THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

SAN BERNARDINO COUNTY

Contract Number

SAP Number
4400018070

Department of Risk Management

Department Contract Representative	Victor Tordesillas
Telephone Number	909-386-8621
Contractor	Willis Towers Watson West Insurance Services, Inc.
Contractor Representative	Bryan Fitzpatrick, Executive VP
Telephone Number	949-930-1781
Contract Term	12/11/2021 through 12/10/2026
Original Contract Amount	
Amendment Amount	
Total Contract Amount	Commission-based
Cost Center	Various

IT IS HEREBY AGREED AS FOLLOWS*:*
(*Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)*

San Bernardino County - Department of Risk Management (hereinafter referred to as County) and Willis Towers Watson West Insurance Services, Inc. (hereinafter referred to as Contractor) are parties to this agreement.

WHEREAS, County self-administers its liability and workers' compensation programs and desires insurance broker services to evaluate alternative insurance placements and combinations of insurance and self-insurance to minimize the total cost of risk for all aspects of the County's insurance programs, and;

WHEREAS, Contractor is professionally qualified and competent to provide comprehensive evaluations of the County's current insurance programs and to place new policies in the best interest of the County.

NOW, THEREFORE, in consideration of the remuneration hereinafter set forth, Contractor agrees to provide the following services for County, Board Governed Special Districts, County Service Areas or other public entities, under the following terms and conditions:

I. CONTRACTOR GENERAL RESPONSIBILITIES

A. Insurance Broker Services

Contractor shall act as an independent insurance advisor to the County, the Director of the Department of Risk Management or designated staff, and proactively provide unbiased professional advice and

recommendations that benefit the County by reducing its total cost of risk. Specific tasks include, but are not limited to:

1. Advise the Director of the Department of Risk Management or designated staff to design and place insurance programs to help the County reduce and stabilize its cost of risk. This will include a comprehensive evaluation of current programs. The ultimate design of the County's coordinated insurance program should represent an unbiased assessment of program alternatives and could include retaining, dropping, combining or otherwise modifying current policies and/or pooling arrangements to best meet the needs of the County.
2. Provide ongoing proactive review and analysis of the County's insurance programs and identify opportunities for risk transfer and risk financing. Continually monitor relevant insurance markets and/or pooling programs. Recommend coverage changes in response to market conditions. This could include increasing or decreasing self-insured retentions or purchasing additional insurance coverage.
3. Assure that insurance policies are placed in a timely manner, without lapses in coverage periods, with reputable and financially responsible insurers.
4. Provide early warning of rate and coverage changes or renewal challenges through a process of annual stewardship and/or marketing report. At least once a year, or more if required or requested, provide a comprehensive report that reviews all of the County's insurance programs.
5. Review proposed placements for accuracy and completeness. Notify the Director of the Department of Risk Management, of changes in terms, exclusions or inclusions, and make sure that they are identified and disclosed to the County prior to binding.
6. Review insurance binders, policies, certificates and other documents to ensure all wording is complete and accurate, and identify any changes in coverage. Delivery of said documents should be no later than 1 day for binders or certificates, and no later than 90 days after the effective date for policies.
7. Service the insurance policies placed for the County, including processing all changes in exposure, coverage, and endorsements and verifying the accuracy of invoices within a reasonable time to be agreed upon by the Department of Risk Management.
8. Assist in analyzing the loss exposures arising from existing or new operations and determine the appropriate risk management alternatives.
9. Obtain updates on insured losses from carriers through which coverage is placed on a regular basis, such as quarterly.
10. Evaluate loss history for trends or other indicators that might dictate changes in coverage strategy.
11. Assist in obtaining payments for insured claims by representing the County's interest in policy interpretation and other negotiations.
12. Develop a marketing strategy for program renewals at least 90 days before policy expirations.
13. Develop underwriting information and assist in gathering and organizing exposure and loss data for renewals in policies placed.
14. Be available for consultation with the County regarding any insurance coverage issue.
15. Attend meetings with Department of Risk Management's staff as needed.

B. Performance Standards

Basic performance should adhere to the standard requirements for the license of Insurance Broker issued by the State of California Department of Insurance.

C. Digital Media and Correspondence

The County may require the Contractor to submit any or all correspondence, reporting, and media, electronically to the County representative.

D. Instructional and Training Services

Contractor 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 insurance broker services. Contractor 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.

E. Contractor's Guarantee

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.

F. Contractor's Name and Tax ID Number

Contractor is required to maintain the same name and tax identification number 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.

