



Contract Number

SAP Number

Human Resources

Department Contract Representative	<u>Diane Rundles, HR Director</u>
Telephone Number	<u>909-387-5570</u>

Contractor	<u>Metropolitan Life Insurance Company</u>
Contractor Representative	<u>Neil McMahon</u>
Telephone Number	<u>949-471-2330</u>
Contract Term	<u>07/18/20-07/29/2023</u>
Original Contract Amount	<u>\$11,000,000</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$11,000,000</u>
Cost Center	<u>7200007799 (LTD), 7200007800 (STD)</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (County) desires to contract to provide fully-insured, non-participating Short-Term Disability (STD), Long Term Disability (STD) and Protected Medical Leaves Administration as well as Employee Assistance Program (EAP) benefits for its employees; and

WHEREAS, the County conducted a competitive process to find Metropolitan Life Insurance Company (Contractor) to provide these services, and

WHEREAS, the County finds Contractor qualified to provide fully-insured, non-participating Short-Term Disability (STD), Long Term Disability (STD) and Protected Medical Leaves Administration as well as Employee Assistance Program (EAP) benefits for its employees; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

A.1 The Board. The Board of Supervisors of The County of San Bernardino is the policy making body of the County and is responsible for the review and approval of all service agreements and/or contracts with the County.

A.2 Contractor. The Proposer selected by the County to provide Protected Medical Leaves Administration, Short-Term Disability, Long-Term Disability, and Employee Assistance Program benefits as a result of this Contract.

A.3 County. The County of San Bernardino is a local governmental agency in Southern California with more than 20,000 square miles. Los Angeles County borders the County on its west end, Riverside County borders the County on its south end, Nevada and Arizona border the County on its east end, and Nevada border the County on its north end. The County is the largest county geographically in the United States. It has a population of approximately 2 million residents, an annual budget of approximately five billion dollars, and has approximately 22,000 employees on payroll with nearly 20,700 provided employee benefits.

A.4 Employee Benefits and Services Division (EBS). A division of the County's Human Resources Department responsible for the design, implementation, and on-going administration of the County's various employee benefit plans and programs.

A.5 Employee Benefits Advisory Committee (EBAC). A labor/management committee charged with the responsibility to review and recommend new and/or changes to current employee benefit plans and programs. The Committee was established in 1995 by an agreement between labor and management for the purpose of improving their negotiations for employee benefit plans and programs.

A.6 Human Resources (HR) Department. The County's HR Department is comprised of various divisions and sections that provide a wide array of personnel and employee services to County departments and agencies. The Department Director reports directly to the County's Chief Executive Officer (CEO).

A.7 Protected Medical Leave. All Federal and State mandated leaves, including but not limited to the Family Medical Leave Act of 1993 (FMLA), California Family Rights Act of 1993 (CFRA) and Pregnancy Disability Leave.

B. CONTRACTOR RESPONSIBILITIES

B.1 All rates must be guaranteed for at least three (3) years and cannot be adjusted mid-year unless requested by the County. Provided, however, Contractor may change the rates whenever the following occurs:

- The premium contribution arrangement for employees and dependents is changed or varies from that stated in the group insurance policies when issues or last renewed, or
- The parties mutually agree to change the rates.

Rate changes made pursuant to this section are subject to section C9 herein and must be made by mutual agreement of the parties.

B.2 All rates must exclude commissions.

B.3 Contractor must agree to underwrite the takeover of this program for any who enroll on a no-loss/no-gain basis for all employees and dependents, and employees on leave of absence as provided in the group insurance policies. Any actively-at-work and evidence of insurability requirements must be waived, as well as any pre-existing condition limitations that may apply, to any person covered as of July 18, 2020.

B.4. Upon takeover, Contractor must agree to assume liability for claims that are in dispute between

Contractor and the incumbent carrier if the issue cannot be resolved between the two organizations.

