

**COUNTY OF MARIN**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**SECURITY SERVICES FOR HEALTH & HUMAN SERVICES BUILDINGS**

**REQUEST FOR PROPOSAL NO. RFP-HHS-2018-10**

**ISSUED BY:**



**DIVISION OF ADMINISTRATION**  
**20 NORTH SAN PEDRO RD.**  
**SAN RAFAEL, CA 94903**  
**415-473-3696**

**April 2018**

**The County of Marin, Health and Human Services Department, is issuing this REQUEST FOR PROPOSAL (RFP) from qualified providers for the provision of security services for Health and Human Services Department facilities.**

**Interested vendors are required to return all of the request for proposal forms as part of their submitted proposal.**

**Proposal packages will be received until: Noon, RFP-HHS-2018-10, at Health and Human Services, 20 N. San Pedro Rd., San Rafael, CA 94903**

**Any vendor who wishes a proposal to be considered is responsible for making certain that the proposal is received by the specified date and time. No oral, telegraphic, electronic, facsimile or telephonic proposals or modifications will be considered unless specified. Proposals received after the scheduled deadline will be returned unopened.**

**Copies of this RFP are available by contacting James Villella at 415-473-6864.**

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County of Marin  
 Health and Human Services Department – Administration  
 Request for Proposal (RFP) Timeline  
 Security Services for HHS Facilities

| Service  | Security for HHS Facilities   |
|--|---|
| Awarding Agency  | Marin County Health and Human Services<br>Administration Division<br>20 North San Pedro Rd.<br>San Rafael, CA 94903   |
| Contact Person   | James Villella 415-473-6864<br>jvillella@marincounty.org  |
| Contract Period  | July 1, 2018 – June 30, 2020  |
| RFP Date of issuance   | April 10 <sup>th</sup> , 2018   |
| Bidder's conference  | April 24 <sup>th</sup> , 2018 10:00 a.m. – 12:00 p.m.<br>Health and Wellness Campus<br>3240 Kerner Blvd. Room, Room 110<br>San Rafael, CA 94901<br>(415) 473-4300   |
| Deadline to submit questions to HHS                                    | May 4 <sup>th</sup> , 2018 by noon  |
| Deadline for HHS Admin. to post written technical assistance and Q & A | May 9 <sup>th</sup> , 2018  |
| Proposal submission deadline   | May 15 <sup>th</sup> , 2018 by noon. <b>All proposals including mailed proposals must be received by the deadline of 12 Noon on May 15<sup>th</sup>, <u>not the date stamp of mailing or the date given to a courier or the date you sent the mail</u></b>  |
| Proposal submission address and instructions                           | Proposals may be submitted in person, via courier service, or mailed (not recommended) by May 15 <sup>th</sup> , 2018 by Noon at:<br>Health and Human Services<br>20 North San Pedro Rd.<br>San Rafael, CA 94903<br>Mailed proposals must be received by the deadline, <u>not the date stamp of mailing</u> . A certificate of receipt of application will be issued for all proposals submitted. Faxed or e-mailed proposals and proposals received after the deadline will not be considered. |
| Required copies to be submitted  | 1 original, 4 copies and 1 electronic copy on a CD or flash drive   |
| Grant award announcement*  | June 4 <sup>th</sup> , 2018   |
| Protest submission deadline  | June 8 <sup>th</sup> , 2018 by noon   |
| Board of Supervisors contract approval                                 | July 10 <sup>th</sup> , 2018  |
| Initiation of services   | July 10 <sup>th</sup> , 2018  |

\*Date subject to Board of Supervisors schedule and County budget and contract processes.

## **GENERAL INSTRUCTIONS**

**All questions regarding this proposal may be submitted to James Villella, PH Division Director; [jvillella@marincounty.org](mailto:jvillella@marincounty.org)**

**Deadline for submission: May 15<sup>th</sup>, 2018 by noon**

### **SUBMISSION OF PROPOSAL**

**BY SUBMITTING A PROPOSAL, THE VENDOR AGREES TO BE BOUND BY AND EXECUTE THE ATTACHED COUNTY OF MARIN PROFESSIONAL SERVICES AGREEMENT (SEE ATTACHMENT D) AND PERTINENT COUNTY POLICIES. THE PROFESSIONAL SERVICES AGREEMENT WILL BE MODIFIED TO INSERT THE BUSINESS TERMS AGREED UPON BETWEEN THE COUNTY OF MARIN AND THE CONTRACTOR.**

Sealed proposals shall be received at Health and Human Services, 20 North San Pedro Rd., San Rafael, CA 94903 until 12:00 noon local time, by May 15<sup>th</sup>, 2018. Proposals must be submitted on the form(s) provided with this RFP package. All items shall be filled in and the signatures of all persons signing shall be written and printed in longhand. All bids submitted must have Offer (Page 25 & 26) completed, dated, with firm's name and signed by a duly authorized officer of the firm. Bids not submitted on the form(s) provided may not be considered by the County of Marin.

**All proposals shall be submitted in a sealed envelope, box, or appropriate package and clearly identified on the outside to read the name and address of the vendor, the subject of the proposal, the Request for Proposal number RFP-HHS-2018-10, and the proposal submittal deadline. Mail or deliver to:**

*County of Marin, Health and Human Services  
20 North San Pedro Rd.  
San Rafael, CA 94903  
Proposal No. RFP-HHS-2018-10  
Attention: James Villella, PH Division Director*

Please submit **one (1) original signature hard copy** to be signed in blue ink (original copy marked as such) **four (4) additional hard copies and one (1) electronic copy** on a CD or flash drive.

### **BIDDER'S CONFERENCE**

A pre-proposal conference will be held as follows:

Date: April 24<sup>th</sup>, 2018  
Time: 9am-11am  
Location: Marin Health and Wellness Campus  
3240 Kerner Blvd. Room 110  
San Rafael, CA 94901

If you are a person with a disability and require an accommodation to participate in this event, requests may be made by calling (415) 473-4300 (Voice), (415) 473-3232 (TDD/TTY), or by email at [jvillella@marincounty.org](mailto:jvillella@marincounty.org) at least five days in advance of the event.

### **PROPOSAL SUBMITTAL DEADLINE**

Proposals will be considered late when Health and Human Services time clock reads 12:00 noon, on May 15<sup>th</sup>, 2018. Any vendor who wishes a proposal to be considered is responsible for making certain that the proposal is received by the specified date and time. No oral, telegraphic, electronic, facsimile or telephonic proposals or modifications will be considered unless specified. Proposals received after this deadline will be rejected regardless of postmark date and will be returned to the vendor unopened.

