not subject to disclosure on Attachment I – Public Records Act Exemptions. The Proposer also must include a brief description that sets out the reasons for exemption from disclosure. Each stated exemption must include a citation to supporting legal authority, including

statutory authority or case law, to support exemption from the Public Records Act. Request exemptions that do not meet the requirements of this section will not be considered.

The County will use reasonable means to ensure that such information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Proposals marked "Confidential" in their entirety will not be honored, and the County may not deny public disclosure of any portion of proposals so marked.

By submitting a proposal with portions identified in Attachment I as "Confidential," Proposer represents that it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act. Proposer may be requested to obtain legal protection from disclosure should a Public Records Act request be received. In the event the County does not disclose the information marked "Confidential," Proposer agrees to reimburse the County for, and to indemnify, defend (with counsel approved by County) and hold harmless the County, its officers, employees, agents, and volunteers, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses, including without limitation, attorneys' fees, expenses and court costs of any nature arising from or relating to the County's non-disclosure of any such designated portions of a proposal.

**K. Employment of Former County Officials**

Information must be provided in Attachment G regarding former San Bernardino County administrative officials (as defined below) who are employed by or represent Proposer. The information provided must include a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of Proposer and should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of Proposer. For purposes of this section, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

Failure to provide this information may result in the proposal being deemed non-responsive.

**L. Iran Contracting Act of 2010**

In accordance with Public Contract Code section 2204(a), the Proposer certifies that at the time the proposal is submitted, the Proposer signing the proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Proposers are cautioned that making a false certification may subject the Proposer to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Proposer agrees that signing the Proposal shall constitute signature of this Certification.

**M. Disclosure of Criminal and Civil Proceedings**

San Bernardino County reserves the right to request the information described herein from the Proposer selected for contract award. Failure to provide the information may result in a disqualification from the selection process and no award of contract to the Proposer. San Bernardino County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Proposer may also be requested to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of contract.

The selected Proposer may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has

been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Proposer will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the selected Proposer may also be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Proposer will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision, "key employees" includes any individuals providing direct service to San Bernardino County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

#### **N. Debarment and Suspension**

Proposer certifies in Attachment D that neither it nor its principals or subcontracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See Attachment D and the following United States General Services Administration's System for Award Management website <https://www.sam.gov>.) Proposer also certifies in Attachment D that if it or any of the subcontractors listed in the proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

#### **O. Unsatisfactory Performance**

Proposer affirms that it has no record of unsatisfactory performance with San Bernardino County in the twenty-four (24) month period immediately preceding the date of issuance of this RFP.

#### **P. Final Authority**

The final authority to award contracts as a result of this RFP rests solely with San Bernardino County Board of Supervisors, or as delegated by the Board of Supervisors.

### **V. SCOPE OF WORK**

#### **A. BACKGROUND INFORMATION**

The San Bernardino County encompasses 20,160 square miles, the largest County in the continental United States. It borders Los Angeles, Riverside, and Kern Counties and the States of Arizona and Nevada. Current population is approximately 2.14 million, the majority of which are located in the southwest portion of the County. The County employs approximately 22,800 workers and, in order to provide adequate service to its citizens, has offices located throughout the County often separated by extensive distances.

The Department of Risk Management (DRM) oversees the County's self-insurance programs and seeks to minimize the frequency and severity of financial loss to the County through a coordinated integrated Risk Management Program. As part of the integrated Risk Management Program, DRM utilizes workers' compensation bill review services to effectively process workers' compensation claims.

#### **B. VENDOR GENERAL RESPONSIBILITIES**

Vendor will provide the following services to the County, including:

- Professional workers' compensation bill review services,

- Hospital inpatient/outpatient bill review services,
- Maintenance of a network of preferred providers,
- Compliance with State requirements,
- Assisting in changing County policy and procedures to comply with future legislative changes affecting such services.

### **C. BILL REVIEW SERVICES**

1. Workers' compensation bill review services (including inpatient, outpatient, and pharmacy bills), and the repricing of all medical bills for services provided to County of San Bernardino occupationally ill or injured employees claiming or receiving workers' compensation benefits.
2. At the request of Risk Management, make available at least one (1) onsite Bill Review Staff member for the entire duration of the contract.
3. Apply California's workers compensation reforms in accordance with the State of California Division of Workers' Compensation (DWC) Official Medical Fee Schedule (OMFS), Preferred Provider Organizations (PPO) contracts, and /or negotiated discounts, as applicable.
4. Evaluate the appropriateness of codes and charges related to the industrial injury/diagnosis. Contact providers when the validity of International Classification of Diseases (ICD)-10 or Current Procedural Technology (CPT) 4 codes are in question.
5. Identify duplicate claims, inappropriate services, and unbundling.
6. Review of bills and charges as allowed with the provisions of recommendations for payment based on the OMFS.
7. Review the authorization status of services.
8. Manually review all surgical bills with two or more surgical codes that have CPT codes of 10040 to 69979 and any other surgical code that exceeds \$1,000 with particular emphasis on unbundling and upcoding.
9. Provide a monthly invoice by claim number; each bill review charge must be itemized showing the claimant name, claim number, adjuster number, and type and amount of savings.
10. Index medical bill by date of injury or loss and all of the following: claimant name, employee id number, social security number, claim number, tax ID number, and specialty.
11. Obtain preauthorization of bills from the County for payment. County will transmit a weekly file of basic claims data from the County claims database. Contractor will enter bill payment information and then run a batch program that matches medical bills to claim information and produce a list of rejected bills that require county review.
12. Transmit medical bill payment information into the County's Claim Management System. Supply at least a weekly electronic copy of medical bill payment information to be transmitted into the County's Claims Management System.
13. Digitize all medical bills through use of current imaging technology for processing and storage.
14. Coordinate with the County a process for transfer of all bills identified for review and delivery of reports. All bills will be forwarded within twenty-four (24) hours to auditing firm's location for review and evaluation at the expense of the contractor (Exception: Weekends and holidays)
15. Assure that 100% of bills that require no clarification or follow-up will be reviewed and returned within seven (7) working days from date of receipt.
16. Review and return all bills requiring clarification or follow-up within fifteen (15) working days from receipt of such bills.
17. Furnish reports to County in which fee scheduled items will be reported on a line by line entry basis along with computation of the fee schedule limit and recommended payment, i.e., explanation of reimbursement (EOR). EOR's to County Preferred Provider Organizations (PPO's) will indicate appropriate discounts in addition to fee schedule reductions.
18. Respond to all inquiries/complaints or appeals from claimants and/or providers and follow DWC appeals process guidelines if findings are disputed at no additional cost to County. Appear at WCAB and at Independent Medical Review at no additional cost to the County.
19. Establish and maintain electronic data link with County claims system provider to provide timely re-pricing and payment authorization information, if applicable.



20. The County may override decisions made by the systematic process of the Contractor if it is determined to be in the best interests of the County. Notwithstanding the foregoing, if the County elects, for any reason, not to utilize Contractor's proposed fee reduction for a given claim, County shall still be obligated to pay to Contractor all applicable fees for such proposed fee reduction for such claim.

#### **D. HOSPITAL BILL REVIEW**

1. Prescreen hospital bills for second level review when charges have exceeded \$5,000 for non-network facilities, or when charges have exceeded the stop-loss attachment point for network facilities. Bills identified by this process will be referred for second level review or negotiation.
2. Second level review will:
  - Examine the necessity of the treatment using established criteria.
  - Verify diagnose(s) against the cause of the illness or accident using established criteria.
  - Determine which services were provided under direction of an M.D.
  - Separate the charges into related and unrelated charges.
  - Produce a signed agreement for all negotiations.
3. Provide annual report on all medical review activity reflecting claim number, claimant name, health care provider, adjuster name and status capturing the statistical data elements required by the DWC.
4. Develop and provide to County communication materials necessary to effectively respond to health care providers' inquiries regarding the medical review program. This communication material shall be subject to County approval.