B5. Contractor must accept the current enrollment or participation levels under all Protected Medical Leaves, Short Term Disability and Long-Term Disability plans.

B6. Contractor agrees to take over existing open Protected Medical Leave claims and will administer the disability claims that are incurred on or after July 18, 2020.

B7. Contractor must allow this plan to be offered at the contracted rates to future County business and County affiliated units or districts

B8. Renewal notice must be given at least 180 days in advance of the renewal date. Any termination of coverage, other than for non-payment of premium, Contractor cannot attempt to terminate any contract until the end of the rate guarantee period.

B9. Contractor must maintain full and accurate records with respect to all matters and services provided to the County.

B10. Contractor agrees to administer W-2 for STD and absorb the MediCare cost on behalf of the County.

B11. Contractor will be responsible for processing Protected Medical Leave requests, Short Term Disability, and Long Term Disability claims, and any other customer service transactions accurately and expeditiously.

B12. Performance Guarantees are effective as of July 18, 2020 and must remain in effect for the duration of the Contract.

B13. Contractor shall complete and submit on a bi-annual basis, an Executive Summary Analysis, and Dashboard that includes claims data and plan experience for Short Term Disability, Long Term Disability, and FMLA. The analysis must include department level reporting.

B14. Adjust the weekly maximum benefit annually during the term of this contract, in accordance with adjustments made by SDI and as confirmed in advance with the County.

B15. Notify the County of those STD claims eligible to convert to LTD prior to the conversion of coverage. Also notify members of their conversion rights upon termination assuming the County provides information to Contractor regarding terminated members with indicators of employees terminating due to retirement (who are not eligible for LTD conversion).

B16. Ensure that an employee does not receive more than 100% of their wages irrespective of the combination of wages/benefits provided (e.g. Workers Compensation and STD) for non-occupational injury benefits paid for the same time frame.

B17. Coordinate benefits with County Risk Management Department. Should a Workers Compensation injury be denied, benefits if otherwise eligible would be payable by the Contractor to the employee upon evidence of denied Workers Compensation claim. Should the claim be subsequently accepted by County Risk Management, Risk Management will reimburse MetLife for the benefits paid under this contract. County Risk Management will be responsible for ensuring Contractor has the information necessary to comply with this requirement, such as Workers Compensation Denial letter.

B18. Contractor agrees that in the event this contract terminates, for any reason, that Short-Term Disability and Long-Term Disability claims that are incurred on or prior termination date shall continue to be the responsibility of the Contractor stated herein. This section shall not apply to Protected Medical Leave (or FMLA) claims.

B19. Contractor agrees to respond to County employee claim inquiries within one business day.

B20. Contractor agrees that direct deposit services for benefits payable shall be offered, upon election by claimants, at no charge to the County or eligible claimant.

B21. Collection of overpayments for benefits paid to claimants, should they occur, shall be the sole responsibility of the Contractor.

B22. Contractor agrees to provide a programming credit in the amount of \$25,000 to the County. This credit will be used for costs including, but not limited to, any custom programming within the County to simplify the leaves administration.

B23. Contractor agrees to provide Employee Assistance Program (EAP) benefits at no additional cost.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

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

C.3 Contract Assignability

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

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The 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 Contract.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney 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 Indemnification and Insurance Requirements.

C.6 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) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on its account management personnel providing services under the contract. 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 the County's hiring criteria, 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.

C.7 Change of Address

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

C.8 Choice of Law

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

C. 9 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 the County regarding health and safety, 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 the provision of the Services, and all amendments and modifications to each of the documents listed in 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.

C.10 Confidentiality

Contractor agrees to comply with the requirements of federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

C.11 Primary Point of Contact

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 acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12 County Representative

The Human Resources Director and/or the Benefits Chief (or their designee) shall represent the 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.

C.13 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. 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, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C. 14 Debarment and Suspension

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.

C.15 Drug and Alcohol Free Workplace

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

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the 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 the County.