Without law or policy to the contrary, if the vendor took reasonable steps to submit the proposal in due time, and failure of the proposal to be on hand at the time of closing was not the result of negligence or other fault of the vendor, but was the result of negligence by the County, the County reserves the right to accept such proposal.

Proposals that do not follow instructions and/or fail to respond to all parts of the RFP shall be deemed non-responsive and will not be considered. The County will not accept any amendments, clarifications, revisions or alterations after the proposal due date unless the changes are requested by the County.

### **INFORMED PROPOSERS**

Before submitting a proposal, bidders must fully inform themselves of the conditions, requirements and specifications of the work or materials to be furnished. Failure to do so will be at the vendor's own risk.

It is the responsibility of the bidder to carefully and thoroughly examine and be familiar with legal and procedural documents, general conditions, all forms, specifications, addenda (if any), herein referred to as contract documents. Contractor shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, equipment and appurtenances necessary to perform the work as specified by the contract documents. The failure or neglect of the contractor to examine the documents shall in no way relieve him from any obligations with respect to the solicitation or contract. The submission of a bid shall constitute an acknowledgment upon which the County of Marin may rely that the vendor has thoroughly examined and is familiar with the contract documents. The failure or neglect of a vendor to receive or examine any of the documents shall in no way relieve him from any obligations with respect to this Invitation for Bid. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

## **PRICES, NOTATIONS, AND MISTAKES**

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person who signs the bid. Prices shall be stated in dollars and quotations made separately on each item. Where there is a conflict between words and figures, words will govern.

## **INTERPRETATION, CORRECTIONS AND ADDENDA**

The bidder must carefully examine the specifications, terms and conditions provided in the Request for Proposal and become fully informed as to the requirements set forth therein. If anyone planning to submit a proposal discovers any ambiguity, conflict, discrepancy, omission or error in the bid, has any questions in relationship to the "Scope of Work", or any other related matters, they shall immediately notify the contact person as shown under "Responsible Parties" of such concern in writing, either by mail, e-mail or facsimile, and request clarification or modification of the document(s) **no later than three (3) working days before the deadline as set forth under sub-Section "Proposal Submittal Deadline."** No further requests for clarification or objections to the proposal will be accepted or considered after this date. Any change in the proposal will be made only by written addendum, issued by the County of Marin, Health and Human Services Department to each firm in receipt of the RFP and shall be incorporated in the proposal.

The bidder shall sign and date the addendum and submit same with the proposal. **Any oral communication by the County's designated contact person or any other County staff member concerning this proposal is not binding on the County and shall in no way modify this proposal or the obligations of the County or any Bidders.**

The bidder may FAX, E-mail or mail to the contact person as shown under "Responsible Parties". All inquiries shall be directed to the designated County staff person as shown. Contact with any other County personnel and any undue "badgering" of such County personnel by the bidder is prohibited. Failure to comply with this request may be considered cause for disqualification of your bid.

## **WITHDRAWAL OF BID**

Submitted proposals: may be withdrawn prior to the opening date only by written request of the bidder.

## **TERMS OF THE OFFER**

Acceptance of bidder's offer shall be limited to the terms herein unless expressly agreed in writing by Health and Human Services. Bidders offering terms other than those shown herein will be declared non-responsive and will not be considered.

## **GENERAL PROVISIONS**

### **GENERAL PROJECT DESCRIPTION**

The County of Marin, Health & Human Services, desires to receive the highest quality security services available in the industry. Proposers must be cognizant of security and confidentiality requirements with regard to health and social services related information, and provide diligent responses on their operational/procedural methods to ensure absolute compliance. The work covered under this Proposal includes the year-round security services for the locations listed below. Primary Security Services required are for patrol and on-site security. Security will be provided to all staff members and visitors. The expectations of security are to help HHS provide a safe and welcoming environment for our employees and visitors.

#### **Primary locations to be staffed by security during business hours:**

1. Health and Wellness Campus located at Kerner and Bellam Blvd, San Rafael. Buildings 3230, 3240, 3250 and 3270 Kerner Blvd. In addition to parking lot and courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd, San Rafael CA.
2. Social Services Building, 120 North Redwood Drive, San Rafael CA

#### **Security Patrols/On-Call**

During non-business hours, contractor shall provide periodic patrols of listed locations and be available on call:

- A. Kerner Health & Wellness Campus 3230, 3240, 3250 & 3270 Kerner San Rafael, Ca., in addition to parking areas noted, between 12:00 a.m. and 6:30 a.m
- B. 120 N. Redwood Blvd., San Rafael, Ca. between 12:00 a.m. and 4:30 a.m
- C. 920 Grand Ave., San Rafael, Ca. between 10:00 p.m. and 6:30 a.m

Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted 7 days a week and shall last approximately 15-20 minutes.

#### **Marin Health and Wellness Campus – Connection Center:**

Provide security for special events

## **RESPONSIBLE PARTIES**

Representing the County of Marin in all matters regarding the submission and/or specifications of the Request for Proposal shall be James Villella, Public Health Division Director, (415) 473-6864.

Questions must be submitted in writing or via e-mail (jvillella@marincounty.org). No telephone questions will be accepted or considered. Contractors should refer to the specific RFP page, paragraph and/or section when sending inquiries. Questions will be answered promptly and sent to all Contractors participating in the RFP.

## **PRICING**

Prices quoted shall be firm and fixed through the first (1st) year of the term, **except for any increase in costs due to the mandatory adherence to the Marin County Living Wage Ordinance that takes effect every January 1<sup>st</sup>.** The County will require a thirty (30) day notice given before a price increase with documentation for the increase. If the County elects to bid out again, a sixty (60) day notice will be given.

## **CONTRACT TERM**

The contract's first term shall be for a period of 24 months, commencing July 10, 2018 and ending on June 30, 2020, with an option to continue for four (4) additional years in one-year increments, by mutual consent of the County and Vendor.

The County plans to negotiate extensions with the winning contractor assuming: (a) good performance on the contractor's part, (b) continued requirement for the services, (c) the availability of funds, (d) the status of the competitive market, and (e) the continuation of services on a reasonable cost basis. Negotiated extensions to the contract without formal competition are a County prerogative, not a contractual right.

## **AWARD OF PROPOSAL**

Award of contract shall be made to the contractor offering the most advantageous proposal. The County of Marin will not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the County after all factors have been evaluated. The County of Marin reserves the right to reject any and all proposals, and to waive any informalities and minor irregularities in the proposals.

## **ADDENDA**

Any changes, additions, deletions or clarifications to this bid package, including the general/special provisions and scope of work shall be made by written addendum to the Request for Proposal. Such addendum shall be issued by the Department of Health and



Human Services and will be made available to all prospective bidders in possession of the RFP package.

