

OCCU-MED, Ltd.

Professional Occupational Health Consulting Services

AGREEMENT FOR SERVICES #6922

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and OCCU-MED, Ltd., a Delaware corporation duly qualified to conduct business in the State of California, whose principal place of business is 2121 West Bullard Avenue, Fresno, California 93711 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a consultant to provide professional occupational health consulting and related services for the Human Resources Department, Risk Management Division;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Work: Consultant is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks

required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XII, Default, Termination, and Cancellation, herein

Consultant acknowledges that the work performed must meet the approval of County, and therefore County reserves the right to monitor the work to ensure its satisfactory completion.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties and shall cover the period of January 1, 2023, through December 31, 2024.

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Fee Schedule / Component Costs," incorporated herein and made by reference a part hereof.

Other direct costs including special reproductions, delivery charges, and other services authorized herein, shall be invoiced at the rates listed in Exhibit B for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant costs for the services being billed on those invoices.

Reimbursement for mileage expenses for Consultant, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. There shall be no markup on any mileage rates for Consultant. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls and other per diem expenses) will not be reimbursed as a direct cost for any services performed under this Agreement by Consultant.

The total amount of this Agreement shall not exceed \$276,000, inclusive of all costs, taxes, and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Human Resources Department
330 Fair Lane
Placerville, California 95667

Attn.: Joseph Carruesco
Director

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XII, Default, Termination, and Cancellation, herein.

ARTICLE IV

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others.

However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE VII

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Human Resources Department for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE VIII

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE IX

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not

responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE X

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XI

Audit by California State Auditor: Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books,

records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County

agrees, in writing, to an extension of the time to perform before that time period expires.

4. A violation of ARTICLE XIX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Human Resources Department
330 Fair Lane
Placerville, California 95667

Attn.: Joseph Carruesco
Director

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

OCCU-MED, Ltd.
2121 West Bullard Avenue
Fresno, California 93711

Attn.: James A. Johnson, President

or to such other location as Consultant directs.

ARTICLE XIV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XV

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Consultant are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

ARTICLE XVI

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000

aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.

- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XVII

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XVIII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of

that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XIX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XII, Default, Termination, or Cancellation.

ARTICLE XX

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act

(Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

ARTICLE XXI

California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXII

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXIII

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIV

Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits,

and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXV

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Joseph Carruesco, Director, Human Resources Department, or successor.

ARTICLE XXVII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXVIII

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

ARTICLE XXIX

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXX

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXXI

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXII

HIPAA Compliance: As a condition of Consultant performing services for the County of El Dorado, Consultant shall execute that Business Associate Agreement which is attached hereto as Exhibit C, marked "HIPAA Business Associate Agreement," which is incorporated herein for all intents and purposes.

ARTICLE XXXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: 

Dated: 12-13-22

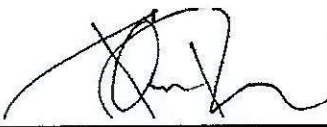
Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 12-13-22

-- OCCU-MED, LTD. --

By: 

James A. Johnson
President
"Consultant"

Dated: 12-9-22

By: 

Devonna M. Kaji
Corporate Secretary

Dated: 12-9-22

OCCU-MED, Ltd.

Exhibit A

Scope of Work

Consultant shall provide professional occupational health consulting and the services and tasks that are reasonable and necessary to complete the work herein.

General

- A. Based on its health screening/physical examinations of a job applicant/employee, Consultant shall advise County of the following:
1. The applicant/employee's physical limitations, if any, and the specific job tasks that cannot be performed and/or environmental conditions, if any, that are related to any risk to health and safety.
 2. Changes that may be made to permit the job tasks to be performed and/or eliminate/reduce the risk. Consultant shall make no determination of whether job tasks are essential to the position in question. Any changes that are recommended are advisory only, based on the physician's general understanding of the job and environment in question, and are not intended to supplant the right of County to determine what modifications are available and reasonable.
- B. To the extent that other conditions are identified, Consultant shall also:
1. Notify the employee/applicant of any medical condition, identified during the limited medical evaluation that County requested, that Consultant believes requires further attention, and recommend that the employee/applicant seek care from his or her personal provider, thereby encouraging health and wellness, leading to a more productive workforce.
 2. Upon authorization of the employee/applicant, Consultant shall inform his or her medical provider by transmitting copies of the medical records created during the visit.
 3. For candidates subject to Peace Officer Standards & Trainings (POST) exams, Consultant shall facilitate additional screenings as required by law.
- C. Consultant shall maintain a medical record for each individual that shall contain records of employer requested services.
- D. Consultant shall maintain necessary equipment and trained personnel required to assure prompt scheduling of medical examinations.
- E. Consultant shall maintain capacity to perform up to three hundred fifty (350) exams per year and up to four (4) exams on any given day.