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

C.16 Duration of Terms

This Contract, 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 Contract.

C.17 Employment Discrimination

During the term of the Contract, 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 VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing 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.

C.18 Environmental Requirements

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. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.19 Improper Influence

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

C.20 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 the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract 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 the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.21 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract 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.

C.22 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. 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.

C.23 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of

this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.24 Material Misstatement/Misrepresentation

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

C.25 Mutual Covenants

The parties to this Contract 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".

C.26 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 the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. 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 memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.27 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.

C.28 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor exclusively for the County pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable), but solely to the extent such items do not include any independently created, pre-existing or third party materials or intellectual property rights. All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV—Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.29 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 Contract.

C.30 Relationship of the Parties

Nothing contained in this Contract 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.

C.31 Release of Information

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

C.32 Representation of the County

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

C.33 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract 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 Contract thereafter.

C.34 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the 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 the County, resumes of proposed subcontractor 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 G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 34.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 34.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 34.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C. 35 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract 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.

C.36 Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with one-hundred eighty (180) days' written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably 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.

C.37 Time of the Essence

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

C.38 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, 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 Contract 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, County of San Bernardino, San Bernardino District.

C.39 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor as members of the Service Team/Sales Team. The information provided includes 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 the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County 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.

C.0 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether key employees (as that term is defined herein), within the last ten years, have 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 key employees, have 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 Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether key employees, within the last ten years, have 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 Contractor 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 the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.41 Copyright

County shall have the sole and exclusive right to copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed by Contractor exclusively for County under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material, but solely to the extent such items do not include any independently-created, pre-existing or third party materials or intellectual property rights. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino 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, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication in a format usable by the County and at no charge to the County.

C.42 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for this product created by Contractor exclusively for County pursuant to the terms of this Contract are the property of the County, but solely to the extent such items do not include any independently-created, pre-existing, or third-party materials or intellectual property rights. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. Contractor may retain copies of any such items if required by law, regulation, court order, or Contractor's record retention requirements. In the event of a failure to return the documents, the 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.

C.43 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract 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.

Contractors are cautioned that making a false certification may subject the Contractor 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.

D. TERM OF CONTRACT

This Contract is effective as of July 18, 2020 and expires July 28, 2023 but may be terminated earlier in accordance with provisions of this Contract. The Contract term may be extended for one additional two-year term by mutual agreement of the parties.

E. FISCAL PROVISIONS

E.1 The maximum amount of reimbursement/payment under this Contract 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.

E.2 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.3 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 Contract.
- E.4 Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- E.5 Contractor shall accept self-billed invoicing from the County on a bi-weekly basis. Contractor agrees to a 60 day grace period from the payment due date before County payments are considered delinquent and a subsequent 30 day Notice of Intent to Terminate Contract once the 60 day grace period has exhausted (total 90days). A Policy Grace Period of 90 days from the payment due date will be granted before County payments are considered delinquent.
- E.6 Contractor agrees that no prepayment of premiums or fees will be required at any time.
- E.7 Performance Guarantees are for each year of the contract, for the duration of the contract and rate guarantee period. Reporting for Performance Guarantees will be provided to the County by November 30th of each contract year for the prior reporting period. Performance Guarantees can be modified subject to mutual agreement during the renewal period each year.

F. INDEMNIFICATION AND INSURANCE REQUIREMENTS

F.1 Indemnification

This paragraph only applies with respect to the insured STD and insured LTD services. The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all third party claims, actions, losses, damages and/or liability arising out of this Contract and for any costs or expenses incurred by the 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 indemnities. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to: (1) any action taken by the County or at its discretion; or (2) the extent of the County's "negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

F.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the 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 the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

F.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the 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 the County.

F.4 Policies Primary and Non-Contributory

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

F.5 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 the County or between the County and any other insured or additional insured under the policy.

F.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the 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 fifteen (15) 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.