### **TERMINATION FOR CONVENIENCE**

1. The County reserves the right to terminate the contract at any time, for the convenience of the County of Marin, without penalty or recourse, by giving written notice to the Vendor at least thirty (30) calendar days prior to the effective date of such termination. The Vendor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the County pursuant to the contract prior to the effective date of termination. Termination compensation cannot exceed the monthly service fee, and the termination nullifies the remaining months of the contract.
2. Termination for lack of funding: The County reserves the right to immediately terminate any contract in any user agency if said agency loses funding during the term of the contract.
3. Termination for non-performance: The County may immediately terminate the contract in whole or in part if delivery or performance is unsatisfactory, but reserves the right to provide a period to cure, which, if given, shall not affect the County's right to immediately terminate for cause. Unsatisfactory performance includes but is not limited to:
  - a. Repeated failure to respond within requested time-frame
  - b. Failure to perform services when promised or as expected
  - c. Inability to reach Contractor's contact; lack of customer service
  - d. Failure to abide by all Marin County Ordinances

### **LOCAL BUSINESS PREFERENCE**

In accordance with County of Marin ordinance # 89-2993; whenever the County of Marin acquires services or supplies by purchase or contract, the Director of Purchasing in evaluating the price or bid, shall award a five (5.0) percent preference on the price submitted by a local county business. (Chapter 3.10 Preference in Contracts and Purchases) However, the County of Marin is not obligated with respect to the contract contemplated by this RFP to award the contract to the lowest bidder, whether that status be obtained with or without a Local Business Preference.

### **COST OF PREPARING AND OWNERSHIP OF PRPOSALS**

Costs for developing the proposals are solely the responsibility of the applicants. The County will not provide reimbursement for such costs. The proposal documents shall become the property of the County upon submission.

## **CONFIDENTIALITY**

Contractor acknowledges and agrees that the County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor proprietary information is contained in documents or information submitted to County and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information.

In the event of a request for such information, the County will make reasonable efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Marin County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information without penalty or liability.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

## **FAVORABLE TERMS**

The County reserves the right to make an award without further discussion of the proposal submitted. Therefore, proposals should be submitted initially with the most favorable terms that the applicant can propose.

Applicants should be prepared to accept the terms of this RFP for incorporation into a contract resulting from this RFP. A template of the anticipated Marin County contract is attached as "Attachment D – Sample Professional Services Contract". Contract negotiation may provide for the incorporation of the Applicant's proposal. It is understood that the proposal will become a part of the official file on this matter without obligation to the County.

## **LEGAL REQUIREMENTS**

1. **Boilerplate Contract**  
Attached is the County's template "Professional Services Contract" as Attachment D. The successful Applicant will be required to comply with the terms and conditions presented in this contract.
2. **Governing Laws**  
This Request for Proposal and any resulting agreement, contract and purchase order shall be governed by all applicable federal, state and local laws, codes, ordinances and regulations, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, EEOC, DFEH, the California State Department of Health Services, and the County of Marin Environmental Health Department.
3. **Jurisdiction and Venue**  
All matters and subsequent contract shall be governed by and in accordance with the substantive and procedural laws of the State of California and venue shall be in the County of Marin.

4. Nuclear Free Zone

The County of Marin is a nuclear free zone in which work on nuclear weapons and/or the storage or transportation of weapons- related components and nuclear material is prohibited or appropriately restricted. The County is prohibited or restricted from contracting for services or products with, or investing County funds in, any nuclear weapons contractor.

5. Assurances

The contractor will be expected to be in compliance with all provisions and assurances as outlined in the contract exhibit(s).

## **SPECIAL PROVISIONS**

### **SECURITY CHECK**

**ALL** members of the contractor's work force assigned to the job must register at the Marin County Sheriff's Office. Background security checks **(to include live scan)** will be made by this office. Employees not having a clear record will not be permitted on the job. **Contractor will not allow anyone except assigned staff to enter County facilities under any circumstances.**

**CONTRACTOR acknowledges that COUNTY may, from time to time, seek further information regarding CONTRACTOR staff and agrees to fully cooperate in any such request for subsequent information.**

### **FIDELITY BOND REQUIRED**

The winning bidder shall be required to provide proof of fidelity or security service bond insurance prior to the start of the contract. The County will only contract with a bonded service. The required security service bond insurance minimum is \$25,000.

### **MINIMUM EXPERIENCE REQUIREMENT**

Bidders are required to have a minimum of five (5) years of experience in commercial or government accounts of the same size and scope as described herein. Any bidder who cannot provide verifiable references for this minimum experience requirement on **Attachment A** will be considered non-responsive.

### **INVOICING AND PAYMENT**

Vendor shall submit an invoice only after services have been rendered to the following address:

**County of Marin  
Department of Health & Human Services  
20 N. San Pedro Rd.  
San Rafael, CA 94903**

Payment by the County of Marin to Vendor shall be made in full, per invoice, with no partial payments allowed within thirty (30) calendar days after receipt of a correct invoice.

## **AWARD EVALUATION CRITERIA**

Evaluation criteria will be used to evaluate all proposals that are received.

The Evaluation Committee may also contact and evaluate the contractor's and subcontractor's references; contact any bidder to clarify any response, contact any current users of a bidder's product and services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The Evaluation Committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interest of the County of Marin, reject any and all proposals, and to waive any informalities and minor irregularities in the proposals. The County also reserves the right to negotiate with any or all prospective contractors on modifications to proposals at their discretion.

Discussions/interviews may, at County of Marin's sole option, be conducted with responsible Bidders who submit proposals determined to be reasonably susceptible of being selected for an award. Discussions/interviews may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions/interviews, County of Marin will not disclose information derived from proposals submitted by competing Bidders.

The County of Marin, Health & Human Services reserves the sole right to judge the contents of the proposals submitted pursuant to this RFP and to review, evaluate and select the successful proposal(s). Evaluation of the proposals will be made by an Evaluation Committee selected by the Department. The Committee will evaluate the proposals and will use the evaluation criteria described herein to select a prospective contract recipient for the contract.