#### **E. ADMINISTRATIVE SERVICES**

1. Provide sufficient service facilities and personnel to operate this program.
2. With the exception of software systems, the Contractor will not be permitted to sub-contract with another entity to provide the services requested in the RFP.
3. Respond to telephone and email inquiries regarding bills, reductions, level of service inquiries and requests from County staff, as needed.
4. Train County staff on bill review process and procedures and /or utilization review referral criteria as applicable to service offering.
5. Build and maintain a data link (interface) with the current automated claims management system used by the County for payment processing. Data link shall be at contractor's expense. If at any time a change to County's claims management system requires Contractor to build and maintain a different data link, Contractor shall establish such new data link. In the event that establishing such new data link requires more than one hundred (100) hours of programming by Contractor, County agrees to pay Contractor one hundred fifty dollars (\$150.00) for each hour of programming over one hundred (100) hours. However, Contractor will make concerted effort not to exceed one hundred (100) hours.
6. Respond to and resolve conflicts or complaints from medical providers concerning bill review recommendations as applicable to provided services. This includes defending against litigation arising from recommendations.
7. Provide County access to bill review databases as applicable to services provided, either through email or other electronic means to review status of recommendations, trends, and savings.

#### **F. REPORTING**

As required based on the particular services provided, the selected Contractor will submit monthly Bill Review and /or Utilization Review reports at no charge, including:

1. Standard monthly reports.
2. Customized and ad hoc re-pricing reports, when needed.
3. Bill Review reports with itemized service description and fee date.
4. Timely, accurate data management and reporting re-pricing bill detail reports.
5. Re-pricing cost and saving summary report.
6. Reports reflecting the results of bill review activities.
7. Detail batch control reports.
8. Turnaround reports.

9. Quarterly statistical reporting of the number of bills and line items reviewed, dollar amount reviewed, amount of recommended reductions, total expense and net savings.

#### **G. COORDINATION BETWEEN CONTRACTOR AND COUNTY**

1. The Contractor will alert the County's claims adjusters to treatment or charges not related to the compensable injury and/or flagging utilization review when thresholds are met or exceeded.
2. The Contractor shall only accept requests for bill review services directly from the County of San Bernardino – Department of Risk Management or designated representative.
3. The Contractor will respond to questions or inquiries from the County workers' compensation staff, within two (2) business days.
4. The Contractor agrees to absorb, as part of overhead that will not be reimbursed by County, charges to the Contractor's system for upgrades or enhancements that are required by changes in State Laws (e.g., changes in the California fee schedule).

#### **H. PERFORMANCE MEASURES**

Regular and comprehensive statistical reporting is the only method that the County uses to measure the value of this program. County will require quarterly reports due on the 15th of the month following each County fiscal quarter, and a fiscal year summary analysis report due fourteen (14) days after the close of the fiscal year on June 30<sup>th</sup> of each year that must include, but is not limited to statistics on the following:

1. Reimbursement Schedule
  - a. Number of invoices reviewed.
  - b. Number of line items reviewed.
  - c. Original bill amount submitted.
  - d. Fee schedule reductions.
  - e. Audit reductions for hospital bills (Non-fee schedule).
  - f. Negotiation and specialty bills (Non-PPO) reductions.
  - g. PPO reductions.
  - h. Total amount of recommended reductions.
  - i. Total paid.
  - j. Net savings.
  - k. Charges for fee schedule reductions.
  - l. Charges for audit reductions.
  - m. Charges for negotiation of specialty bills.
  - n. Charges for PPO savings.
  - o. Total charges.
2. Hospital/Physician/Chiropractic/Physical Therapy Second Level Review
  - a. Number of invoices reviewed.
  - b. Number of days of in-patient stays.
  - c. Number of physical therapies.
  - d. Chiropractic visits paid.
  - e. Original bill amount submitted.
  - f. Total amount of recommended reductions.
  - g. Total of second level review expense fees.
  - h. Net savings.

#### **I. ELECTRONIC DATA INTERCHANGE (EDI)**

##### **1. Electronic Data Interchange**

In accordance with Section I.I.2 below, the parties shall develop, implement and transmit medical bill/payment reports as required by California EDI requirements to ensure compliance with DWC/WCIS regulations on behalf of County.

##### **2. Exchange of Information; Penalties**

- a) Contractor agrees to provide information technology services, in cooperation with County, necessary for the establishment and maintenance of an electronic data interface between Contractor's and County's computer systems, to facilitate the scanning, review, payment, and

electronic storage of County's medical bills. Electronic data interface files shall be automated and transmitted by each party from their original source database, using a format and naming convention agreed upon by County and Contractor and shall be uploaded by the recipient within three (3) days of receipt from the sender. The County must be able to import scanned bills to County's internal document imaging system. Along with digital images, County will also need relevant and related information such as Claim number, Invoice Number etc.

- b) Contractor agrees to supply all information pertaining to County's medical bills, including information relating to the payment of such bills required or otherwise requested by the State of California and its governmental agencies, including the establishment and maintenance of an electronic data interface required by California law, to avoid the incurrence of penalties and fines ("Reporting Obligations"). However, subject to the limitations and each party's obligations set forth in this section, in the event that County incurs penalties and fines as a result of Contractor's failure to comply with the terms and conditions of this Section I.1.2, including as a result of Contractor's systems failures, Contractor shall be responsible to pay such penalties and fines.
- i. In order for Contractor to meet the Reporting Obligations, County shall notify Contractor of each bill paid by County within twenty-one (21) business days of the payment date of the bill, such payment to be made in accordance with Section I.1.2 (iii) below, via the electronic transmission of a medical bill date paid file to Contractor each business day, which file shall contain the Contractor's required file naming convention consisting of a 3 character customer abbreviation as determined by Contractor and supplied to Customer, a single underscore character, and date the file is created in a CCYYMMDD format.
  - ii. In the event that information supplied by County to Contractor is incorrect, incomplete or untimely processed and prevents Contractor from submitting a report to the State of California, or leads to errors in submissions to the State of California, County shall be solely responsible for promptly resubmitting corrected data to Contractor, and Contractor will not be liable for any damages, fines, penalties or other amounts to the extent arising from such incorrect, incomplete or untimely processed information. Contractor shall promptly notify County if Contractor receives notice from the State of California that a report submitted by Contractor on behalf of County contains incorrect, incomplete or untimely processed information. If Contractor fails to provide such notice and County incurs damages, fines or other penalties that would not have been incurred but for such failure of Contractor to provide such notice, Contractor shall remain liable for such damages, fines or penalties. County shall release Contractor from any and all penalties or other fines imposed by the State of California and its governmental agencies, (1) with respect to any and all non-filed or untimely filed bills in the event such penalties or other fines have resulted from such time period; or (2) in the event information supplied by County to Contractor is incorrect, incomplete or untimely processed and prevents Contractor from submitting a report to the State of California or leads to errors in submissions to the State of California. Subject to the foregoing, Contractor shall be liable for penalties directly resulting from Contractor's failure to comply with the Reporting Obligations. County agrees to cooperate with Contractor in the appeal of any damages, fines or other penalties assessed against County by the State of California arising out of this agreement if such appeal is desired by Contractor.
  - iii. To assist County in meeting its obligations under this subsection, Contractor shall electronically send an exception report to County within five (5) business days following each upload which shall set forth those bills which County has not included in any of its medical bill date paid files sent to Contractor within five (5) business days of the date upon which Contractor sent the electronically adjudicated bill and the Explanation of Review for the bill (as defined in Section I.1.2(iii)) to County. This exception report shall include the bill control number, County's claim number, the employee's name, the provider's name and tax identification number, date of service, and the recommended payment allowance for the bill.
- c) Within five (5) business days after scanning the bills into its computer database, Contractor will review and adjudicate the bills and post legible copies, along with the medical providers'