F.7 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".

F.8 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.

F.9 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, the 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 the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

F.10 Insurance Review

Insurance requirements are subject to periodic review by the 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 interests of the 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 the County, inflation, or any other item reasonably related to the 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 the 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 the County.

F.11 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.

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:

F.11.1 Workers' Compensation/Employer's 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 \$250,000 limits covering all persons including volunteers 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 the 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 the 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.

F.11.2 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.

F.11.3 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.

F.11.4 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.

F.11.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

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

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

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

- F.11.6 Cyber Liability Insurance** - 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 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 protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

G. RIGHT TO MONITOR AND AUDIT

G.1 The County, State and Federal government 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 Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County. Contractor shall repay to 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.

G.2 Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Contract.

All records relating to the Contractor's personnel, Contractors, Subcontractors, Service/Scope of Work and expenses pertaining to this Contract 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 County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

The County or an agreed-upon, third party auditor (not a competitor) may perform audits of Contractor. Audits must be conducted at Contractor's home office and be subject to applicable privacy and confidentiality laws and Contractor's internal privacy and confidentiality policies and procedures. The internal privacy and confidentiality policies will be provided to the County if and when the County conducts an audit.

Prior to the audit, the parties will hold a discussion to determine the desired process, as well as the amount of staff time required. If the third-party auditor anticipates a charge for time based on the audit request, the parties will discuss these fees and agree to terms prior to any onsite visit. Records for such audit will be available for a time period consistent with applicable record retention laws and Contractor's record retention policies and procedures.

In the event the 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 a mutually agreeable time.

H. CORRECTION OF PERFORMANCE DEFICIENCIES

H. 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 Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.

H.2 Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

H.3 Contractor's 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 with 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 Chief Executive Officer, 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.

H.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 Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be paid by the Contractor upon demand.

H.5 Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract 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.

I. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino
Human Resources Department
EBSD
157 West 5th Street
San Bernardino, CA 92415

MetLife Disability
PO Box 14590, Lexington, KY
40512-4590

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

J. AMENDMENT OF SHORT-TERM DISABILITY INSURANCE GROUP POLICY

The County requests Contractor to amend the group policy annually, effective on the pay period that includes January 1 of each calendar year, to change the short-term disability maximum weekly benefit for non-exempt employees to equal the maximum disability insurance benefit under the California State Disability Insurance (SDI) plan for California workers. The maximum weekly benefit for exempt employees will be increased by applying the percentage increase in SDI to the maximum weekly benefit in effect. The County hereby provides advance approval to Contractor to amend the group policy as described in this section, without any additional approvals by the County. The County understands any increase in insurance benefits under the plan will be subject to the active work provisions of the group policy.

K. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

Attachment A: Rate Confirmation Exhibit
Attachment B: Group Policy Long-Term and Short-Term Disability Insurance Policy
Attachment C: Performance Guarantee Agreement
Attachment D: Statement of Responsibility
Attachment E: Application for Group Insurance
Attachment F: Employee Absence Administrative Services Agreement
Attachment G: Agency Agreement
Attachment H: Policy Agreement Side Letter

In the event that the provisions of these attachments conflict with the provisions stated in this contract, the provisions of this contract shall prevail. Provided, however, the terms of the group insurance policy (Attachment B) shall govern eligibility for insurance and benefits, and Contractor's right to underwrite and terminate its group insurance policies.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

MetLife

(Print or type name of corporation, company, contractor, etc.)

By ► Craig Johnson
(Authorized signature - sign in blue ink)

Name Craig Johnson
(Print or type name of person signing contract)

Title Vice President
(Print or Type)

Dated: 5/11/20

Address S Park Plaza
Irvine, CA 92614

FOR COUNTY USE ONLY

Approved as to Legal Form ►	Reviewed for Contract Compliance ►	Reviewed/Approved by Department ►
County Counsel		
Date _____	Date _____	Date _____