All proposals will be scored and ranked in numerical sequence from high to low. After a prospective recipient has been selected, the County of Marin, Health & Human Services, and the prospective contract recipient will negotiate a Contract for submission to the Board of Supervisors for its consideration and possible approval. If a satisfactory Contract cannot be negotiated, the County of Marin, Health & Human Services, may, at its sole discretion, begin contract negotiations with the next qualified Proposer who submitted a proposal, as determined by the Department. The County of Marin, Health & Human Services, retains the right to select a Proposal other than the Proposal receiving the highest number of points if the Department determines, at its sole discretion, another Proposal is the overall most qualified, cost-effective, responsive, responsible, and/or in the best interests of the Department.

| <b>EVALUATION CRITERIA</b>   |  |
|--|--|
| Company's Background (size, structure of firm), History and Experience in performance of comparable work.              |  |
| Qualifications of personnel and assigned supervisors, including number of years of recent Security Service experience. |  |
| References   |  |
| Contractor's demonstrated competence   |  |
| Proposal submission – quality and completeness relative to the description given in the RFP                            |  |

| <b>EVALUATION CRITERIA (CONTINUED)</b>   |  |
|--|--|
| Contractor's concept and understanding of the County of Marin's goals and intent for the security of the Health and Human Services Department County properties  |  |
| Contractor's concept & understanding of the kinds and degree of security required (safeguarding classified matter) & safety rules regarding employment restrictions, working hours, hazardous conditions, smoking policies, etc. |  |
| Price  |  |

## REQUIREMENTS

### I. FAIR EMPLOYMENT PROVISIONS

The contractor awarded this bid and doing the work herein specified shall not knowingly fail to hire or allow to be dismissed from employment thereon any persons because of race, color, sex, religion, national origin, sexual orientation or creed. The hiring of all labor for the work included in this contract shall be in accordance with applicable directives of the Department of Fair Employment and Housing of the State of California.

The contractor shall comply fully with Sections 508 and 504 of the 1973 Rehabilitation Act in that the contractor's hiring practices do not discriminate against disabled/handicapped persons.

The contractor shall cooperate fully with the County and affiliated unions to promote and ensure the maximum employment of minorities and other protected group members with particular emphasis on residents of Marin County, in all phases and at all levels of the work. The contractor shall encourage maximum utilization of apprenticeship and other on-the-job training programs to achieve this goal.

Contractor and/or any permitted subcontractor shall not unlawfully harass nor discriminate against any individual based on race, religious creed, color, national origin, ancestry, medical condition, marital status, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

A County representative will be available to advise and assist in implementation of the foregoing.

### II. LIGHTS AND SECURITY

1. All entrance/exiting doors must be locked and lights turned off after each patrol of an area has been completed.
2. Security systems must be activated when exiting the building. Please note: **Police citation fee for false alarm triggered by janitorial staff shall be paid by the County and be reimbursed in full by the contractor.**
3. Contractor must adhere to agreed upon patrol and on-site security schedules.

### **III. KEYS**

All keys required will be furnished by the County to designated contractor's employee on custody receipt and shall be returned to the County upon demand. Any loss of keys must be reported to the Health and Human Services Department Facility Manager immediately. Keys are to be made only by the County. Restricted areas may vary from time to time and will be handled per County instructions.

**Proof of key duplication by the contractor or any of its personnel may be cause for cancellation of this contract.**

### **IV. CONTRACTOR'S STORAGE AREA**

County will assign areas for contractor to work, store materials and equipment used on the job. Safe, neat, and clean housekeeping of these areas will be the contractor's responsibility. Contractor will also be required to furnish and maintain staff uniforms.

### **V. CONTRACTOR SUPERVISION**

It is required by the County that the contractor provide a qualified supervisor to oversee all assigned locations and all assigned guards at those locations during operating hours. It is required all guards are qualified to do the work that they are assigned to do.

It is also required that the assigned guards submit incident reporting logs (See **Attachment B**) to the County's Health and Human Services Department Facilities Manager and designated managers at each site. These reports have to be submitted daily. All serious incidents must be reported immediately to the Health and Human Services Department Facilities Manager or his/her designee. All Serious incident reports are to be completed daily, and mailed via email to the Health and Human Services Department Facilities manager and their designees.

### **VI. CONTRACT MODIFICATION**

Contract changes will be negotiated by the County when areas serviced require adjustments.

### **VII. ASSIGNMENT**

In submitting this bid to a public purchasing body, the bidder offers and agrees that, if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid.



## **SPECIFICATIONS**

**Security services will be provided for 120 North Redwood Dr, San Rafael and the Health and Wellness Campus located at 3230, 3240, 3250, and 3270 Kerner Blvd, San Rafael. In addition to parking lot and courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd, San Rafael CA.**

During site business hours, there will be one guard assigned to 120 North Redwood, San Rafael, CA, one guard assigned to the Health and Wellness Campus on Kerner Blvd. (3230, 3240, 3250, and 3270), along with parking lot and courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd, San Rafael CA.

### **Security Patrols/On-Call**

During non-business hours, contractor shall provide periodic patrols of listed locations and be available on call:

- A. Kerner Health & Wellness Campus 3230, 3240, 3250 & 3270 Kerner San Rafael, Ca., in addition to parking areas noted, between 12:00 a.m. and 6:30 a.m
- B. 120 N. Redwood Blvd., San Rafael, Ca. between 12:00 a.m. and 4:30 a.m
- C. 920 Grand Ave., San Rafael, Ca. between 10:00 p.m. and 6:30 a.m

Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted 7 days a week and shall last approximately 15-20 minutes.

### **Marin Health and Wellness Campus – Connection Center:**

Provide security for special events

**Smoking is not permitted at any time on HHS sites**

Answer the questions below regarding your company experience and operations.

Explain your company's experience and procedures for handling the following populations:

- Visitors with Mental Health Issues
- Intoxicated visitors
- Visitors who are disruptive and/or not able to follow instructions
- Language/communication barriers

List your references for facilities that you have provided security for including:

- Square footage of facility
- Type of security provided
- Number of employees at the site
- Contract duration

List the initial and on-going training you provide to your employees (i.e. MAB training)

Do you provide armed guards and at what level are they armed?

List the different job classifications your company has (i.e. Guard, Supervisor, etc) and provide the type of equipment that each position is assigned (i.e. Pepper Spray, Baton). Provide an hourly rate for each job classification.

In the event of an emergency, how would your company respond to HHS Facility needs beyond the regular daily assignment to the property?

Explain the immediate action your guard would take during a shelter in place emergency.

Tell us the type of background check your company runs on your employees, including criminal history.

What type of dispatch system do you have?

The County observes the following holidays and will be closed for business. Unless other arrangements are made, security services will not be needed. Holiday and weekend patrols will be in effect.

