

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND AGREEYA

This Agreement is entered into this _____ day of _____, 20____, by and between County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Agreeya, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of contingency staffing for County short-term IT projects or to fulfill urgent IT staffing needs until staffing can be hired under County recruitment process.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Description of Services
- Exhibit B—Payments and Rates
- Exhibit C—Quality Assurance
- Exhibit D—Work Order Form
- Exhibit E—Consultant Information Form
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance
- Attachment P – Personally Identifiable Information

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibits A and C.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibits A & C, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable.

Contractor acknowledges and agrees by signing this Agreement that County (Human Services Agency) has agreed to pay all contractors who provide IT contingency staffing services authorized collectively by single resolution, a copy of which is attached hereto and incorporated by reference herein, an aggregate amount that shall not exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000), and that the funds available to pay each individual contractor are dependent upon the specific staffing services requested by County and the ability of each IT contingency staffing contractor to fulfill such staffing needs and the

individual negotiated rates that apply. Each Contractor is only entitled to payment for actual costs incurred based on the rates shown in Exhibit B of its individual Agreement for staffing services that have been fulfilled by request of County (Human Services Agency).

In the event that County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 1, 2017, through September 30, 2020.

5. Termination

This Agreement may be terminated by Contractor or by the Human Services Agency Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. **Hold Harmless**

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion

be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury,

including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000
- (c) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political

beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. § 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations

covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other Agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior Agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Ken Kong, Manager
Address: 1 Davis Drive
Belmont, CA 94002
Telephone: (650) 802-6544
Email: kkong@smcgov.org

In the case of Contractor, to:

Name/Title: Ajay Kaul, Managing Partner
Address: 605 Coolidge Drive
Folsom, CA 95630
Telephone: (916) 813-6300
Email: ajay.kaul@agreeya.com

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such Agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

For Contractor:

Contractor Signature

Date

Contractor Name (please print)

For County:

Purchasing Agent Signature
(Department Head or
Authorized Designee)
County of San Mateo

Date

Iliana Rodriguez
Purchasing Agent Name (please print)
(Department Head or **Authorized** Designee)
County of San Mateo

Director, Human Services Agency
Purchasing Agent or **Authorized** Designee
Job Title (please print)
County of San Mateo

Exhibit A
Agreeeya
Description of Services

In consideration of payments set forth in Exhibit B, Contractor shall provide services as shown in Exhibit A.

Contractor shall provide IT temporary/contingency staffing solutions as requested by County on an as need basis. For references provided in this Agreement County staff shall be referred to as "County employees" and Contractor's staff shall be referred to as "temporary staff" and "candidates."

I. AGREEYA CONTACT FOR STAFFING REQUESTS, INFORMATION AND SERVICES:

The primary contact for County for Agreeeya to request services are:

Ajay Kaul, Managing Partner
605 Coolidge Drive
Folsom, CA 95630
Email: ajay.kaul@agreeeya.com
phone: (916) 813-6300
Fax: (916) 404-4009

II. CONTACTS FOR COUNTY REQUISITIONS:

For the purpose of meeting County Human Resources (HR) policies and requirements, requests for staffing under this Agreement may only be authorized by the following County representatives:

Dawn Sparks, HR Manager
County of San Mateo
Human Services Agency
1 Davis Drive
Belmont, CA 94002
Email: drsparks@smcgov.org
Phone: (650) 802-7571
Fax: (650) 631-5663

If Contractor receives requests from County employees other than the representative shown in this section, such County employee should be referred by Contractor to the Human Services Agency's HR Manager.