corresponding narrative reports, on the Contractor's internal bill review application to be reviewed by County. Within fifteen (15) business days of the posting of a bill by Contractor on its internal bill review application, County will notify Contractor of the approval, denial, or disallowance of the bill via a computer entry made by County on the Contractor's internal bill review application. Any bill not approved, denied or disallowed within twenty (20) days from the date Contractor posts such bill on the Contractor's internal bill review application, will be returned to County, and Contractor will have no further obligation with respect thereto. Within one (1) business day following County's approval, denial, or disallowance of a bill, Contractor will generate an Explanation of Review (EOR) which sets forth the recommended payment allowance for the bill, electronically send the recommended payment allowance for the bill to County via a mutually acceptable electronic data interface, as described in Section I.I.2 (i), within twenty (20) business days of its receipt of both the electronically adjudicated bill and the EOR for the bill from Contractor, County will make payment to the medical provider, and County shall notify Contractor of each bill paid by County within twenty (20) business days of the payment date of the bill via the electronic transmission of a medical bill date paid file to Contractor each business day, which file shall contain the medical bill control number and the date of payment of the bill.

#### **J. MONITORING OF SERVICE/QUALITY**

Contractor will:

1. Provide the County with quarterly reports that evaluate the Contractor's compliance with each performance measure by the 15th of the month following each County fiscal year quarter.
2. Maintain a quality improvement and/or assurance program for the different components of Contractor's services. Contractor will develop the details of this program and submit them to the County for review and comment by the end of the first quarter of the contract year.
3. Provide automated software support and/or computer link up for the review process to be used by the Contractor in order to assure timely responses, uniform administration, and complete data gathering at the expense of Contractor.
4. Collect data for report preparation as outlined in the reporting section.

#### **K. INSTRUCTIONAL AND TRAINING SERVICES**

Proposer agrees to undertake a planned effort to educate, and make available, learning opportunities to Risk Management Staff and other designated County staff on topics related to workers' compensation bill review services. Proposer shall provide a maximum of four (4) days instructor led training classes per year at the premises of San Bernardino County – Department of Risk Management that may span multiple dates. Manuals or handouts must be provided for all attendees.

#### **L. CONTRACTOR'S GUARANTEE**

The Contractor guarantees its services will be satisfactory to the County as specified in the RFP and the contract. If the County is dissatisfied with the Contractor's services, qualifications of its staff, licenses and/or certifications, the County has the right to cancel any contract for service and be relieved of the obligation of continuing with this contract.

#### **M. CONTRACTOR'S NAME AND TAX ID NUMBER**

Contractor is required to maintain the same name and tax id for the duration of the contract. However, if a change occurs, the Contractor shall notify the COUNTY in writing of any change of name or tax identification number within ten (10) business days of the change and should provide a new IRS W9 form and promptly complete and return updated electronic fund transfer forms.

### **VI. PROPOSAL SUBMISSION**

#### **A. General**

1. All interested and qualified Proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that the Proposer has read and understands the entire RFP, including all

appendixes, attachments, exhibits, schedules, and addenda (as applicable) and that all concerns regarding the RFP have been satisfied.

2. Proposals must be received by the designated date and time. **All Proposers must register with the ePro system prior to the date and time to submit the proposal or they will be disqualified. Late or incomplete proposals will not be accepted.** Electronic response must be submitted through the San Bernardino County Electronic Procurement Network (ePro) <https://epro.sbcounty.gov/epro/>. System-related issues in ePro shall be directed to the Purchasing Department at (909) 387-2060. For procurement questions involving ePro, please contact the RFP contact identified in Section I, Paragraph A - Purpose.
3. The Proposer acknowledges that its electronic signature is legally binding. Submittals in ePro will be opened from the system's encrypted lock box after the deadline and evaluated as stated in this RFP.
4. Paper responses may be submitted in lieu of electronic submission, at the location identified in the RFP, by mail or in person to the RFP Contact listed in Section I, Paragraph B, and will be time/date stamped when received. Proposals may be withdrawn at any time prior to the scheduled deadline for submission of the proposal.

Hand carried proposals may be delivered to the RFP Contact identified in Section I between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays observed by San Bernardino County. Hand carried proposals must be received by the deadline to submit proposals, which is **December 21, 2018 prior to 4:00pm PST**. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements, and ensuring that the address information appears on the outer wrapper or envelope used by such service.

5. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP.
6. Proposals must be completed in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.

## **B. Proposal Format**

Response to this RFP must be in the form of a proposal package, which must be submitted in the following format:

### **1. Presentation**

All proposal must be submitted on 8 ½ x 11 page size; each page, including attachments, must be clearly and consecutively numbered.

### **2. Cover Page**

Please use the Cover Page included in this RFP; this form must be fully completed and signed by an authorized officer of the Proposer.

### **3. Table of Contents**

All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to a Table of Contents.

### **4. Proposal Checklist**

Please use Attachment A to ensure that all items requested have been included.

### **5. Statement of Certification**

Include the following on Attachment B:

- a. A statement that the offer made in the proposal is firm and binding for nine (9) months from the deadline for submission of the proposal.
- b. A statement that all aspects of the proposal, including cost, have been determined independently, without consultation with any other Proposer (competitor) for the purpose of restricting competition.
- c. A statement that all declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle San Bernardino County to pursue any remedy by law.
- d. A statement that the Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and a Contract awarded.
- e. A statement that the Proposer agrees to provide San Bernardino County with any other information San Bernardino County determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed.
- f. A statement that the Proposer, if selected will comply with all applicable rules, laws, and regulations.
- g. A statement that the Proposer has reviewed the RFP and General Contract Terms in their entirety and have no exceptions to any requirements, terms or conditions, except as noted in Attachment H.

**6. Statement of Experience and Qualifications**

Include the following in this section of the proposal:

- a. Business name of the Proposer and type of legal entity such as corporation, partnership, etc. If Proposer is a business entity that must be registered with the California Secretary of State, Proposer shall provide the County the entity number assigned to it by the Secretary of State.
- b. Number of years the Proposer has been in business under the present business name, as well as related prior business names.
- c. Identify if Proposer uses any sub-contractor(s) for services and software used to provide the required services in this RFP. Each sub-contractor must be identified and a brief description of its services or software shall be included.
- d. Statement that the Proposer does not have any commitments or potential commitments that may impact the Proposer's ability to perform the Contract, if awarded.

**7. Licenses, Permits, and/or Certifications**

List in Attachment C and provide copies of all licenses, permits and/or certifications as required under Section X. TERMS AND CONDITIONS, Paragraph A, 22.

**8. Certification Regarding Debarment or Suspension**

Proposer certifies in Attachment D that neither it nor its principals or subcontracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency as required by Executive Order 12549. Further, Proposer affirms that it has no record of unsatisfactory performance with San Bernardino County in the twenty-four (24) month period immediately preceding the date of issuance of this RFP.

