

**Agreement for
Workers Compensation Claims Administration Services /
Managed Care Services Between the County of Sonoma and
Intercare Holdings Insurance Services, Inc.**

This agreement (“Agreement”) by and between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”), and Intercare Holdings Insurance Services, Inc., a California-based Third Party Administrator Claims Administrator (hereinafter “Contractor”) is effective July 1, 2026 (“Effective Date”)

R E C I T A L S

WHEREAS, The County of Sonoma issued a Request for Proposal for third party claims administration of its Workers’ Compensation Program and managed care services in October 2025, and Contractor was selected from various vendor proposals; and

WHEREAS, Contractor represents that it is duly qualified and has extensive experience providing workers’ compensation claims administration, managed care services and related services; and

WHEREAS, in the judgment of the Director of Human Resources it is necessary and desirable to employ the services of Contractor for workers’ compensation claims administration, managed care and other related services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Scope of Services.

1.1 Contractor’s Specified Services. Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this

reference (hereinafter “Scope of Work”), and within the times or by the dates provided for in **Exhibit A** and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and **Exhibit A**, the provisions in the body of this Agreement shall control.

- 1.2 Cooperation With County. Contractor shall cooperate with County and County staff in the performance of all work hereunder.
- 1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor’s profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Contractor’s work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.
- 1.4 Assigned Personnel.
 - a. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from County.

- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material consideration to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Contractor shall, subject to Contractor's hiring processes, procedures, and job requirements and make offers to employee key personnel assigned to the County's account.
 - c. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.
2. **Payment**. For all services and incidental costs required hereunder, Contractor shall be paid in accordance with the budget set forth in **Exhibit B**, provided, however, that total claims administration fee payments to Contractor shall not exceed **\$4,656,109.30** for the contract term, without the prior written approval of County. Managed Care fees shall be applied to individual claims at the rates provided in fee schedule (**Exhibit B**) based on the needs of the individual case and in accordance with workers' compensation claims administration industry best practices. Contractor shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

PRISM, the County's Excess Workers' Compensation program administrator, will conduct biennial Third Party Administration (TPA) Claims Audits, and interim audits more frequently if the overall result is not "Meets Expectations" or "Exceeds Expectations". If Contractor fails an audit, defined as the overall result being "Below Expectations" or "Unsatisfactory", the County's TPA fee will be reduced by \$2,000 per each billing month until such time as Contractor achieves a "Meets Expectations" or "Exceeds Expectations" overall result. In the event Contractor fails the next subsequent audit following a failed audit, the monthly TPA fee reduction shall be increased to \$2,500 per month. Such fee reduction shall continue until such time as Contractor successfully achieves a Meets or Exceeds Expectations overall result. In addition to the above-referenced monthly TPA fee reduction, in the event Contractor fails an audit, the costs of subsequent audit(s) will be paid for by Contractor until such time that Contractor achieves a Meets or Exceeds Expectations overall audit result.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Contractor for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Contractor does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Contractor does not qualify, County requires that a completed and signed Form 587 be provided by the Contractor in order for payments to be made. If Contractor is qualified, then the County requires a completed Form 590.

Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Contractor has the option to provide County with either a full or partial waiver from the State of California.

3. **Term of Agreement**. The term of this Agreement shall be from July 1, 2026 to June 30, 2029 with the option to renew for two one-year contract extensions for the period of July 1, 2029 to June 30, 2030, for a total not to exceed amount of \$1,667,347.49 and July 1, 2030 to June 30, 2031, for a total not to exceed amount of \$1,734,041.39 unless terminated earlier in accordance with the provisions of Article 4 below.

4. **Termination**.

4.1 **Termination Without Cause**. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Contractor.

4.2 **Termination for Cause**. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

4.3 **Delivery of Work Product and Final Payment Upon Termination**.

In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors,

Contractors, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Contractor shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Contractor.

4.5 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Human Resources Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or

obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. **Insurance**. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, Contractors, and other agents to maintain, insurance as described in **Exhibit C**, which is attached hereto and incorporated herein by this reference.
7. **Prosecution of Work**. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.
8. **Extra or Changed Work**. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not exceed the delegated signature authority of the Department Head and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the

Department Head in a form approved by County Counsel. The Board of Supervisors must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Contractor to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all rights or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. **Representations of Contractor.**

9.1 **Standard of Care.** County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

9.2 **Status of Contractor.** The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to **Article 4**, above, Contractor expressly agrees that it shall have no recourse or right of

appeal under rules, regulations, ordinances, or laws applicable to employees.

- 9.3 No Suspension or Debarment. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Contractor becomes debarred, Contractor has the obligation to inform the County
- 9.4 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.
- 9.5 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.
- 9.6 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any

manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Contractor's or such other person's financial interests.