III. CONTRACTOR SERVICES:

In fulfilling IT staffing solutions for County, Contractor shall:

- A. Ensure compliance with all state, federal and local laws or rules applicable to the performance of the work required under the Agreement.
- B. Comply with all terms and conditions of this Agreement in providing IT staffing solutions to County.
- C. Protect County from co-employment claims by keeping all temporary staff data and records completely separate from County's systems and records.
- D. Conduct reference checks of the staffing that are referred to County for staff fulfillment in regards to qualifications and work history.
- E. Provide background checks, fingerprinting and other verifications requested by County.
- F. Provide specialized knowledge testing as requested by County.
- G. Provide temporary staff training and orientation as outlined in section V.
- H. Provide time tracking and employment reporting for temporary staff that is working for County under this Agreement as requested by County.
- I. To the extent that Contractor should obtain or receive protected health information in which the County is the custodian on Contractor's premises or systems, Contractor shall comply with the applicable requirements set forth in the health Insurance Portability and Accountability Act of 1996 (HIPAA) and all applicable Federal regulations promulgated thereunder and as shown in Attachment H.
- J. To the extent that Contractor should obtain or receive Personally Identifiable Information (PII) in which the County is the custodian, or Sensitive Personal Information (SPI) on Contractor's premises or systems, Contractor shall comply with the applicable requirements set forth in 45 C.F.R. § 205.40, *et seq.*, California Welfare & Institutions Code section 10850, and all applicable Federal regulations promulgated thereunder and as shown in Attachment P.
- K. Complete work in accordance with the work order (form is shown as Exhibit D).

IV. STAFFING FULFILLMENT PROCESS:

County intends to enter into agreements with three firms for contingency staffing services outlined in this Agreement. Authorization of work among the selected firms will be determined through a review of qualifications of staff presented by each firm and a cost-based selection process, resulting in the issuance of a project-based Consultant Information Form (Exhibit E) with the selected firm.

Contractor and County will use the following steps to fulfill short term IT staffing requests:

1. County's Request for Staffing (Work Order):

When County determines it is appropriate to use contingency staffing, County will start the process as follows:

- a. Complete and issue a work order (Exhibit D) that includes: scope of work, qualifications/knowledge requirements, terms and conditions specific to the work order, timeline for project, performance requirements and project payment terms (based on fixed hourly rates, direct costs, firm fixed price or other applicable pricing specific to the scope of work- if applicable) will be issued by County to all three contingency staffing firms allowing all firms an equal opportunity to submit staffing proposals for each available project.
- b. Work orders will be submitted by County to Contractor's Project Manager via phone, fax, email or the intranet. A work order will only be accepted by Contractor if submitted by County's Human Services Agency HR Manager. Any other referral by County should be referred to the Human Services Agency's HR Manager. The HR Manager's contact information can be found in Section II of this Exhibit.

2. Contractor Response to a Work Order:

Each contingency staffing firm will have 72 hours to respond to the work order with perspective proposals. County shall have the option not to review late proposals.

Proposals will include:

- a. Classification(s) of staff that would perform the work;
- b. Hourly rate(s) or project rates based on requirements;
- c. Associated fees;
- d. Proposed overall cost based on the work order description;
- e. Any other information required by the work order; and
- f. A pool of 3-4 potential candidates and their qualifications for each classification proposed.

3. Evaluation of Proposals and Candidates

County will evaluate proposals and review qualifications of candidates presented by each firm and perform a cost analysis. Before awarding a Consultant Information Form (CIF) to any firm, the HSA's project manager will:

- a. Arrange with contingency staffing firm(s) dates and times to interview candidates of interest on-site at County's specified location.
- b. Once a qualified candidate(s) is identified, firm(s) identified shall complete a customized evaluation process as requested by County. This may include criminal and drug screening, knowledge testing, as well as an in-depth review of job requirements and expectations. If candidate(s) meets all requirements and is

interested in the position, County and firm shall move to the next step. If not, the previous step is repeated until a qualified candidate match is made or County decides that no match is suitable and decides to cancel or reissue the work order.

- c. If approved, candidate(s) chosen will be confirmed for a start date contingent upon accepted completion of background check(s). If the background check is passed, then County shall have the option to move forward and award a CIF to the firm(s) providing the approved candidate(s). If the background check fails, County will continue its selection process or if determined there are no suitable candidates have the option to cancel or reissue the work order.