**9. Project Team Organization Chart**

Provide an organization chart illustrating the project team that clearly shows the organization of the team and the hierarchy of the members. It must include:

- a. Organizational framework for the proposed project team.
- b. Staff name, position, and contact information for each role identified in the chart.
- c. Resumes of key personnel, including qualifications, education and experience in the field of services requested in the RFP.

**10. Proposal Description**

The proposal should include the following:

- a. A brief synopsis of the Proposer's understanding of the County's needs and how the Proposer plans to meet these.
- b. Reviews of sample bills with EOR for each and a summary of savings analysis.
- c. Identify and list all claims systems Proposer's software/system is interfaced with.
- d. Briefly discuss the Proposer's methodology for claims interfacing.
- e. A detailed statement of the proposed services.
- f. Other available services provided by Contractor.
- g. An explanation of any assumptions and/or constraints.

#### **11. Work Plan and Schedule**

Include the following:

- a. Work Plan should include time needed to build data link with our claims system, provide the ability to test the link in a test environment, with testing time line and cut over to production.
- b. Briefly discuss the Proposer's methodology for claims interfacing.
- c. Summary of management/work plan for this Project;
- d. Project schedule; please include estimated project milestones dates through all phases of the project. Examples of project phases preliminary/planning phase, design, tests, implementation, etc.

#### **12. Cost**

Complete proposed pricing on Attachment E.

#### **13. References**

Provide three (3) references from other agencies, preferably public agencies of similar size as San Bernardino County, with whom you have established a contract on a project of this nature. Provide Contact Name and Title, Email, Address, Phone Number, and dates during the time services were provided, please use Attachment F.

#### **14. Employment of Former County Officials**

Complete Attachment G to provide information about former San Bernardino County Officials, as defined in Section IV, Paragraph K.

#### **15. Exceptions to RFP**

Complete Attachment H, if applicable.

#### **16. Public Records Act Exemptions**

Complete Attachment I – Public Records Act Exemptions, if applicable.

#### **17. Insurance**

Submit evidence of ability to insure as stated in Section X, Sub-section B - Indemnification and Insurance Requirements. Proposer must complete and submit Attachment J, and ensure the form is complete, including the signature from Proposer's insurance broker/agent.

#### **18. Financials**

Proposer must provide its annual financial statements for the last two years. Proposer must also include independently audited financial statements for the most recent completed fiscal year. If audited financial statements are not available, please provide un-audited financial statements along with a certification from the Proposer's accountant that the information accurately reflects the Proposer's current financial status. If the Proposer is a sole proprietorship, please provide Schedule C of the Internal Revenue Service forms as well as a certification from the owner and the accountant that the information accurately reflects the Proposer's current financial status.

## **VII. EVALUATION**

Proposals will be subject to an Initial Review to confirm responsiveness, by determining whether each proposal includes the stipulated content, required certifications or licensing, etc., and is presented in the required format, in order for the proposal to advance for evaluation. Any reasonable person reviewing for responsiveness must be able to ascertain that the Proposal meets these requirements.

The evaluation process includes the following categories, and may include additional specific criteria. Likewise, the listed considerations are possible considerations, and may not be the only factors involved in the evaluation.

### **A. QUALIFICATIONS, EXPERIENCE, AND REFERENCES**

Weight: 30 Points

Considerations: Proposer background and reputation, qualifications of the project team, experience with similar services and entities. Considerations: Satisfactory performance of similar work, demonstrated knowledge and expertise, work product, quality of interactions, capability of assigned team members, likelihood of continued use, etc. References will be contacted by the interview panel prior to interviewing Proposer.

### **B. TECHNICAL REVIEW**

Weight: 30 Points

Considerations: Statement of understanding of San Bernardino County's needs, work plan, scheduling, technical specifications and functionality, quality control, training, adequacy of support staff, insurance compliance—risk management, and value-added aspects.

### **C. INTERVIEW, PRESENTATION, OR DEMONSTRATION**

Weight: 20 Points

Considerations: Content conveyed or demonstrated in person to the evaluation panel.

### **D. COST**

Weight: 20 Points

Considerations: Unit cost, % of PPO savings, savings, warranty, etc.

### **E. FINANCIAL REVIEW**

Considerations: Applies only when financial stability and responsibility is deemed pertinent to the intended selected vendor and contract award, at the sole discretion of San Bernardino County. Statements and/or tax information is evaluated by qualified individuals, most often at the Auditor-Controller's Office.

San Bernardino County may, at its sole discretion, create a shortlist of proposals for further evaluation; require an oral interview, presentation, or demonstration; utilize outside experts to assist in the evaluation process; and/or issue a request for Best and Final Offer (BAFO) from one or more Proposers.

San Bernardino County will establish an evaluation panel with responsibility for reviewing all proposals and conducting the evaluation. A facilitator will manage the integrity of the evaluation process and will not be a voting member of the evaluation panel. An initial meeting will be scheduled and held with the evaluation panel members, wherein the facilitator will distribute all relevant documents to the evaluators including the RFP, evaluation worksheets for each proposal, and written evaluation instructions.

After the initial meeting, evaluators will independently review and score the proposals. The evaluation panel will then convene again to discuss the individual scores to resolve questions and to discuss the basis for individual scores, but not for the evaluators to agree upon scoring. At the end of this discussion, each evaluator will be given an option to revise his/her scores.



Evaluators will make independent determinations for scores, including review and understanding of any additional information obtained by the group discussion. In the event a score is revised, the evaluator will strike out the original score, document the new score, and provide comments to support the revision.

If clarifying information is needed at any point, the facilitator will contact Proposer(s) to obtain the necessary information. The facilitator will then provide the information to the evaluation panel electronically or verbally, as appropriate.

If the evaluation process includes components such as oral interviews, product demonstration, and/or site visits, the facilitator will coordinate those with evaluators. Individual scoring and any subsequent evaluation panel meetings with respect to such components must be conducted.

Once all ratings are finalized and documented, the facilitator will collect individual evaluation worksheets to create a final evaluation scoring worksheet.

## **VIII. NEGOTIATIONS AND NOTICE OF INTENT TO AWARD**

San Bernardino County may require the potential Proposer(s) selected to participate in negotiations. This may include cost, technical, or other clarifications needed to make a decision.

### **A. Contract Negotiation**

After final evaluation and selection, negotiations may be conducted with the Proposer of the highest-ranked proposal. Negotiations, if held, shall be within the scope of work in the request for proposals. If the contract negotiations take place in San Bernardino County, California, the Proposer will be responsible for its travel and per diem expenses of its personnel.

### **B. Failure to Negotiate**

If the selected Proposer

- Fails to provide the information required to begin negotiations in a timely manner; or
- Fails to negotiate in good faith; or
- Indicates it cannot perform the contract within the budgeted funds available for the services; or
- If the Proposer and San Bernardino County, after a good faith effort, simply cannot come to terms,

Then San Bernardino County may terminate negotiations with the Proposer initially selected and commence negotiations with the next highest rated Proposer.

### **C. Notice of Intent to Award (NOIA) – Proposer Notification of Selection**

After the completion of contract negotiations a written or electronic Notice of Intent to Award (NOIA) and denial letters (or a copy of the NOIA) will be issued to all Proposers. The issuance date of the NOIA is the date the NOIA was delivered by email or into the care of the United States Postal Service for delivery to the Proposer. The NOIA also begins the 10-calendar day appeal period.

### **D. Review of Financial Performance**

As indicated in Section VII, Paragraph E, financial information may be used to evaluate and select the proposal(s) deemed to be in San Bernardino County's best interest. Alternatively, at San Bernardino County's sole discretion, the financial performance of the intended contractor(s) may be assessed prior to contract award. Financial performance deemed unsatisfactory by the County may result in non-award or a recommendation for award to another Proposer(s).