- F. Any examination or medical conclusion shall be based on the information furnished by County and the physician's general understanding of the requirements of jobs of similar nature. Consultant conducts such examinations with County's assurances that the examination and Consultant's medical inquiries are job-related and consistent with the business needs of County, and otherwise comply with all applicable legal obligations.
- G. Notation of recommended follow-up shall be documented in the clinical record. With the exception of fitness-for-duty evaluations and examinations, any recommendations for follow-up that are related to work performance shall be reported to County and to the employee within three (3) business days of the evaluation. Any recommendations for follow-up that are work-related and forwarded to County shall not include confidential medical information unless specifically allowed by law and upon a request by County.

Examinations Performed

- A. Pre-employment (post-offer) medical evaluations/examinations
1. Pre-employment (post-offer) medical evaluations/examinations of persons who are offered employment shall assess:
 - a. Physical findings and current functional capacity of the individual.
 - b. Significant past medical history relative to the person's abilities to perform the essential functions of the job.
 2. Pre-employment (post-offer) evaluations/examinations shall be job related and consistent with the specific job functions of the position.
 3. County may revise, permanently or on a case-by-case basis, the examination components and requirements for an individual applicant/employee or classification. Revision will be expressly made prior to examination, and shall not exceed the scope of this Agreement.
 4. Pre-employment (post-offer) Evaluations/Examinations classification groups shall be defined as follows:
 - a. Group I: Heavy Physical Demands Enforcement – POST and/or firearms including actual or potential exposure to chemicals, hazardous vapors/fumes, heavy metals, respiratory irritants/carcinogens and hearing insult.
 - b. Group II: Heavy to Moderate Physical Demands, Hazmat Response, and non-POST including actual or potential exposure to chemicals, hazardous vapors/fumes, heavy metals, respiratory irritants/carcinogens and hearing insult.
 - c. Group III: Light to moderate physical demands including actual or potential exposure to blood borne pathogens, aerosolized infectious disease, hazardous biological agents, pesticides, and chemicals.

- d. Group IV: Light physical demands with field work and driving responsibilities with no hazard exposures beyond that of the general public.
- e. Group V: Sedentary no physical demands beyond that of the typical business office.

5. Respirator Use Classifications Medical Clearance

- a. Evaluate using a medical questionnaire to determine the ability to safely use a respirator for applicants or employees in job classes requiring respirator use, as identified by County.
- b. Issue a written recommendation regarding the applicant's or employee's ability to use a respirator consistent with Occupational Safety and Health Administration (OSHA)/CALOSHA standards.

B. Drug/Alcohol Screening

- 1. Drug/Alcohol screening for safety-sensitive classifications as requested by County.
- 2. Drug/Alcohol screening for additional job classifications as requested by County.
- 3. Medical Review Officer (MRO) interpretation and determination of the specimen drug testing results.
- 4. MRO interpretation and determination of the specimen drug testing results for reasonable suspicion as requested by County.

C. Fitness-for-duty Evaluations, Examinations, and Consultation for Job Fitness Determinations as Requested by County

- 1. Exams shall be limited to determining an employee's ability to perform the essential duties of the position safely without endangering himself or herself or others due to his or her medical condition. This initial evaluation and finding are to be scheduled and completed within two (2) weeks of request.
- 2. Report shall include the following:
 - a. Employee's current work restrictions and functional limitations.
 - b. Employee's condition, whether temporary or permanent of a long term and uncertain duration, that would make them unfit for duty.
 - c. If a re-evaluation is recommended, report shall include information on when the re-evaluation should be conducted and when an employee can be expected to return to work.

D. Reporting

1. Provide County periodic reports on the number and types of exams processed and the outcome of each exam. Consultant shall provide County, in response to a specific request, other periodic or status reports.
2. Provide an annual report documenting the results of Consultant's work if requested. Consultant shall also serve as an on-going resource for medical (i.e., what level of hearing loss is acceptable for a nurse), legal (i.e., what to do when California State law conflicts with Americans with Disabilities Act [ADA]).