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Friday following Thanksgiving Day

Christmas Day

New Years Day

Martin Luther King Jr. Day

Washington's Birthday

Memorial Day

**EXHIBIT “A”  
SCOPE OF SERVICES (required)**

EXHIBIT A  
SCOPE OF SERVICE  
July 10, 2018-June 30, 2020

**Marin Health and Wellness Campus located at Kerner and Bellam Blvd., San Rafael, Buildings 3230, 3240, 3250 and 3270 Kerner Blvd.; along with parking lot and courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd., San Rafael, CA.:**

1. During business hours, contractor shall have at least (1) staff person on the campus, patrolling the site and responding to calls. On site staff can reach security during business hours on the site phone. Business hours are defined as 8:00 a.m. to 10:00 p.m. Monday through Thursday and 8:00 a.m. through 6:00 p.m. on Friday.
2. During non-business hours, contractor shall provide periodic patrols of the Kerner Health & Wellness Campus and be available on call. Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted between 12:00 a.m. and 6:30 a.m., 7 days a week and shall last approximately 15-20 minutes.
3. On an as-needed basis, work with County staff, outside agencies and law enforcement agencies to address security issues for the campus.

**Marin Health and Wellness Campus – Connection Center:**  
Provide security for special events

**Social Services Buildings located at 120 N. Redwood Drive, San Rafael, Ca.:**

1. During business hours at 120 N. Redwood, 6:30 a.m. through 5:15 p.m., Monday through Friday, contractor shall provide one (1) security staff person to remain on site and respond to calls. On site staff can reach security during business hours on the site phone.
2. During non-business hours, contractor shall provide periodic patrols and be available on call. Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted between 12:00 a.m. and 4:30 a.m., 7 days a week and shall last approximately 15-20 minutes.
3. On an as-needed basis, work with County staff, outside agencies and law enforcement agencies to address security issues for these sites.

**920 Grand Ave., San Rafael, Ca.**

- During non-business hours, contractor shall provide periodic patrols and be available on call. Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted between 10:00 p.m. and 6:30 a.m., 7 days a week and shall last approximately 15-20 minutes.

**Additional On-Call Services:**

Upon request provide additional security services to other HHS facilities not listed above.

**Maintenance of Confidentiality**

Notwithstanding any other provision of this Agreement, the Contractor agrees to protect the confidentiality of all patient or client information with which the Contractor may come into incidental contact in the process of performing its contracted services. The Contractor shall not retain, copy, use or disclose this information in any manner for any purpose. Violation of the confidentiality of patient or client information may, at the option of the County, be considered a material breach of this Agreement.

Contractor will ensure that staff are aware of the need to maintain confidentiality for County clients and for County records. County will provide educational or other materials to assist with this effort.

**Assessment of Services**

Contractor will provide County with regular reports of incidents. Periodically, Contractor and County will review the reports of incidents to date to help with efforts such as County staff training or to improve the effectiveness of County security measures.

**COST ESTIMATE SCHEDULE (See Exhibit A above)**

Please complete the following for the locations listed below:

- 1. Number of personnel by classification

**BLDG. 120 NORTH REDWOOD DRIVE, SAN RAFAEL, CA**

Security Guard \_\_\_\_\_ Hours per week \_\_\_\_\_  
Supervisor (if needed) \_\_\_\_\_ Hours per week \_\_\_\_\_

**3230, 3240, 3250, 3270 Kerner AND parking lot/courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd, San Rafael CA.**

Security Guard \_\_\_\_\_ Hours per week \_\_\_\_\_  
Supervisor (if needed) \_\_\_\_\_ Hours per week \_\_\_\_\_

**Security Patrols/On-Call**

During non-business hours, contractor shall provide periodic patrols of listed locations and be available on call:

- A. Kerner Health & Wellness Campus 3230, 3240, 3250 & 3270 Kerner San Rafael, Ca., in additon to parking areas noted, between 12:00 a.m. and 6:30 a.m
- B. 120 N. Redwood Blvd., San Rafael, Ca. bewteen 12:00 a.m. and 4:30 a.m
- C. 920 Grand Ave., San Rafael, Ca. between 10:00 p.m. and 6:30 a.m

Such patrols shall involve the Security Agent exiting their vehicle and physically checking that the outside doors and windows are secured at least twice during the night. Patrols will be conducted 7 days a week and shall last approximately 15-20 minutes.

Security Guard \_\_\_\_\_ Hours per week \_\_\_\_\_  
Supervisor (if needed) \_\_\_\_\_ Hours per week \_\_\_\_\_

**Marin Health and Wellness Campus – Connection Center:**

Provide security for special events

Security Guard \_\_\_\_\_ Hours per week \_\_\_\_\_

Supervisor (if needed) \_\_\_\_\_ Hours per week \_\_\_\_\_

**BID SCHEDULE**

**REQUEST FOR PROPOSAL # RFP-HHS-2018-10**

**SECURITY SERVICES – HEALTH AND HUMAN SERVICES BUILDINGS**

**LOCATION**

**COST PER MONTH**

Health and Wellness Campus Building –  
3230, 3240, 3250, 3270 Kerner Blvd. San Rafael.

\$ \_\_\_\_\_

**This would also include parking lot/courtyard for 3260 Kerner and adjacent HHS buildings, with an off-site parking area located at 3110 Kerner Blvd, San Rafael CA**

Building – 120 N. Redwood Drive

\$ \_\_\_\_\_

**Security Patrols (non-business hours)**- Kerner Health & Wellness Campus, 120 N. Redwood, 920 Grand Ave., San Rafael, Ca.

\$ \_\_\_\_\_

**Marin Health and Wellness Campus – Connection Center:**

Provide security for special events

\$ \_\_\_\_\_

**Total (all locations)  
Per Month**

\$ \_\_\_\_\_

**Total (all locations)  
Annually**

\$ \_\_\_\_\_

**Additional On-Call Services (hourly rate):**

\$ \_\_\_\_\_

**EXCEPTIONS TO THE SCOPE OF WORK**

Vendors shall fully describe any exceptions to the written requirements and/or scope, in the space provided below. Attach an additional sheet if more space is necessary. Any exception taken shall be fully described to allow the County of Marin to evaluate its acceptance.

Scope Section or  
Page number

Description of exception

=====

=====

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**OFFER**

In compliance with the above, the undersigned offers and agrees, if this bid is accepted within sixty (60) calendar days from the date of opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the designated point within the time specified. Discounts will not be considered in the evaluation of any quotation, unless otherwise stated in this invitation.