4. Selection of Firm and CIF Award

- a. County may choose not to accept any proposals or enter into a CIF and may cancel a work order at its discretion.
- b. Notification of a CIF award or work order cancellation will be sent via email to all three firms.
- c. County will base its award(s) on the firm(s)' ability to provide candidates with the qualifications that best meet the overall requirements of the project presented in the work order and also provide the services for the best value to County. Awards are not solely based on lowest cost. Awards will be based on factors such as the firm's ability to provide individuals that can fulfill service responsibilities outlined in the work order and other relevant factors at the discretion of County.
- d. Firms may not protest County's selection of a candidate. Protests may only be made in regards to unfair screening processes and if the scope of work issued is not presented fairly to each Contractor.
- e. A CIF (shown in Exhibit E) will be awarded to the firm(s) if their candidate is selected by County to fill the work order for the project.

V. RESPONSIBILITIES OF THE CONTRACTOR IF A CIF IS AWARDED

- 1. In accordance with State of California Assembly Bill 469 – Wage Theft Protection Act, Contractor will notify the temporary staff in writing with information specific to his or her assignment if a position/project is accepted and a CIF is awarded.
- 2. Prior to the start date, Contractor will provide candidate with a full orientation on the job and County environment, as well as information on how to complete Contractor's timecard and training requirements shown in section VI below.
- 3. On the first day of assignment, a member of Contractor's Human Resource Team will conduct a quality control call to candidate's supervisor. At the end of the first

week, another quality control check will be completed. Afterwards, the team will conduct ongoing quality checks to ensure that candidate is performing up to, or better than County expectations. If candidate is not performing up to County's expectations, County shall have to right to request a new candidate.

4. Performance guarantees: If a consultant fails to perform work in accordance with the work order (form shown as Exhibit D), within one week of an engagement, Contractor will not bill County for it temporary staff's time in most cases. Contractor will speak with County's point of contact shown as requestor in Exhibit D in order to determine the primary cause for the failure so that it is not repeated again in the future.

VI. CANDIDATE ORIENTATION AND TRAINING

As required, Contractor will inform all prospective candidates of requirements and obligations if selected to work at County. Once a candidate is identified for placement with County, Contractor's Project Manager will assist in helping candidate acclimate to County working environment by conducting a thorough department-specific orientation. This orientation will cover at minimum the following subjects:

- Dress code
- Contractor's working hours
- Parking
- Phone number
- Scheduling time off with Contractor
- Direction
- Supervisor name with Contractor
- Dates of work
- Contractor's time card preparation
- Reporting absences to Contractor

Contractor shall also include any other information which County determines to be important as part of this orientation, inclusive of a review of applicable County policies. In addition to this orientation, County shall notify candidate of the following:

County shall conduct additional or more recent reference inquiries of previous employers or verify such information that County deems appropriate to be able to fill its short term IT position(s). Such verifications and checks may include drug screens, criminal background checks, fingerprinting, or any verification processes required for the position being screened for, including execution of confidentiality agreements between staff filling the position and County.

1. Temporary staff will only be authorized to perform work within the scope of their assignment.
2. Shall be provided safe working conditions and not authorized to operate machinery or equipment outside of typical office machine. (i.e., computers, servers, copiers, printers, paper shredders, etc.)

3. Time reporting sheets shall be submitted to the temporary staff's assigned supervisor with Contractor for sign off on a weekly basis.

VII. PROBLEM RESOLUTION AND SERVICE TIME FRAME

Service issues and requests should be documented by County and immediately reported to Contractor's Project Manager. Contractor will follow-up with County and provide a specific time-frame in which County can expect action, as well as provide periodic status reports while working to resolve the issue.

If a correction requires immediate replacement of temporary staff, Contractor shall respond within (4) hours to provide County with a solution.

Upon issue resolution, Contractor will schedule a follow-up with County to review the incident, confirm satisfaction and discover ways in which the process might be improved for the future.

Exhibit B

Agreeya

Payments and Rates

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor for IT contingency staffing services fulfilled as requested by County based on the following fee schedule and terms, and all other IT contingency staff Agreements approved collectively by a single resolution not to exceed the amount stated in Section 3 of the body of the Agreement titled as Payments:

1. Project Rates

County shall pay Contractor based on the pricing structure below. Rates include all services fees per hour and may include but are not limited to any overhead, G&A costs, statutory taxes, general liability, workers' compensation, employee compensation, training, recruitment, agency profits and any other applicable fees to County.