### **E. Award**

Contract(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Proposer will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award.

## **IX. APPEAL AND AWARD**

In the event a dispute arises concerning the proposal process prior to the award of the contract, the party wishing resolution of the dispute shall submit a request in writing to the Purchasing Agent. Proposer may appeal the recommended award or denial of award (Protest), provided the following stipulations are met:

1. Appeal must be in writing.
2. Appeal must be submitted within ten (10) calendar days of the date of the NOIA.

An appeal of a denial of award can only be brought on the following grounds:

1. Failure of the San Bernardino County to follow the selection procedures and adhere to requirements specified in the RFP or any addenda or amendments.
2. There has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.
3. A violation of State or Federal law.

Appeals will not be accepted for any other reasons than those stated above. All appeals must be sent to:

Laurie Rozko, Director  
San Bernardino County  
Purchasing Department  
777 E. Rialto Avenue  
San Bernardino, CA 92415-0760

Upon receipt of the formal Appeal, the Purchasing Agent, or his/her designee, will attempt to resolve the Appeal. An Appeal shall be disallowed when, in the judgment of the Purchasing Agent it has been submitted: (1) as a delay tactic; (2) for the purpose of posturing the Proposer advantageously for future procurement; (3) in a form that deviates from the one prescribed; (4) without adequate factual basis or merit; or (5) in an untimely manner.

The Purchasing Agent shall make a decision concerning the appeal, and notify the Proposer submitting the appeal, within a reasonable timeframe prior to the tentatively scheduled date for awarding the contract. The decision of the San Bernardino County Purchasing Agent shall be deemed final.

Alternatively, at the Purchasing Agent's discretion, an Appeal Panel consisting of five (5) members appointed by the Purchasing Agent shall hear the Appeal. The Proposer will be provided reasonable notice of the time, date and location of the hearing. In the event that an appealing Proposer does not appear at the Appeal hearing as scheduled, the Appeal will be disallowed.

The hearing is informal, in that it is not subject to the strict rules of evidence or procedure, and live witnesses, if any, will not be sworn. All relevant evidence is admissible, including hearsay. It will be up to the Appeal Panel members to consider the credibility of the evidence and the weight to give it.

The Panel will determine by at least three (3) affirmative votes: 1) whether the Appeal was submitted timely; 2) whether the Appeal is based on at least one of the three designated grounds identified above; and 3) whether the grounds on which the Appeal are based have been substantiated.

If any of the grounds are determined to be valid, the Panel will also decide if the valid portion of the Appeal has so tainted the RFP process that it is unfair to the Proposer or whether the valid grounds for the Appeal

are in the nature of harmless error and that the RFP process was fair to the Proposer. The Panel will not re-evaluate the proposals.

The Purchasing Agent shall notify the Proposer making the Appeal of the decision, within a reasonable timeframe prior to the tentatively scheduled date for awarding the contract. The decision of the Appeal Panel shall be deemed final. If the Contract must be approved by the Board, after receiving a decision from the Purchasing Agent or Appeal Panel, the Proposer may then present its Appeal to the Clerk of the Board of Supervisors for the Board's review and decision. The Proposer must file its written Appeal with the Clerk of the Board or provide a verbal Appeal (typically limited to three minutes) prior to the Board making a decision on the Contract. Any decision of the Board shall be deemed final.

A Proposer appealing the results of any of the processes described herein must follow the procedures set forth. By submitting a "Letter of Intent to Appeal", the Proposer has agreed that the appeal procedures herein shall precede any action in a judicial or quasi-judicial tribunal regarding this proposal. Appeals that do not follow these procedures shall not be considered. The appeal procedures constitute the sole administrative remedy available to the Proposer under this RFP. Upon exhaustion of this remedy no additional recourse is available.

## **X. TERMS AND CONDITIONS**

The selected Proposer will be required to enter into a formal agreement with San Bernardino County. This RFP sets forth some of the general provisions which will be included in the final contract. In submitting a response to this RFP, Contractor will be deemed to have agreed to each clause unless the proposal identifies an objection and County agrees to a change of language in writing. This includes the terms in the Business Associate Agreement in Exhibit I. All objections to any provisions in the Term and Conditions must be listed on Attachment H – Exceptions to RFP, or any exception thereto shall be waived.

### **A. General**

#### **1. Agreement Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of Contractor and San Bernardino County.

#### **2. Agreement Assignability**

Without the prior written consent of San Bernardino County, the Agreement is not assignable by Contractor either in whole or in part.

#### **3. Agreement Exclusivity**

This is not an exclusive Agreement. San Bernardino County reserves the right to enter into an agreement with other Contractors for the same or similar services. San Bernardino County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Agreement.

#### **4. Attorney Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Part B-1 Indemnification.

#### **5. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) have not been convicted of a felony and are not proven substance abusers; and (c) are not otherwise disqualified from performing the Services under applicable Law. If requested by Customer and not in violation of applicable Law, Contractor shall

conduct a background check on all its personnel providing Services to verify compliance with the preceding requirements and shall review the results of the background check of each individual to verify that the individual meets Contractor's standards for employment. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet criteria acceptable to County, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**6. Change of Address**

Contractor shall notify San Bernardino County in writing of any change in mailing address within ten (10) business days of the change.

**7. Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**8. Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of County regarding safety and health and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all Laws applicable to the County facilities and/or the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**9. Confidentiality**

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall execute and comply with the attached Business Associate Agreement (Exhibit I). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for services performed pursuant to Contract.

**10. Primary Point of Contact**

The Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written notification and acceptance of San Bernardino County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**11. County Representative**

The Director of the Department of Risk Management or his/her designee shall represent San

Bernardino County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

#### **12. Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, San Bernardino County may make any necessary repairs. Contractor, as determined by San Bernardino County, for such repairs shall repay all costs incurred by San Bernardino County, by cash payment upon demand or County may deduct such costs from any amounts due to the Contractor from San Bernardino County.

#### **13. Debarment and Suspension**

The Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

#### **14. Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this agreement, Contractor agrees that the Contractor and the Contractor's employees, while performing service for San Bernardino County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- c. Shall not sell, offer, or provide alcohol or a drug to another person. This shall not be applicable to a Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing services for San Bernardino County on County property, or using County equipment, of San Bernardino County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for San Bernardino County.

San Bernardino County may terminate for default or breach of this agreement and any other agreement the Contractor has with San Bernardino County, if the Contractor or Contractor's employees are determined by San Bernardino County not to be in compliance with above.

#### **15. Duration of Terms**

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

#### **16. Employment Discrimination**

During the term of the Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

#### **17. Environmental Preference**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.

#### **18. Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in San Bernardino County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

#### **19. Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of San Bernardino County in an attempt to secure favorable treatment regarding this Agreement.

San Bernardino County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of San Bernardino County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the San Bernardino County Administrative Office. In the event of a termination under this provision, San Bernardino County is entitled to pursue any available legal remedies.

#### **20. Informal Dispute Resolution**

In the event San Bernardino County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

#### **21. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of the Contract is terminated or held to be invalid,

illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**22. Licenses, Permits, and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the Federal, State, County, and municipal laws, ordinances, rules and regulations. Contractor shall maintain these licenses, permits, and/or certifications in effect for the duration of this Agreement. Contractor will notify County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and/or certifications may result in immediate termination of this Agreement.