**REPRESENTATIONS AND CERTIFICATIONS**

BIDDER CERTIFIES THE FOLLOWING: (CHECK APPROPRIATE ONE)

THAT THEY ARE A \_\_\_\_\_ DEALER IN THE BID ITEMS BID UPON

\_\_\_\_\_ MANUFACTURER OF THE ITEMS BID UPON

THAT THEY OPERATE AS AN

\_\_\_\_\_ INDIVIDUAL

\_\_\_\_\_ PARTNERSHIP

\_\_\_\_\_ CORPORATION

INCORPORATED IN THE  
STATE OF \_\_\_\_\_

**BIDDER NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**PHONE:** \_\_\_\_\_

**FAX:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

**SIGNATURE OF PERSON AUTHORIZED TO SIGN BID:**

X \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

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

E-MAIL ADDRESS: \_\_\_\_\_

**REQUEST FOR PROPOSAL # RFP-HHS-2018-10**

**SECURITY SERVICES - HEALTH AND HUMAN SERVICES BUILDINGS**

**BID DOCUMENTS TO BE RETURNED**

The following forms must be completed and submitted on or before the Submittal Deadline.

**PLEASE PROVIDE THREE (3) COPIES OF THE BID. ONE (1) WITH ORIGINAL SIGNATURES, AND FOUR (4) COPIES AND ONE (1) ELECTRONIC COPY.**

|    |  |         |
|----|--|---------|
| a. | Cost Estimate Schedule                 | Page 21 |
| b. | Bid Schedule                           | Page 23 |
| c. | Exceptions to the Requirements         | Page 24 |
| d. | Offer                                  | Page 25 |
| e. | Attachment A – References              | Page 28 |
| f. | Attachment B – Incident Reporting Form | Page 31 |

Winning Bidder shall be required to furnish:

- a. Certificate of Liability Insurance
- b. Additional Insured Endorsement naming County of Marin as additional insured
- c. Fidelity/Security Service Bond Insurance

## ATTACHMENT A

### REFERENCES

Bidders shall provide the following information which will be used by the County in evaluating the bid. Bidder must be able to show current contracts for service on a minimum of 400,000 square feet.

1. Number of years in business: \_\_\_\_\_

2. Current average number of employees: \_\_\_\_\_

3. List five current accounts and approximate number of square feet serviced and number of guards for each shift **for contact as reference and possible on-site visit:**

**Client Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Client Project Mgr Name:** \_\_\_\_\_

**Project Mgr Phone No:** \_\_\_\_\_

**Square Feet:** \_\_\_\_\_

**Project Start Date:** \_\_\_\_\_

**Client Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Client Project Mgr Name:** \_\_\_\_\_

**Project Mgr Phone No:** \_\_\_\_\_

**Square Feet:** \_\_\_\_\_

**Project Start Date:** \_\_\_\_\_

**Client Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Client Project Mgr Name:** \_\_\_\_\_

**Project Mgr Phone No:** \_\_\_\_\_

**Square Feet:** \_\_\_\_\_

**Project Start Date:** \_\_\_\_\_

**Client Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Client Project Mgr Name:** \_\_\_\_\_

**Project Mgr Phone No:** \_\_\_\_\_

**Square Feet:** \_\_\_\_\_

**Project Start Date:** \_\_\_\_\_

**Client Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Client Project Mgr Name:** \_\_\_\_\_

**Project Mgr Phone No:** \_\_\_\_\_

**Square Feet:** \_\_\_\_\_

**Project Start Date:** \_\_\_\_\_

**ATTACHMENT B**

**ATTACH A SAMPLE OF YOUR INCIDENT REPORTING FORM**

## ATTACHMENT C

### Locations and Square Footage

| <b>LOCATION</b>           | <b>SQ FOOTAGE</b>               |
|---------------------------|---------------------------------|
| 120 North Redwood Drive   | 51,278 sq. ft                   |
| 3250 Kerner, San Rafael   | 17,759 sq. ft.                  |
| 3240 Kerner, San Rafael   | 18,136 sq. ft.                  |
| 3230 Kerner, San Rafael   | 6,655 sq. ft.                   |
| 3270 Kerner, San Rafael   | 12,544 sq. ft.                  |
| 3260 Kerner, San Rafael   | Parking area and Courtyard only |
| 3110 Kerner, San Rafael   | Parking Area only               |
| Non-business Hour Patrols | N/A                             |



**ATTACHMENT D**

CAO Contract Log # \_\_\_\_\_

**COUNTY OF MARIN**

Dept. Contract Log # \_\_\_\_\_

**PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF MARIN, hereinafter referred to as "County" and \_\_\_\_\_, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, County desires to retain a person or firm to provide the following service: \_\_\_\_\_; and

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the Contract made, and the payments to be made by County, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

The County agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and Contract forms and special provisions format when needed.

**3. FEES AND PAYMENT SCHEDULE:**

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract. Contractor shall provide County with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

**4. MAXIMUM COST TO COUNTY:**

In no event will the cost to County for the services to be provided herein exceed the maximum sum of \$ \_\_\_\_\_ including direct non-salary expenses. As set forth in section 14 of this Contract, should the funding source for this Contract be reduced, Contractor agrees that this maximum cost to County may be amended by written notice from County to reflect that reduction.

**5. TIME OF CONTRACT:**

This Contract shall commence on \_\_\_\_\_, and shall terminate on \_\_\_\_\_. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made

to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

## **6. INSURANCE:**

### **Commercial General Liability:**

The Contractor shall maintain a commercial general liability insurance policy in the amount of \$1,000,000 (\$2,000,000 aggregate). The County shall be named as an additional insured on the commercial general liability policy.

### **Commercial Automobile Liability:**

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor, Contractor shall provide comprehensive business or commercial automobile liability coverage, including non-owned and hired automobile liability, in the amount of \$1,000,000.00.

### **Workers' Compensation:**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance, a letter of self-insurance, or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

### **Errors and Omissions, Professional Liability or Malpractice Insurance.**

Contractor may be required to carry errors and omissions, professional liability or malpractice insurance.

All policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to a "claims made" basis. The insurer shall supply County adequate proof of insurance and/or a certificate of insurance evidencing coverages and limits prior to commencement of work. Should any of the required insurance policies in this Contract be cancelled or non-renewed, it is the Contractor's duty to notify the County immediately upon receipt of the notice of cancellation or non-renewal.