Contract Work	Minimum Bill Rate	Maximum Bill Rate
IT Help Desk Tech	\$34	\$49
Application Developer	\$74	\$105
Reporting & Data Analyst	\$69	\$105
Application Support Analyst	\$65	\$95
IT Project Manager	\$81	\$121
Business Analyst	\$60	\$110
Data Administrator	\$67	\$115
QA Tester	\$59	\$85
Technical Writer	\$55	\$85
Trainer E-Learning	\$52	\$95
Trainer: Course Design	\$60	\$95
Senior Developer	\$70	\$115
Architect	\$80	\$135

The pricing provided herein reflects broad categories of work, which can include several titles and position/experience levels.

County shall not be limited to these categories of work and may request other work categories as needed. The cost range for other types of work will be determined by Contractor at the time of request by County and negotiated and agreed upon by both parties. County has the option to contract with the IT contingency firm that has the most qualified candidate at the most competitive rate.

2. Overtime

Overtime pay will be paid by the Contractor as required pursuant to applicable state and federal law and will be billed to the County at one and one-half (1 ½) times the normal billing rate.

3. Conversion Fees

County may convert, at no charge, any of Contractor's temporary staff to a full-time County employment should Contractor's staff apply, qualify and be hired by County.

4. Invoicing & Payments

Contractor shall submit itemized monthly invoices for actual costs incurred based on the rate shown in Section 1 above plus any applicable taxes and fees; and based off the weekly time reporting form approved by County for specific positions requested by County and fulfilled by Contractor.

County shall pay Contractor upon receipt and approval of invoices and verification of hours based on the weekly time reporting forms.

Invoices submitted to:

Ken Kong

kkong@smcgov.org

Exhibit C

Agreeeya

Quality Assurance

Contractor will monitor the quality of services described in Exhibit A and as set forth in the work order requirements that it is fulfilling.

1. Daily progress checks of assigned project which will include but are not limited to:
 - Progress of assigned work
 - Progress toward milestones
 - Project feedback
2. Weekly and ongoing quality checks of performance for their contingency staff including:

<ul style="list-style-type: none">• Attendance• Punctuality• Proficiency in Required Skills• Ability to Adapt to the Work Environment• Ability to Follow Instructions• Ability to Solve Problems• Ability to Follow Established Policies and Procedures	<ul style="list-style-type: none">• Verbal Communication Skills• Written Communication Skills• Quality of Work• Productivity• Dress Attire• Ability to Maintain Effective Working Relationships
---	--
3. Monthly meetings with County or as agreed upon with County to address performance objectives and compliance.
4. Monthly reviews and reports covering, but not limited the following topics:
 - a) Task order and team management
 - b) Required deliverables
 - c) Task order schedule and cost control
 - d) Employee security compliance requirements, Contractor identification and in-processing procedures
 - e) Training and certification requirements
 - f) Staffing and retention issues

These reviews will incorporate findings from Contractor's contact with temporary staff and County. Any complaint or deficiency will be immediately reviewed by Contractor's Project Manager.

Quality Assurance

Each Scope of Work/Project will include specific work items and/or milestones that are clearly defined including start and end dates within which work items must be completed. To monitor progress or work assignments, County will conduct daily check-ins with Contractor's temporary staff to monitor the progress of their assigned work items, review progress toward any milestones, and provide feedback by which Contractor's temporary staff can act on immediately. At the completion of work items/milestones, there will be demonstrations/presentations by Contractor's temporary staff to subject matter experts/County to gather feedback and provide acceptance of deliverables. Depending on assignments, work item/milestone features will also be released to the test environment so that subject matter experts can review, test, validate, and report back issues found.

Exhibit D



Work Order Form

Date Issued: _____ Work Order #: _____

Requestor: _____

Issued To: _____

Proposals Due: _____

Estimated Work Timeline: _____

I. Scope of Work
Type Here

II. Qualifications/Knowledge of:
Type Here

III. Other Requirements:
Type Here

Exhibit E



Consultant Information Form (CIF)

Instructions: A copy of the Work Order Form must be attached to this document in order to process. The Contractor must sign this form acknowledging that their candidate(s) has been chosen to fulfill the Work Order. If more than one Contingency Staffing Firm is chosen, a separate form must be filled out for each Firm.