E. Assistance with Appeals as requested

Consultant shall assist County, when requested, in responding to appeals that may be filed as a result of medical disqualification of an applicant. This assistance shall include a review of medical information submitted by the applicant, telephone consultation with County, research each, and possible direct testimony.

F. Job and Medical Profiles

1. Review and recommended revisions to current County job and medical job class profiles to determine the relevancy and validate the current physical level required.
2. For all new County job classes, conduct an assessment of the physical abilities needed to perform each job by development of a job profile. Using established job profiles, develop a medical exam profile for each profile identifying all physical and environmental job requirements and potential job-related medical requirements.

Scheduling

- A. Providers shall be available to provide medical examinations between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Facilities and equipment shall be accessible to persons with physical disabilities.
- B. Pre-employment (post-offer) evaluations requests will be provided by County to Consultant. Consultant shall contact employee/applicant within two (2) business hours, and shall schedule and complete examination appointment within two (2) business days, unless employee/applicant and County agree to delay exam.
- C. Each pre-employment (post offer) evaluation and respective diagnostic, screening, and lab test, must be performed in a single time period on the same day. This time period must not exceed four (4) hours, except where such performance is beyond reasonable control. Any change in such performance will require the prior authorization of County.

Qualifications of Staff

- A. A physician who is trained in occupational medicine and workers compensation (preferably board certified in occupational medicine) shall conduct all examinations and analysis and shall render a medical work clearance determination specific to the

requirements of the job classifications requiring regular OSHA testing. A licensed physician certified in radiology shall interpret X-ray films.

- B. When administered, the maximal exercise cardiac stress electrocardiogram (EKG) shall conform to the Bruce Protocol and shall be performed and interpreted by a cardiologist or physician board certified in internal medicine. The interpretation report shall include a copy of the baseline EKG.
- C. Maximal exercise treadmill cardiac stress testing by Bruce Protocol shall be performed by a licensed board certified or eligible cardiologist, internist, or qualified family practitioner. Tests shall include a copy of the baseline EKG.
- D. A certified pulmonary technician or a person who has completed a National Institute for Occupational Safety and Health (NIOSH) approved course in pulmonary function testing shall administer spirometry assessment for those employees whose job classifications require regular OSHA testing.
- E. Upon request by County, Consultant shall provide a written proposal to provide expert witness services such as a physician or other specialist that may be required to testify or to assist County in ADA and civil rights litigation by providing research testimony and experts to support work fitness decisions. County retains the discretion to identify the individuals who will provide assistance and testimony in legal proceedings.

Notifications

- A. The Medical Examination results shall be provided to County within three (3) business days of the completed pre-employment (post-offer) evaluation. Consultant shall also notify County if an applicant declines to accept any immunizations recommended for the classification.
- B. Preparation of a descriptive summary which provides expansion and/or clarification of positive indicators on the health history questionnaire, specifically targeting applicants previous work injuries and occupational exposures, use of prescription and nonprescription medication, and potential that the applicant has falsified information on the questionnaire, e.g., no history of chronic back or joint pain; however on examination, a limited range of motion and a surgical scar is noted.
- C. Preparation of a descriptive summary outlining the medical qualification of the employee/applicant in the following categories:
 - 1. Conditions identified which conflict with the individual's ability to safely address the physical demands of the position being applied for or currently held.
 - 2. Functional limitations and corresponding job duty restrictions in the event applicant or employee was found to have a medical condition which will interfere with ability to safely perform the essential duties of the position.

3. Further evaluation tests or consultation outcomes with County in the event that further evaluation is required and/or subspecialty assessment is deemed appropriate.
 4. Detailing other health-related information that is necessary for County to determine employability of the individual.
- D. The physician shall render a determination as to the capacity of the prospective employee to perform the essential functions of the job classification at the time of placement and show the probability of minimal risk of injury to themselves or others. The examiner shall also render a determination as to those individuals who should be eliminated from placement based on an inability to perform the job at the time of examination, or who could do so only at an unduly high risk of injury to themselves or others. The term injury is defined as an event or condition that:
1. Is connected with, or occurs as a result of the performance of job- related duties; and
 2. Shows a substantial and imminent probability of aggravating or precipitating a physical condition, disease, or syndrome that is inconsistent with continued safe and efficient job performance; and
 3. Affect those physical abilities that are necessary and required for the safe and efficient performance of the essential duties of the job; and
 4. Is consistent with the examination and evaluation protocols, which are outlined by the most current edition of the California Commission on Peace Officers Standards and Training (POST), specific to all safety classifications and/or those jobs specified by County.