If Contractor does not carry a required insurance coverage and/or does not meet the required limits, the coverage limits and deductibles shall be set forth on a waiver, Exhibit C, attached hereto.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of this Contract. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

## **7. ANTI DISCRIMINATION AND ANTI HARASSMENT:**

Contractor and/or any subcontractor shall not unlawfully discriminate against or harass any individual including, but not limited to, any employee or volunteer of the County of Marin based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any subcontractor understands and agrees that Contractor and/or any subcontractor is bound by and will comply with the anti-discrimination and anti-harassment mandates of all Federal, State and local statutes,

regulations and ordinances including, but not limited to, County of Marin Personnel Management Regulation (PMR) 21.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Contract, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Contract and shall require subcontractor to name Contractor and County of Marin as an additional insured under this Contract for general liability. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

**10. LICENSING AND PERMITS:**

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

**11. BOOKS OF RECORD AND AUDIT PROVISION:**

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

**12. WORK PRODUCT/PRE-EXISTING WORK PRODUCT OF CONTRACTOR:**

Any and all work product resulting from this Contract is commissioned by the County of Marin as a work for hire. The County of Marin shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product.

To the extent Contractor incorporates into the work product any pre-existing work product owned by Contractor, Contractor hereby acknowledges and agrees that ownership of such work product shall be transferred to the County of Marin.

**13. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

**14. APPROPRIATIONS:**

The County's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Marin County Board of Supervisors, the State of California or other third party. Should the funds not be appropriated County may terminate this Contract with respect to those payments for which such funds are not appropriated. County will give Contractor thirty (30) days' written notice of such termination. All obligations of County to make payments after the termination date will cease.

Where the funding source for this Contract is contingent upon an annual appropriation or grant from the Marin County Board of Supervisors, the State of California or other third party, County's performance and obligation to pay under this Contract is limited by the availability of those funds. Should the funding source for this Contract be eliminated or reduced, upon written notice to Contractor, County may reduce the Maximum Cost to County identified in section 4 to reflect that elimination or reduction.

**15. RELATIONSHIP BETWEEN THE PARTIES:**

It is expressly understood that in the performance of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent Contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

**16. AMENDMENT:**

This Contract may be amended or modified only by written Contract of all parties.

**17. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

**18. JURISDICTION AND VENUE:**

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**19. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Contract.

**20. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all Federal, State and local laws and resolutions: including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Board of Supervisors Resolution #2005-97 prohibiting the off-shoring of professional services involving employee/retiree medical and financial data affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the Contract Manager referenced in section 21. In addition, the following NOTICES may apply:

- 1. Pursuant to California Franchise Tax Board regulations, County will automatically withhold 7% from all payments made to vendors who are non-residents of California.**
- 2. Contractor agrees to meet all applicable program access and physical accessibility requirements under State and Federal laws as may apply to services, programs or activities for the benefit of the public.**
- 3. For Contracts involving any State or Federal grant funds, Exhibit D must be attached. Exhibit D shall consist of the printout results obtained by search of the System for Award Management at [www.sam.gov](http://www.sam.gov).**

**Exhibit D - Debarment Certification**

**By signing and submitting this Contract, the Contractor is agreeing to abide by the debarment requirements as set out below.**

- The certification in this clause is a material representation of fact relied upon by County.
- The Contractor shall provide immediate written notice to County if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances.
- Contractor certifies that none of its principals, affiliates, agents, representatives or contractors are excluded, disqualified or ineligible for the award of contracts by any Federal agency and Contractor further certifies to the best of its knowledge and belief, that it and its principals:
- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;
- Have not been convicted within the preceding three-years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses listed in 2 CFR 180.800(a);
- Have not had one or more public transactions (Federal, State, or Local) terminated within the preceding three-years for cause or default.

- The Contractor agrees by signing this Contract that it will not knowingly enter into any subcontract or covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
- The Contractor to this Contract and any subcontractor will provide a debarment certification that includes the debarment clause as noted in preceding bullets above, without modification.

**21. NOTICES:**

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager: \_\_\_\_\_

Dept./Location: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Notices shall be given to Contractor at the following address(es):

Contractor: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

Contractor: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

**22. ACKNOWLEDGEMENT OF EXHIBITS:**

*Check applicable Exhibits*

**CONTRACTOR'S INITIALS**

|  |   |  |
|--|---|--|
| <b><u>EXHIBIT A.</u></b>                             | <input type="checkbox"/> <b>Scope of Services</b>                       |  |
| <b><u>EXHIBIT B.</u></b>                             | <input type="checkbox"/> <b>Fees and Payment</b>                        |  |
| <b><u>EXHIBIT C.</u></b>                             | <input type="checkbox"/> <b>Insurance Reduction/Waiver</b>              |  |
| <b><u>EXHIBIT D.</u></b>                             | <input type="checkbox"/> <b>Contractor's Debarment Certification</b>    |  |
| <b><u>EXHIBIT E.</u></b>                             | <input type="checkbox"/> <b>Subcontractor's Debarment Certification</b> |  |
| <b><u>OTHER REQUIRED EXHIBITS (HHS USE ONLY)</u></b> | <input type="checkbox"/>  |  |
|  | <input type="checkbox"/>  |  |
|  | <input type="checkbox"/>  |  |

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

**CONTRACTOR:**

**APPROVED BY  
COUNTY OF MARIN:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

---

**COUNTY COUNSEL REVIEW AND APPROVAL *(required if template content has been modified)***

**County Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT "B"**  
**FEES AND PAYMENT SCHEDULE (required)**

CONTRACTOR:

CONTRACT TITLE:

COUNTY shall pay CONTRACTOR as follows:

BASE CONTRACT FEE. COUNTY shall pay CONTRACTOR a contract fee not to exceed **Dollars (\$ )**. CONTRACTOR shall submit monthly invoices for payment within 30 calendar days following the close of the month services were provided. In no event shall total compensation paid to CONTRACTOR exceed **Dollars (\$ )** without an amendment to this Agreement approved by the County of Marin.

MAXIMUM CONTRACT AMOUNT: The maximum amount payable to CONTRACTOR under this Agreement shall not exceed the following:

|                                   |        |
|-----------------------------------|--------|
| (1) Base Contract Fee             | \$     |
| (2) Mileage                       | -0-    |
| (3) Travel Costs                  | -0-    |
| (4) Authorization Required        | -0-    |
| (5) Special Circumstances (COLA): | \$     |
| <br>MAXIMUM CONTRACT AMOUNT       | <br>\$ |



**EXHIBIT M:  
BUSINESS ASSOCIATE AGREEMENT  
TERMS AND CONDITIONS**

To the extent Contractor is a business associate as defined under the Federal Health Insurance Portability and Accountability Act (“HIPAA”) and the HITECH Act, Contractor shall comply with the additional terms and conditions set forth in this Exhibit (“M”) to the Professional Services Contract (“PSC” or “Contract”). This Business Associate Agreement Exhibit “M” supplements and is made a part of the Contract by and between the County of Marin, referred to herein as Covered Entity (“CE”), and \_\_\_\_\_, referred to herein as Business Associate (“BA”), to which this Exhibit “M” is an incorporated attachment.