Branch: _____

Associated with Work Order #: _____

Agreement #: _____

Contractor Name: _____

☐ Estimated Amount: \$ _____

☐ Amended Amount: \$ _____

☐ Work Term: Start: [Click here to enter a date.](#) End: [Click here to enter a date.](#)

☐ Amended Work Term: Start: [Click here to enter a date.](#) End: [Click here to enter a date.](#)

☐ Hourly Rate: \$ _____

☐ Fixed Rate: \$ _____

By signing this Document, Contractor agrees to provide staffing for rates and terms shown above and in addition agrees to the terms and conditions set forth by the Work Order and in compliance with the Agreement between the County and Contractor.

Contractor Authorized Representative's Signature

Date

County Approval(s)

Date

Attachment H

Health Insurance Portability and Accountability Act (HIPAA)

Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this Agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 164.503 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 - 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 - 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 - 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 - 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.

- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR,

- etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSABLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐

a. Employs fewer than 15 persons.

☒

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Krista Sheldon

Name of Contractor(s):

AgreeYa Solutions

Street Address or P.O. Box:

605 Coolidge Drive

City, State, Zip Code:

Folsom, CA 95630

I certify that the above information is complete and correct to the best of my knowledge

Signature:



Title of Authorized Official:

Director, HR & Administration

Date:

10/03/2017

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Attachment P

Personally Identifiable Information

Requirements for County Contractors, Subcontractors, Vendors and Agents

I. Definitions

Personally Identifiable Information (PII), or Sensitive Personal Information (SPI), as used in Federal information security and privacy laws, is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context. PII may only be used to assist in the administration of programs in accordance with 45 C.F.R. § 205.40, *et seq.* and California Welfare & Institutions Code section 10850.

- a. **“Assist in the Administration of the Program”** means performing administrative functions on behalf of County programs, such as determining eligibility for, or enrollment in, and collecting context PII for such purposes, to the extent such activities are authorized by law.
- b. **“Breach”** refers to actual loss, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for other than authorized purposes have access or potential access to context PII, whether electronic, paper, verbal, or recorded.
- c. **“Contractor”** means those contractors, subcontractors, vendors and agents of the County performing any functions for the County that require access to and/or use of PII and that are authorized by the County to access and use PII.
- d. **“Personally Identifiable Information” or “PII”** is personally identifiable information that can be used alone, or in conjunction with any other reasonably available information, to identify a specific individual. PII includes, but is not limited to, an individual's name, social security number, driver's license number, identification number, biometric records, date of birth, place of birth, or mother's maiden name. PII may be electronic, paper, verbal, or recorded.
- e. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PII, or interference with system operations in an information system which processes PII that is under the control of the County or County's Statewide Automated Welfare System (SAWS) Consortium, or under the control of a contractor, subcontractor or vendor of the County, on behalf of the County.
- f. **“Secure Areas”** means any area where:
 - i. Contractors administer or assist in the administration of County programs;
 - ii. PII is used or disclosed; or

- iii. PII is stored in paper or electronic format.

II. Restrictions on Contractor re Use and Disclosure of PII

- a. Contractor agrees to use or disclose PII only as permitted in this Agreement and only to assist in the administration of programs in accordance with 45 CFR § 205.50, *et seq.* and California Welfare & Institutions Code section 10850 or as otherwise authorized or required by law. Disclosures, when authorized or required by law, such as in response to a court order, or when made upon the explicit written authorization of the individual, who is the subject of the PII, are allowable. Any other use or disclosure of PII requires the express approval in writing by the County. No Contractor shall duplicate, disseminate or disclose PII except as allowed in this Agreement.
- b. Contractor agrees to only use PII to perform administrative functions related to the administration of County programs to the extent applicable.
- c. Contractor agrees that access to PII shall be restricted to Contractor's staff who need to perform specific services in the administration of County programs as described in this Agreement.
- d. Contractor understands and agrees that any of its staff who accesses, discloses or uses PII in a manner or for a purpose not authorized by this Agreement may be subject to civil and criminal sanctions available under applicable Federal and State laws and regulations