**23. Material Misstatement/Misrepresentation**

If during the course of the administration of this Agreement, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**24. Mutual Covenants**

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**25. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by San Bernardino County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Agreement; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Agreement. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**26. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**27. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Agreement shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Agreement. Unless otherwise directed by County, Contractor may retain copies of such items.

**28. Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Agreement.

**29. Relationship of the Parties**

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the parties hereto, nor shall either party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other party hereto.

**30. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this Agreement or Contractor's relationship with County may be made or used without prior written approval of San Bernardino County.

**31. Representation of San Bernardino County**

In the performance of the Agreement, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

**32. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

**33. Subcontracting**

Contractor agrees not to enter into any subcontracting agreements for work contemplated under the Agreement without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into agreements with or otherwise engaging any subcontractors who may supply any part of the deliverables and/or services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by County, resumes of proposed subcontractor's personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section X. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor's Personnel, including removal.

For any subcontractor, Contractor shall:

- 33.1** Be responsible for subcontractor compliance with the contract and the subcontract terms and conditions; and
- 33.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 33.3** Include in the subcontractor's subcontract substantially similar terms as are provided in this Agreement.

Upon expiration or termination of this Agreement for any reason, County will have the right to enter into direct agreement(s) with any of the Subcontractor(s). Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractor's from entering into direct agreements with County.

**34. Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.



**35. Termination for Convenience**

San Bernardino County for its convenience may terminate this Agreement in whole or in part upon thirty (30) calendar day's written notice. Such adjustment shall provide for payment to the Contractor for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**36. Time of the Essence**

Time is of the essence in performance of this Agreement and of each of its provisions.

**37. Venue**

The venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**38. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, and any other materials or properties developed under this contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this contract must be filed with San Bernardino County prior to publication.

**39. Artwork, Proofs and Negatives**

All artwork, proofs and/or negatives in either print or digital format for this product are the property of the San Bernardino County. These items must be returned to the San Bernardino County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, San Bernardino County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

**40. Fiscal Provisions**

- a. Invoices for services provided under this contract will be billed to each claim the services were provided for. Invoicing for services shall not be combined in any way that prevents charging directly to each claim that utilized the services.
- b. The maximum amount of reimbursement/payment under this Agreement shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- c. Contractor shall provide County itemized monthly invoices, in arrears, for services performed under this Agreement within twenty (20) days of the end of the previous month. The County shall make payment to Contractor within sixty (60) working days after receipt of invoice or the resolution of any billing dispute. Invoice must reflect both purchase order number and applicable proposal number to

initiate payment. Invoices are to be sent to the ordering department. Each invoice must have a unique number, our accounting system is unable to pay any invoice with a duplicated number.

- d. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- e. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Agreement.
- f. Costs for services under the terms of this Agreement shall be incurred during the agreement period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

## **B. Indemnification and Insurance Requirements**

### **1. Indemnification**

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless San Bernardino County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by San Bernardino County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor indemnification obligation applies to San Bernardino County's "active" as well as "passive" negligence but does not apply to San Bernardino County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

### **Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming San Bernardino County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for San Bernardino County to vicarious liability but shall allow coverage for San Bernardino County to the full extent provided by the policy. Such additional insured coverage shall provide at least as broad coverage and provide for the same limits of coverage to the County as provided to the Contractor as the name insured on all such policies of insurance.

### **Waiver of Subrogation Rights**

The Contractor shall require the carriers of the above-required coverage's to waive all rights of subrogation against San Bernardino County, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against San Bernardino County.

### **Policies Primary and Non-Contributory**

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by San Bernardino County.

### **Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and San Bernardino County or between San Bernardino County and any other insured or additional insured under the policy.

### **Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to San Bernardino County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fourteen (14) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

### **Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

### **Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

### **Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, San Bernardino County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by San Bernardino County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

### **Insurance Review**

Insurance requirements are subject to periodic review by San Bernardino County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of San Bernardino County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against San Bernardino County, inflation, or any other item reasonably related to San Bernardino County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of San Bernardino County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of San Bernardino County.

## **2. Insurance Specifications**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contracted services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**Workers' Compensation/Employers Liability**

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits, covering all persons providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by San Bernardino County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**Commercial/General Liability Insurance**

The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment
- b. Products and completed operations
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

**Automobile Liability Insurance**

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**Umbrella Liability Insurance**

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**Professional Services Requirements**

**Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

Or

**Errors and Omissions Liability Insurance** with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

### **Cyber Liability Insurance**

Contractor shall maintain Cyber Liability Insurance coverage with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, and extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

## **C. Right to Monitor and Audit**

### **1. Right to Monitor**

San Bernardino County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this agreement. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with San Bernardino County in the implementation, monitoring and evaluation of this agreement and comply with any and all reporting requirements established by San Bernardino County. Contractor shall repay to San Bernardino County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

In the event San Bernardino County determines that Contractor’s performance of its duties or other terms of this contract are deficient in any manner, County will notify Contractor of such deficiency in writing or orally, provided written confirmation is given five (5) days thereafter. Contractor shall remedy any deficiency within forty-eight (48) hours of such notification, or County at its option, may terminate this contract immediately upon written notice, or remedy deficiency and off-set the cost thereof from any amounts due the Contractor under this contract or otherwise.

### **2. Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for agreement performance. All records shall be complete and current and comply with all agreement requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Agreement.

All records relating to the Contractor’s personnel, contractors, subcontractors, service/scope of work and expenses pertaining to this Agreement shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by San Bernardino County’s representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

**D. Correction of Performance Deficiencies**

1. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the Contractor shall notify San Bernardino County within one (1) working day, in writing and by telephone.
2. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement.
3. Contractor Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim within ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the County Executive Office, or designee and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement.
  - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County;
  - b. Withhold funds pending duration of the breach;
  - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery;
  - d. Offset against any monies billed by Contractor but yet unpaid by San Bernardino County;
  - e. Terminate this Agreement immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, San Bernardino County may proceed with the work in any manner deemed proper by San Bernardino County. The cost to San Bernardino County shall be deducted from any sum due to the Contractor under this Agreement and the balance, if any, shall be paid by the Contractor upon demand.
5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

**APPENDIX A – STATISTICAL INFORMATION**  
**Risk Management Statistical Information for Workers’ Compensation Claims**

**Number of Open Claims and Number Bills from FY2015/16 to FY2017/18**

<b>Fiscal Year</b>	<b>Number of Open Claims</b>	<b>In-Patient Hospital Bills</b>	<b>Out-Patient Hospital Bills</b>	<b>Provider Bills</b>	<b>Total Number of Bills</b>
2014-15	2,446	59	1,057	23,452	24,568
2015-16	2,530	77	1,131	22,930	24,138
2016-17	2,416	68	1,191	23,650	24,909
2017-18	3,311	65	1,207	25,525	26,797

**Total Savings, Allowance, and Fees Paid by Fiscal Year**

<b>Fiscal Year</b>	<b>FY2014-15</b>	<b>FY2015-16</b>	<b>FY2016-17</b>	<b>FY2017-18</b>
<b>Total Charges</b>	\$23,519,559	\$27,324,479	\$23,363,128	\$20,584,251
<b>Bill Review Savings</b>	\$12,297,648	\$15,040,243	\$12,122,053	\$11,577,701
<b>Audit Savings</b>	\$455,749	\$468,266	\$551,616	\$506,914
<b>Specialty Savings</b>	\$0	\$167,042	\$229,176	\$42,578
<b>PPO Savings</b>	\$529,716	\$501,613	\$510,946	\$423,060
<b>Total Savings</b>	\$13,283,114	\$16,177,164	\$13,413,791	\$12,550,253
<b>Total Allowance</b>	\$10,236,445	\$11,147,315	\$9,949,337	\$8,033,998
<b>Bill Review Fees</b>	\$134,687	\$132,476	\$135,624	\$146,492
<b>Audit Fees</b>	\$91,043	\$93,920	\$110,334	\$131,635
<b>Specialty Fees</b>	\$0	\$33,409	\$45,835	\$9,504
<b>PPO Fees</b>	\$106,043	\$100,530	\$102,369	\$107,444
<b>Total Fees</b>	\$331,773	\$360,335	\$394,162	\$395,075