**RECITALS**

CE and BA have entered into a business relationship through which BA may receive Protected Health Information (“PHI”) (defined below) from CE or create, collect, transmit, retain, process or otherwise use PHI on behalf of CE pursuant to the terms of the Contract.

CE and BA intend to protect the privacy and provide for the security of PHI disclosed to, created by, or in any manner used by, 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 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) 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(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Exhibit “M”.

In consideration of the mutual promises below and the exchange of information pursuant to this Exhibit “M”, the parties agree as follows:

**1. Definitions**

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the 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 17938 and 45 C.F.R. Section 160.103. For purposes of this Exhibit “M”, use of the term Business Associate includes all Contractor agents, employees, contractors or other associates providing services or assistance to Contractor under the Contract.

- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103. For purposes of this Contract, this term is intended to mean the County of Marin.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **DHHS Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Individual** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- k. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- l. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- m. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

- o. Unsecured PHI** shall have the 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(h).

## **2. Obligations of Business Associate**

- a. Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and this Exhibit "M". Further, and notwithstanding anything to the contrary above, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and this Exhibit "M". Further, and notwithstanding anything to the contrary above, BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Exhibit "M" 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 Protected Information, 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)].
- c. Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information 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). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. Appropriate Safeguards.** BA shall implement appropriate administrative, physical and technical safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected

Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

- e. **Reporting of Improper Access, Use or Disclosure.** Unless stricter reporting requirements apply in accordance with federal or state laws or regulations, other provisions of the Contract, or this Exhibit “M”, BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and this Exhibit “M”, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five **(5) business days** after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. BA shall provide notice to CE as set forth in paragraph 6.
- f. **Business Associate’s Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph d above with respect to PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e). If any Individual requests access to protected Information directly from BA or its agents or subcontractors, BA shall inform the CE of the request without unreasonable delay, in any event no later than three (3) days of receipt of the request. If the CE permits the disclosure, the CE will inform the BA within two (2) days of the receipt of the request from BA, Whereupon the BA will be authorized to provide access to the client.
- h. **Amendment of PHI.** Within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an Individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any Individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) business days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. Accounting Rights.** Within ten (10) business days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by 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. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record and is subject to this requirement. 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 Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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 Individuals' authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) business days of a request forward it to CE in writing. However, it shall be BA's responsibility to prepare and deliver any such accounting requested and to do so in accordance with law. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Exhibit "M" [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].
- j. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use, disclosure and privacy protection of Protected Information available to CE and to the DHHS Secretary for purposes of determining BA's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the DHHS Secretary concurrently with providing such Protected Information to the DHHS Secretary.
- k. Minimum Necessary.** BA and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the DHHS Secretary with respect to what constitutes "minimum necessary."
- l. Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information. The CE is the owner of all protected information and/or records containing such PHI provided to BA pursuant to the Contract or this Exhibit "M."
- m. Notification of Breach.** Unless stricter reporting requirements apply in accordance with federal or state laws or regulations, other provisions of the Contract, or this Exhibit "M", BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware

and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Unless CE provides BA with written notice within **3 (three) business days** that it will undertake such obligations on behalf of BA, BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. The parties agree that CE has the sole discretion to determine whether or not it will undertake such obligations on behalf of BA and that, if it does, CE has the right to require BA to pay for any or all costs associated therewith. BA shall provide notice to CE as set forth in paragraph 6.

- n. Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or this Exhibit "M" or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the DHHS Secretary. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or this Exhibit "M" or other arrangement within five (5) business days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation. BA shall provide notice to CE as set forth in paragraph 6.
- o. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by CE, BA and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, contracts, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Exhibit "M" for the purpose of determining whether BA has complied with this Exhibit; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, contracts, policies and procedures does not relieve BA of its responsibility to comply with this Exhibit "M", nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract or this Exhibit "M". BA shall notify CE within ten (10) business days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### **3. Termination of Contract**

- a. Material Breach.** A breach by BA of any provision of this Exhibit "M", as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for

immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** Notwithstanding any provision in the Contract to the contrary, 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 HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections of Section 2 of this Exhibit "M" to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed.

#### **4. Indemnification**

In addition to any other indemnification and defense obligation under the Contract, BA will indemnify, defend and hold harmless CE and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation reasonable attorney's fees, suffered by CE from or in connection with any breach of Exhibit "M", or any negligent or wrongful acts or omissions in connection with this Exhibit "M", by BA or its employees, directors, officers, subcontractors or agents.

#### **5. Insurance**

BA shall maintain insurance with respect to BA's obligations under the Contract and this Exhibit "M" reasonably satisfying to CE and provide from time to time as requested by CE proof of such insurance.

#### **6. Notices**

Any notice to be given under this Exhibit "M" to CE shall be made via overnight mail or hand delivery at CE's address given below and by providing telephonic notification as specified below. Any such notice shall be deemed given when so delivered to or received at the proper address.

Notice to CE:

- a.** Privacy Officer – Department of Health and Human Services, 20 N. San Pedro Rd, San Rafael, CA 94903.

- b. Compliance and breach reporting line – (415) 473-6948.

Notice to BA:

**[insert address]**

## **7. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Exhibit “M”, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA’s own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

## **8. Certification**

To the extent that CE determines that such examination is necessary to comply with CE’s legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE’s expense, examine BA’s facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which BA’s security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Exhibit.

## **9. Amendment**

- a. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or this Exhibit “M” may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Exhibit “M” embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or this Exhibit “M” when requested by CE pursuant to this Section or (ii) BA does not enter not enter into an amendment to the Contract or this Exhibit “M” providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.
- b. **Amendment of Exhibit “M”.** This Exhibit “M” may be modified or amended at any time without amendment of the Contract, but only by written agreement of the parties.

## **10. Assistance in Litigation of Administrative Proceedings**



BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract, 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.

#### **11. No Third-Party Beneficiaries**

Nothing expressed or implied in the Contract or this Exhibit "M" 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.

#### **12. Effect on Contract**

Except as specifically required to implement the purposes of this Exhibit "M", or to the extent inconsistent with this Exhibit "M", all other terms of the Contract shall remain in force and effect.

#### **13. Interpretation**

The provisions of this Exhibit "M" shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Exhibit "M". This Exhibit "M" and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Exhibit "M" shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

#### **14. Survival of Provisions**

Excepting only the provisions regarding BA's use or disclosure of Protected Information for the purpose of performing BA's obligations under the Contract, the terms of this Exhibit "M" shall survive the termination of the Contract so long as PHI obtained or generated during the term of the Contract is retained by BA.