III. Use of Safeguards by Contractor to Protect PII

- a. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PII received from, or created or received by Contractor on behalf of County, agrees to adhere to the same restrictions and conditions contained in this Attachment PII.
- b. Contractor agrees to advise its staff who have access to PII, of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in applicable Federal and State laws and regulations.
- c. Contractor agrees to train and use reasonable measures to ensure compliance by Contractor's staff, including, but not limited to (1) providing initial privacy and security awareness training to each new staff within thirty (30) days of employment; (2) thereafter, providing annual refresher training or reminders of the PII privacy and security safeguards to all Contractor's staff; (3) maintaining records indicating each Contractor's staff name and the date on which the privacy and security awareness training was completed; and (4) retaining training records for a period of three (3) years after completion of the training.

- d. Contractor agrees to provide documented sanction policies and procedures for Contractor's staff who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment when appropriate.
- e. Contractor agrees that all Contractor's staff performing services under this Agreement sign a confidentiality statement prior to accessing PII and annually thereafter. The signed statement shall be retained for a period of three (3) years, and the statement include at a minimum: (1) general use; (2) security and privacy safeguards; (3) unacceptable use; and (4) enforcement policies.
- f. Contractor agrees to conduct a background check of Contractor's staff before they may access PII with more thorough screening done for those employees who are authorized to bypass significant technical and operational security controls. Contractor further agrees that screening documentation shall be retained for a period of three (3) years following conclusion of the employment relationship.
- g. Contractor agrees to conduct periodic privacy and security reviews of work activity, including random sampling of work product by Contractor's staff by management level personnel who are knowledgeable and experienced in the areas of privacy and information security in the administration of County's programs and the use and disclosure of PII. Examples include, but are not limited to, access to data, case files or other activities related to the handling of PII.
- h. Contractor shall ensure that PII is used and stored in an area that is physically safe from access by unauthorized persons at all times and safeguard PII from loss, theft, or inadvertent disclosure by securing all areas of its facilities where Contractor's staff assist in the administration of the County's programs and use, disclose, or store PII.
- i. Contractor shall ensure that each physical location, where PII is used, disclosed, or stored, has procedures and controls that ensure an individual who is terminated from access to the facility is promptly escorted from the facility by an authorized employee of Contractor and access is revoked.
- j. Contractor shall ensure that there are security guards or a monitored alarm system at all times at Contractor's facilities and leased facilities where five hundred (500) or more individually identifiable records of PII is used, disclosed, or stored. Video surveillance systems are recommended.
- k. Contractor shall ensure that data centers with servers, data storage devices, and/or critical network infrastructure involved in the use, storage, and/or processing of PII have perimeter security and physical access controls that limit access to only those authorized by this Agreement. Visitors to any Contractor data centers area storing PII as a result of administration of a County program must be escorted at all times by authorized Contractor's staff.

- l. Contractor shall have policies that include, based on applicable risk factors, a description of the circumstances under which Contractor staff can transport PII, as well as the physical security requirements during transport.
- m. Contractor shall ensure that any PII stored in a vehicle shall be in a non-visible area such as a trunk, that the vehicle is locked, and under no circumstances permit PII be left unattended in a vehicle overnight or for other extended periods of time.
- n. Contractor shall ensure that PII shall not be left unattended at any time in airplanes, buses, trains, etc., including baggage areas. This should be included in training due to the nature of the risk.
- o. Contractor shall ensure that all workstations and laptops, which use, store and/or process PII, must be encrypted using a FIPS 140-2 certified algorithm 128 bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk. It is encouraged, when available and when feasible, that the encryption be 256 bit.
- p. Contractor shall ensure that servers containing unencrypted PII must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review. It is recommended to follow the guidelines documented in the latest revision of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Security and Privacy Controls for Federal Information Systems and Organizations.
- q. Contractor agrees that only the minimum necessary amount of PII required to perform required business functions will be accessed, copied, downloaded, or exported.
- r. Contractor shall ensure that all electronic files, which contain PII data is encrypted when stored on any mobile device or removable media (i.e. USB drives, CD/DVD, smartphones, tablets, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm 128 bit or higher, such as AES. It is encouraged, when available and when feasible, that the encryption be 256 bit.
- s. Contractor shall ensure that all workstations, laptops and other systems, which process and/or store PII, must install and actively use an antivirus software solution. Antivirus software should have automatic updates for definitions scheduled at least daily. In addition, Contractor shall ensure that:
 - i. All workstations, laptops and other systems, which process and/or store PII, must have critical security patches applied, with system reboot if necessary.
 - ii. There must be a documented patch management process that determines installation timeframe based on risk assessment and vendor recommendations.