**APPENDIX B – PRACTITIONER ANALYSIS**

**Provide your organization’s network status for the providers listed below. Indicate in or out of network and name of network.**

<b>PROVIDER NAME</b>	<b>Tax ID #</b>	<b>IN or OUT of Network</b>	<b>Name of Network</b>
Loma Linda University Medical Center	<b>953522679</b>		
Southern CA Permanente Medical Group	<b>951750445</b>		
Orthopedic Medical Group of Riverside	<b>952741152</b>		
Riverside Healthcare System	<b>330751869</b>		
Kaiser Foundation Hospital	<b>941105628</b>		
Parkview Community Hospital Medical Center	<b>952477294</b>		
Saint Bernadine Medical Center	<b>870692261</b>		
Community Medical Group of Riverside	<b>952964729</b>		
San Bernardino Med Ortho DBA Arrowhead Orthopedics	<b>330376200</b>		
Redlands Community Hospital	<b>951643347</b>		
San Antonio Community Hospital	<b>951183919</b>		
Desert Valley Medical Group	<b>330674406</b>		
St. Mary Regional Medical Center	<b>951914489</b>		
Desert Valley Hospital	<b>330502805</b>		
Haider Spine Center Medical Group DBA Inland Empire Spine Center	<b>330604079</b>		
Fox Occupational Medical Center	<b>330706520</b>		
Comprehensive Physical Therapy & Aquatic Center	<b>412030173</b>		
Southern California Orthopedic Specialists	<b>330380898</b>		
Occupational Health Center DBA Concentra Medical Centers	<b>860750222</b>		

**Preferred Provider Organization (PPO) Networks being utilized:** Coventry, Interplan, MCMC Fusion, and the County’s own exclusive provider organization.



**COVER PAGE**

PROPOSER'S NAME (*Legal name of firm, entity, or organization*):

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FEDERAL EMPLOYER IDENTIFICATION NUMBER:

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NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

---

MAILING ADDRESS:

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

PROPOSER'S ORGANIZATIONAL STRUCTURE

Corporation     Partnership     Proprietorship     Joint Venture

Other (explain): \_\_\_\_\_

If Corporation,    Date Incorporated: \_\_\_\_\_ State Incorporated: \_\_\_\_\_

States Registered in as foreign corporation: \_\_\_\_\_

PROPOSER'S SERVICES OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS RFP REQUESTS:

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PROPOSER'S AUTHORIZED SIGNATURE:

The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

PRINT NAME OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

### ATTACHMENT A – PROPOSAL CHECKLIST

**Use this checklist to ensure that all items requested have been included.**

Items Completed		Page (s)
1.	Cover Page	
2.	Table of Contents	
3.	Attachment A – Proposal Checklist	
4.	Attachment B – Statement of Certification	
5.	Statement of Experience and Qualifications	
6.	Attachment C – Licenses, Permits, and/or Certifications	
7.	Attachment D – Debarment or Suspension Certification	
8.	Project Team Organization Chart	
9.	Proposal Description	
10.	Work Plan and Schedule	
11.	Attachment E – Cost	
12.	Attachment F – References	
13.	Attachment G – Employment of Former County Officials	
14.	Attachment H – Exceptions to RFP	
15.	Attachment I – Public Records Act Exemptions	
16.	Attachment J – Indemnification and Insurance Requirements Affidavit	
17.	Appendix B – Practitioner Analysis	
18.	Financials (Two Years)	

**ATTACHMENT B  
STATEMENT OF CERTIFICATION**

The following statements are incorporated in our response to the San Bernardino County.

	<b>Statement</b>	<b>Agree (initial)</b>	<b>Agree with exception (initial and attach explanation)</b>
1.	The offer made in the proposal is firm and binding for nine (9) months from the date the proposal is opened and recorded.		
2.	All aspects of the proposal, including cost, have been determined independently, without consultation with any other Proposer or competitor for the purpose of restricting competition.		
3.	All declarations in the proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle San Bernardino County to pursue any remedy by law.		
4.	Proposer agrees that all aspects of the RFP and the proposal submitted shall be binding if the proposal is selected and a Contract awarded.		
5.	Proposer agrees to provide San Bernardino County with any other information San Bernardino County determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed; and		
6.	Proposer, if selected will comply with all applicable rules, laws and regulations.		
7.	I have reviewed the RFP and General Contract Terms in their entirety and have no exceptions to any requirements, terms, or conditions. (Please use Attachment H to identify and list any specific exceptions to content or language by indicating the Section, Paragraph number, and Page number, as applicable. Add as many pages as required.) Decide		



## ATTACHMENT D

### **CERTIFICATION REGARDING DEBARMENT OR SUSPENSION; CALIFORNIA SECRETARY OF STATE BUSINESS ENTITY REGISTRATION**

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all Proposers submitting a response to this RFP:

1. The Proposer certifies, to the best of its knowledge and belief, that neither the Proposer nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or non-procurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
2. The Proposer certifies, to the best of its knowledge and belief, that neither any subcontractor listed in its Proposal, nor subcontractor's Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or non-procurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
3. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
4. The Proposer shall provide immediate written notice to the San Bernardino County Purchasing Agent if, at any time prior to award, the Proposer learns that this certification was erroneous when submitted or has become erroneous by reason of changes circumstances.
5. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Proposer rendered an erroneous certification, in addition to other remedies available to the San Bernardino county government, the San Bernardino County Purchasing Agent may terminate the contract resulting from this solicitation for default.
6. Proposer affirms that neither it, nor any subcontractor listed in the Proposal, has any recent unsatisfactory performance with the San Bernardino County, during the past twenty-four (24) months at a minimum.
7. Proposer also certifies that if it or any of the subcontractors listed in the Proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**ATTACHMENT E – COST**

Quote on a flat fee per bill, % of PPO savings, % of Hospital and Specialty Bill Review (Non-OMFS) Savings, and include a cap or maximum fee per bill (if applicable).  
(Statistics provided in Appendix A may assist you in developing your fees.)

<b>Services (List all applicable services)</b>	<b>Flat Fee</b>	<b>% of PPO Savings</b>	<b>% of Audit &amp; Specialty Savings</b>	<b>Cap or Maximum Fee per Bill</b>
<b>MEDICAL BILL REVIEW</b> Official Medical Fee Schedule Review (OMFS)				
<b>INPATIENT HOSPITAL BILL REVIEW</b>				
<b>OUTPATIENT HOSPITAL BILL REVIEW</b>				
<b>PHARMACY BILL REVIEW</b>				
<b>INPATIENT HOSPITAL, OUTPATIENT HOSPITAL, AND SPECIALTY BILL REVIEW (Non-OMFS)</b> Negotiation of Non-OMFS and Line-Item Audit bills for Inpatient / Outpatient Hospital and Specialty bills (Non-PPO charges).	<b>N/A</b>	<b>N/A</b>		
<b>DURABLE MEDICAL EQUIPMENT (DME) BILL REVIEW</b>				

**ATTACHMENT F - REFERENCES**

<b>Name of Agency/Company</b>	<b>Contact Name, Title and Address</b>	<b>E-mail Address</b>	<b>Phone Number</b>	<b>Dates services provided (from/through*)</b>

Provide a minimum of three (3) customer references you have contracted with, providing the same service as requested in this RFP.