For all Pre-employment evaluations, the physician shall translate pertinent medical findings into functional placement data, which shall be transmitted (Medical Examination Report) to County. The functional assessments shall contain specific details on medical diagnoses and relate to the individual's capability of fulfilling employment requirements.

Pre-Employment Medical Examination Summary Reports are defined as follows:

- A. Medically Qualified – Indicates that no medical condition has been identified which conflicts with the individual's ability to safely perform the essential duties of the position being applied for or currently held.
- B. Conditionally Qualified – The applicant or employee was found to have a medical condition that could interfere with the individual's ability to safely perform the essential duties of the position. The physician shall note any activity restrictions on the Health Status Report. County will review these restrictions and functional limitations to determine if such limitations will impose an undue hardship upon the employing department's ability to provide service.

- C. Recommendation Delayed for Qualification – Indicates that the physician is not willing to make a placement decision without further evaluation, tests, or consultation with County.
- D. Medically Disqualified – Applicant has been deemed unsuitable for job classification.

Job Analysis

Consultant shall collect and analyze valid job information pertaining to the most physically demanding essential job function for any physical ability required for a job classification. Consultant shall conduct this analysis using a structured group process involving interviewing job incumbents from the job classification being analyzed. During job analysis sessions, incumbents shall identify the most physically demanding essential job tasks for each physical ability category identified by Consultant in order to have the tasks rated on a behaviorally-anchored scale. Incumbents shall also be asked to provide environmental factors encountered during their performance of job functions. Consultant shall proctor this process to ensure the most accurate outcome. Typical sessions should be accomplished in approximately two (2) hours.

Data collected shall be qualitatively and statistically analyzed by Consultant. Once analyzed by Consultant, the data collected shall be provided to County for validation by supervisor(s) of each job classification. Once validated, Consultant shall utilize the information to develop job profiles and, thereafter, the job profiles shall be utilized to ensure medically-relevant and legally defensible testing is recommended for each job classification. Job profiles shall also be used by Consultant during the evaluation of findings from pre-placement medical examinations to ensure that applicants to jobs are able to safely perform essential job functions.

Extended Assessment

For Recommended Delay for Qualification (RDQA), Consultant shall communicate to County the need for further evaluation, tests, physical capacity testing, and/or subspecialty assessment in the event that a more comprehensive evaluation is necessary to render a medical qualification determination.

Conflict of Interest

Consultant shall inform the employee or appointee of an acute medical condition requiring urgent medical treatment if identified during the examination. The referral by Consultant of a client (seen while Consultant is under contract to County) to a private service in which Consultant has an interest, financial or otherwise, represents a potential conflict of interest. Therefore, no person employed by or under contract to County shall refer a client to his/her private practice or to a private practice in which she/he has an interest, financial or otherwise.

Standard Fees Charged for Consulting Services:

Job Analysis: \$2,000 per day

Staff: \$75/hour (fitness-for-duty and return-to-work evaluations, basic research)

Senior Staff: \$115/hour (advanced research, reasonable accommodation investigation, assistance with appeals, and fitness-for-duty and return-to-work evaluations)

Executive Staff: \$175/hour (research, project design, systems development, advanced fitness- for-duty and return-to-work evaluations)

Legal Staff and Medical Staff: \$250 - \$275/hour

Independent Medical Evaluation: Actual Charges

Mileage Charges: In accordance with ARTICLE III, Compensation for Services

Printing Charges: \$0.20/page, as appropriate

Mailing Charges: Actual charges

OCCU-MED, Ltd

Exhibit C

HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract ("Underlying Agreement") to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the "Effective Date").

RECITALS

WHEREAS, County and Contractor (hereinafter referred to as Business Associate ("BA")) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH" Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws as may be amended from time to time; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

WHEREAS, "Breach" shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, "Unsecured PHI" shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Business Associate

Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.

B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:

- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
- (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
- (3) disclose PHI as necessary for BA's operations only if:
 - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
 - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
 - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
- (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
- (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
- (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.

C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as

required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:

- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
- B. Report to County within 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. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
- D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as

directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) 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 disclosure from 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 the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
 - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
- D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the

Underlying Agreement, or this Business Associate Agreement.

- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA

or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.

(2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
 - D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
 - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
- 8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
 - 9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
 - 10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
 - 11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.