- iii. At a maximum, all applicable patches deemed as critical must be installed within thirty (30) days of vendor release. It is recommended that critical patches which are high risk be installed within seven (7) days.
- iv. Applications and systems that cannot be patched within this time frame, due to significant operational reasons, must have compensatory controls implemented to minimize risk.
- t. Contractor shall ensure that all of its staff accessing Personally Identifiable Information on applications and systems will be issued a unique individual password that is a least eight (8) characters, a non-dictionary word, composed of characters from at least three (3) of the following four (4) groups from the standard keyboard: upper case letters (A-Z); lower case letters (a-z); Arabic numerals (0-9) and special characters (!, @, #, etc.). Passwords are not to be shared and changed if revealed or compromised. All passwords must be changed every (90) days or less and must not be stored in readable format on the computer or server.
- u. Contractor shall ensure that usernames for its staff authorized to access PII will be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee within twenty- four (24) hours. Note: Twenty-four (24) hours is defined as one (1) working day.
- v. Contractor shall ensure when no longer needed, all PII must be cleared, purged, or destroyed consistent with NIST SP 800-88, Guidelines for Media Sanitization, such that the Personally Identifiable Information cannot be retrieved.
- w. Contractor shall ensure that all of its systems providing access to PII must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- x. Contractor shall ensure that all of its systems providing access to PII must display a warning banner stating, at a minimum that data is confidential; systems are logged, systems use is for business purposes only by authorized users and users shall log off the system immediately if they do not agree with these requirements.
- y. Contractor will ensure that all of its systems providing access to PII must maintain an automated audit trail that can identify the user or system process which initiates a request for PII, or alters PII. The audit trail shall be date and time stamped; log both successful and failed accesses be read-access only; and be restricted to authorized users. If PII is stored in a database, database logging functionality shall be enabled. The audit trail data shall be archived for at least three (3) years from the occurrence.
- z. Contractor shall ensure that all of its systems providing access to PII shall use role-based access controls for all user authentications, enforcing the principle of least privilege.

- aa. Contractor shall ensure that all data transmissions of PII outside of its secure internal networks must be encrypted using a Federal Information Processing Standard (FIPS) 140-2 certified algorithm that is 128 bit or higher, such as Advanced Encryption Standard (AES) or Transport Layer Security (TLS). It is encouraged, when available and when feasible, that 256 bit encryption be used. Encryption can be end to end at the network level, or the data files containing PII can be encrypted. This requirement pertains to any type of PII in motion such as website access, file transfer, and email.
- bb. Contractor shall ensure that all of its systems involved in accessing, storing, transporting, and protecting PII, which are accessible through the Internet, must be protected by an intrusion detection and prevention solution.
- cc. Contractor shall ensure that audit control mechanisms are in place. All Contractor systems processing and/or storing Personally Identifiable Information must have a least an annual system risk assessment/security review that ensure administrative, physical, and technical controls are functioning effectively and provide an adequate level of protection. Review shall include vulnerability scanning tools.
- dd. Contractor shall ensure that all of its systems processing and/or storing PII must have a process or automated procedure in place to review system logs for unauthorized access.
- ee. Contractor shall ensure that all of its systems processing and/or storing PII must have a documented change control process that ensures separation of duties and protects the confidentiality, integrity and availability of data.
- ff. Contractor shall establish a documented plan to enable continuation of critical business processes and protection of the security of PII kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.
- gg. Contractor shall ensure its data centers with servers, data storage devices, and critical network infrastructure involved in the use, storage and/or processing of PII, must include environmental protection such as cooling, power, and fire prevention, detection, and suppression.
- hh. Contractor shall establish documented procedures to backup PII to maintain retrievable exact copies of PII. The documented backup procedures shall contain a schedule which includes incremental and full backups, storing backups offsite, inventory of backup media, recovery of PII data, an estimate of the amount of time needed to restore PII data.
- ii. Contractor shall ensure that PII in paper form shall not be left unattended at any time, unless it is locked space such as a file cabinet, file room, desk or office. Unattended means that information may be observed by an individual not authorized to access the information. Locked spaces are defined as locked file