\*Enter "**Present**" if still providing the services (Example: 10/08/03/present).





**ATTACHMENT H – EXCEPTIONS TO RFP**

CONTRACTOR NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# ( ) \_\_\_\_\_ FAX # ( ) \_\_\_\_\_

I have reviewed the RFP and General Contract Terms in their entirety and have the following exceptions: (Please identify and list your exceptions by indicating RFP#, the Section or Paragraph number, and Page number, as applicable. Be specific about your objections to content, language, or omissions. Add as many pages as required.)

**ATTACHMENT I – PUBLIC RECORDS ACT EXEMPTIONS**

CONTRACTOR NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# ( ) \_\_\_\_\_ FAX # ( ) \_\_\_\_\_

Proposer requests that specific portions of the contents of this Proposal be held confidential and not subject to public disclosure pursuant to the Public Records Act. The specific portions are detailed below: (Please identify and list your exemptions by indicating the section or paragraph number, and page number, of the proposal where the content is contained.) **Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that does not meet the requirements of this section will not be considered.**

**ATTACHMENT J – INDEMNIFICATION AND INSURANCE REQUIREMENTS AFFIDAVIT  
THE PROPOSER’S INSURANCE COMPANY(S) OR INSURANCE AGENT MUST COMPLETE THIS FORM  
AND  
THE PROPOSER MUST SUBMIT THIS COMPLETED AFFIDAVIT WITH HIS PROPOSAL.**

I, the undersigned (Please check one box)  underwriter  agent/broker, certify that the Proposer listed below and I have jointly reviewed the “Insurance Requirements” in this Request for Proposal (RFP). If the County of San Bernardino (“County”) awards the Proposer the Contract for this project, I will be able—within fourteen (14) calendar days after the Proposer is notified of the Contract’s award—to furnish the County with all the required, insurance certificate(s) and endorsement(s) as specified in Section X Paragraph B. Indemnification and Insurance Requirements.

\_\_\_\_\_  
Insurance Broker / Agency Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Insurance Broker’s / Agent’s Name (Printed)

\_\_\_\_\_  
Insurance Broker’s / Agent’s Name (signature)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
FAX Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Proposer’s Name

\_\_\_\_\_  
County RFP Name and Number

***Below State the Name of Insurance Company Providing Coverage:***

DO NOT write “Will Provide,” “To Be Determined,” “When required,” or similar phrases.

\_\_\_\_\_  
Commercial General Liability

\_\_\_\_\_  
Automobile Liability

\_\_\_\_\_  
Workers’ Compensation Liability

\_\_\_\_\_  
Professional Liability

\_\_\_\_\_  
Cyber Liability

\_\_\_\_\_  
Pollution Liability

**[NOTE TO PROPOSER: See Section X, Paragraph B. Indemnification and Insurance Requirements, for details on the basic requirements and types of insurance for this agreement.]**

**NOTE TO THE UNDERWRITER / AGENT-BROKER: If the insurance forms that the Proposer submits to the County do not fully comply with the Insurance Requirements, and/or if the Proposer fails to submit the forms within the 14-day time limit, the County may: (1) declare the Proposer’s Bid non-responsive, and (2) award the Contract to the next highest ranked Proposer.**

***If you have any questions about the Insurance Requirements, please contact Mr. Rafael Viteri, County of San Bernardino - Risk Management Department, at (909) 386-8730 or via e-mail [rviteri@rm.sbcounty.gov](mailto:rviteri@rm.sbcounty.gov) (Please provide name and number of RFP with your email question(s)).***

## EXHIBIT I

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the County of San Bernardino [DEPARTMENT] (hereinafter Covered Entity) and [INSERT CONTRACTOR NAME HERE] (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

#### RECITALS

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

#### I. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
- b. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
- c. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
- d. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.

- f. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
- g. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## II. **Obligations and Activities of BA**

### a. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

### b. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### c. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or

transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]

- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

e. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
  - 1. Date the Breach or suspected Breach occurred;
  - 2. Date the Breach or suspected Breach was discovered;
  - 3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
  - 4. Number of potentially affected Individual(s) with contact information; and
  - 5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
  - 1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - 2. The unauthorized person who had access to the PHI;
  - 3. Whether the PHI was actually acquired or viewed; and
  - 4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
  - 1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.

2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.

iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must

submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

i. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.



r. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

III. **Obligations of CE**

a. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:

- i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
- ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
- iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

IV. **General Provisions**

a. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

b. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

e. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and

this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

## **Business Associate Addendum for Cloud Services Software as a Service (SaaS)**

This Business Associate Addendum for Cloud Services is entered into by and between the County of San Bernardino (County) and Business Associate (Contractor) for the purposes of establishing terms and conditions applicable to the provision of services by Business Associate to the County involving the use of hosted cloud computing services. County and Business Associate agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.

### **1. DEFINITIONS:**

- a) **"Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Data"** - means any information, formulae, algorithms, or other content that the County, the County's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information, Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA)) and metadata which may contain Data or from which the Data may be ascertainable.
- c) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

### **2. SaaS AVAILABILITY:** Unless otherwise stated in the Statement of Work (SOW),

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).

- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.
- d) Contractor shall provide advance written notice to the County in the manner set forth in the SOW of any major upgrades or changes that will affect the SaaS availability.

**3. DATA AVAILABILITY:** Unless otherwise stated in the SOW,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW if the County is unable to access the Data as a result of:
  - 1) Acts or omissions of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;
  - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.

**4. DATA SECURITY:**

- a) In addition to the provisions set forth in the Business Associate Agreement, Contractor shall certify to the County:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the County within thirty (30) business days of Contractor's receipt of such results.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County's access to its Data.
- c) Contractor shall allow the County reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the County's Data, at no cost to the County.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the County.
- f) Contractor shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all

undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

**5. ENCRYPTION:** Contractor warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.

**6. DATA LOCATION:** All Data will be stored on servers located solely within the Continental United States.

**7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the County, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**8. TRANSITION PERIOD:**

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the County in extracting and/or transitioning all Data in the format determined by the County ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the County without alteration.
- d) Contractor agrees to compensate the County for damages or losses the County incurs as a result of Contractor's failure to comply with this section.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the County confirming the destruction or inaccessibility of the County's Data.
- f) The County at its option, may purchase additional transition services as agreed upon in the SOW.

**9. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work:

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the County by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the County of:
  - 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
- b) If Contractor fails to respond immediately and remedy the failure, the County may exercise its options for assessing damages or other remedies.
- c) Contractor shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the County exercising its options for assessing damages or other remedies.

- d) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.

**10. EXAMINATION AND AUDIT:** Unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the County or its designated representative shall have access to Contractor's SaaS operational documentation and records, including online inspections that relate to the security of the SaaS product purchased by the County.
- b) Contractor shall allow the County, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
- 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the County or representatives on behalf of the County.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, County-approved third party perform an information security audit. The audit results shall be shared with the County within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**11. DISCOVERY:** Contractor shall promptly notify the County upon receipt of any requests which in any way might reasonably require access to the Data of the County or the County's use of the SaaS. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the County unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the County with adequate time for the County to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the County unless authorized in writing to do so by the County.

**13. INSURANCE REQUIREMENTS:** Contractor shall, at its own expense, secure and maintain for the term of this contract, Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.

**14. DATA SEPARATION:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.