II. TERMS AND CONDITIONS

A. General

1. Term of Contract

The term of the contract awarded will be for a period of five (5) years, commencing on December 11, 2021 and ending on December 10, 2026, unless terminated earlier as provided within this contract.

2. Notice of Cancellation

The contract may be terminated by any party for any reason upon thirty (30) days written notice.

3. 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.

4. Agreement Assignability

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

5. 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.

6. 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 and Insurance Requirements.

7. 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.

8. 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.

9. Choice of Law

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Environmental Preference

In accordance with San Bernardino 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

Contractor must be licensed as an Insurance Broker by the State of California Department of Insurance and maintain this license throughout the length of this contract.

Failure to maintain required licenses, permits, and/or certifications may result in immediate termination of this Agreement.

25. 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.

26. 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".

27. 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.

28. 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.

29. 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.

30. Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the County of San Bernardino requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

a. Such governmental body does not have and will not have in force any other contract for like purchases.
b. Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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:

36.1 Be responsible for subcontractor compliance with the contract and the subcontract terms and conditions; and

36.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

36.3 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.

37. 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.

38. 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.

39. Time of the Essence

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

40. 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.

41. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officer, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest exists, any increase in costs, associated with the conflict of interest may be disallowed by the County and such conflict may constitute ground for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

42. Former County Administrative Officials

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative official 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 purposed of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officers' staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or nay employee in the Exempt Group, Management Unit or Safety Management unit.

43. 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 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 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 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 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.

44. 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.

45. 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.

46. Fiscal Provisions

- **a.** County agrees to compensate Contractor for services described in Section I above, solely based on the lines of coverage that Contractor places on behalf of County, in accordance with the schedule of insurance programs and fees, attached hereto as Attachment A.
- **b.** Any additional income received by Contractor as a result of placing coverage for County shall be refunded to County within 30 days of receiving such income.
- **c.** County shall make payment to Contractor within sixty (60) working days after receipt of invoice. Invoices for services provided under this contract must be detailed and individually numbered. Invoice(s) shall clearly indicate the amount of commission received and all fees related to each placement.
- **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 comply within 60 days of the start of the contract, providing 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.

g. Commission escalation adjustments will not be considered during contract period.

h. Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

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.

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 statue 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.

WHEREAS, this agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

SAN BERNARDINO COUNTY

►

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
San Bernardino County

By

Deputy

Willis Towers Watson West Insurance Services, Inc.

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

By ►

(Authorized signature - sign in blue ink)

Name Bryan Fitzpatrick

(*Print or type name of person signing contract)*

Title Executive VP

(Print or Type)

Dated:

Address 18101 Von Karman Avenue, Suite 325

Irvine, CA 92612

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Cynthia O'Neill, County Counsel		Victor Tordesillas, Director of Risk Management
Date	Date	Date

ATTACHMENT A

SAN BERNARDINO COUNTY
INSURANCE BROKER SERVICES CONTRACT
SCHEDULE OF INSURANCE PROGRAMS & FEES
DECEMBER 11, 2021 through DECEMBER 10, 2026

WILLIS TOWERS WATSON WEST INSURANCE SERVICES, INC.

INSURANCE PROGRAMS	COMPENSATION
1. To achieve the minimum cost of risk, the broker will market and negotiate with carriers the best rates, expanded services, and preferences for the following programs: • Crime • Fiduciary Liability • Excess Fiduciary Liability (if any) • Fine Arts-Museum and Loans • Contractors Pollution Liability • Primary Pollution and Remediation Legal Liability (including landfills) • Excess Pollution and Remediation Legal Liability (if any)	**Annual Commissions not to exceed 10%.**
2. Provide an annual comprehensive analysis of insurance programs including, but not limited to the following: • Loss stratification • Enterprise & Risk Finance modules • Risk Management initiatives • Premium determinations for alternative structures, limits and/or self-insured options.	**Included in the annual commission above.**
3. Provide insurance consultation services, contract reviews, and claims advocacy as requested. If additional programs are marketed and placed by the broker, their compensation will be a flat 10% commission. All commissions received by the broker in excess of 10% will be refunded to the County.	**Included in the annual commission above.**

Note:

This is a non-exclusive contract. San Bernardino County may retain other and/or additional insurance broker services vendors at its sole discretion. There are no guarantees of specific lines of insurance.

ATTACHMENT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between San Bernardino County Department of Risk Management (hereinafter Covered Entity) and Willis Towers Watson West Insurance Services, Inc. (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.

l. 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.