cabinets, locked file rooms, locked desks, or locked offices in facilities which are multi-use, meaning that there are Contractor's staff and non-Contractor functions in one building in work areas that are not securely segregated from each other. It is recommended that all PII be locked up when unattended at any time, not just within multi-use facilities.

- jj. Contractor shall ensure that any PII that must be disposed of will be through confidential means, such as cross cut shredding or pulverizing.
- kk. Contractor agrees that PII must not be removed from its facilities except for identified routine business purposes or with express written permission of the County.
- ll. Contractor shall ensure that faxes containing PII shall not be left unattended and fax machines shall be in secure areas. Faxes containing PII shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them and notify the sender. All fax numbers shall be verified with the intended recipient before send the fax.
- mm. Contractor shall ensure that mailings containing PII shall be sealed and secured from damage or inappropriate viewing of PII to the extent possible. Mailings that include five hundred (500) or more individually identifiable records containing PII in a single package shall be sent using a tracked mailing method that includes verification of delivery.

IV. Reporting of Breaches Required by Contractor to County; Mitigation

- a. Contractor shall report to County within one business day of discovery, to the County contact listed in this Agreement by email or telephone as listed in the of unsecured PII, if that PII was, or is, reasonably believed to have been accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PII in violation of this Agreement, or potential loss of confidential data affecting this Agreement.
- b. Contractor understands that State and Federal Law requires a breaching entity to notify individuals of a breach or unauthorized disclosure of their PII. Contractor shall ensure that said notifications shall comply with the requirements set forth in California Civil Code section 1798.29, and 42 U.S.C. section 17932, and its implementing regulations, including but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than sixty (60) calendar days.
- c. Contractor agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Contractor stemming from a use or disclosure of PII in violation of the requirements of this Agreement, including taking any action pertaining to such use or disclosure required by applicable Federal and State laws and regulations.

V. Permitted Uses and Disclosures of PII by Contractor

Except as otherwise limited in this schedule, Contractor may use or disclose PII to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

VI. Obligations of County

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with California Welfare and Institutions Code section 10850, as well as any changes to such notice.
- b. County shall notify Contractor of any changes in, or revocation of, permission by Individual to use or disclose PII, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of PII that County has agreed to in accordance with California Welfare and Institutions Code section 10850.

VII. Permissible Requests by County

County shall not request Contractor to use or disclose PII in any manner that would not be permissible under the Privacy Rule if so requested by County, unless Contractor will use or disclose PII for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

VIII. Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all PII received from County, or created, maintained, or received by Contractor on behalf of County that Contractor still maintains in any form. This provision shall apply to PII that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PII.
- b. In the event that Contractor determines that returning or destroying PII is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of the Parties that return or destruction of PII is infeasible, Contractor shall extend the protections of the Agreement to such PII and limit further uses and disclosures of such PII to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PII.

IX. Miscellaneous

- a. **Regulatory References.** A reference in this Attachment to a section in the Personally Identifiable Information Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and in accordance 45 CFR § 205.40, *et seq.* and California Welfare and Institutions Code section 10850.
- c. **Survival.** The respective rights and obligations of Contractor under this Attachment shall survive the termination of the Agreement unless and until the PII is destroyed or returned to the County.
- d. **Interpretation.** Any ambiguity in any provision in this Attachment shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.

Reservation of Right to Monitor Activities. County reserves the right to monitor the security policies and procedures