- 9.7 Statutory Compliance/Living Wage Ordinance. Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Contractor expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 9.8 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 9.9 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination

in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

- 9.10 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.
- 9.11 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, Contractors, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Contractor may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.12 Representation, Warranty and Responsibility as to Data Security:

- a. Data Security: Contractor shall preserve, and shall ensure that its sub-Contractors or vendors preserve, the confidentiality, integrity, and availability of County data with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that the selected firm then applies to its own processing environment. Maintenance of a secure processing environment includes, but is not limited to, the timely application of patches, fixes and updates to operating systems and applications as provided by Contractor and/or its sub-Contractors or vendors. Contractor agrees to, and shall ensure that its sub-Contractors or vendors comply with the County's current and future information security policies, standards, procedures, and guidelines.
- b. Encryption Requirements: Contractor shall encrypt, and shall ensure that its sub-Contractors or vendors encrypt, confidential information whether the data is in transit, or at rest, including but not limited to Personally Identifiable Information (PII) or Protected Health Information (e.g. PHI, ePHI).
- c. Security Breach: Contractor shall comply, and shall ensure that its sub-Contractors or vendors comply, with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information (PII) or protected health information (e.g. PHI, ePHI) or other event requiring notification. In the event of a breach, or other event requiring notification under applicable law, Contractor shall:
 - i. Notify the County by telephone and e-mail within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of information of which Contractor or its agents become aware and/or any actual

or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations.

- ii. Assume responsibility for informing all such individuals in accordance with applicable federal or state laws or regulations.
 - iii. Pursuant to Article 5 of the Agreement, provide indemnity and other protection as specified therein.
- d. Request to Audit: Contractor will accommodate and upon reasonable notice by Sonoma County, work with Sonoma County and/or its subcontractors to submit to a random information security audit. This is to ensure that the Contractors and/or vendor's information security practices or standards comply with Sonoma County's information security policies, standards, procedures and guidelines. Contractor shall ensure that its sub-Contractors or vendors comply with this requirement.
- e. Cyber Risk Insurance Requirements: Contractor shall include, and shall ensure that its sub-Contractors or vendors include, cyber risk insurance requirements in compliance with County of Sonoma Risk Management standards.

9.13 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Contractor.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a

justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement.

Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. **Assignment and Delegation**. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. **Method and Place of Giving Notice, Submitting Bills and Making Payments**.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To: County: Tony Fortunato c/o HR Accounting,
Disability Programs Manager
Human Resources Department
575 Administration Drive, Suite 116B
Santa Rosa, CA 95403
hr-accounting@sonomacounty.gov

To: Contractor: Agnes Hoerberling, Chief Client Officer
Intercare Holdings, Insurance Services, Inc.
6020 West Oaks Boulevard, Suite 100
Rocklin, CA 95765

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day.

When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or

payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. **Miscellaneous Provisions.**

13.1 **No Waiver of Breach.** The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

- 13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.
- 13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 13.10 Counterpart; Electronic Signatures. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other

transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Contractor: **Intercare Holdings Insurance Services, Inc.**

County: **County of Sonoma**

By: _____

CERTIFICATES OF INSURANCE
REVIEWED, ON FILE, AND APPROVED
AS TO SUBSTANCE FOR COUNTY:

Name: Agnes Hoerberling

By: _____

Janell Crane, Human Resources Director

Title: Chief Executive Officer

Date: _____

Date: _____

APPROVED AS TO FORM FOR COUNTY

By: _____

County Counsel

Date: _____

EXECUTED BY:

By: _____

Janell Crane, Human Resources Director

Date: _____

Exhibit A

Scope of Work

I. County Expectations

Intercare Holdings Insurance Services, Inc. (“Intercare”) agrees to the following specific compliance:

A. General

1. Contractor will work cooperatively with County personnel and will coordinate all appropriate actions with designated County representatives throughout all aspects of services provided under this Agreement. Contractor will conform to all services as outlined in this Agreement and exhibits and will adhere to service instructions agreed to by County and Contractor.
2. Contractor will provide full third-party workers’ compensation claims administration services as outlined in this Agreement and contained in Contractor’s Proposal for Workers’ Compensation Claims Administration, dated July 1, 2026.
3. Contractor will use County’s computerized Risk Management Information System, for claims administration.
4. In coordination with overall claims administration, Disability Management and Return to Work support and consultation will be provided as part of claims administration services provided by Contractor and will not be a separate expense.
5. Contractor will, at its own expense, maintain claim file storage for the period of time required by law. Contractor may choose, at its own expense, to convert paper files to electronic documents and destroy the paper file with the permission of the County.
6. Contractor will cooperate fully with all audit requests of County as well as PRISM (Excess Insurance Authority) or other associated agencies.

7. Contractor will execute a contract with defense attorneys and will work with Risk Management in developing claims-handling litigation guidelines.

B. Staffing

1. Claims examiners assigned to the County's account will have a minimum of three years' active claims adjusting experience as a claims examiner. A claims assistant may not be substituted for an experienced examiner.
2. Claims examiners will be assigned to the County's account exclusively based on the staffing coverage model needed to meet claim ratio standards in #3, below. When claim levels are low, a flexible staffing model will be used to adjust staffing levels and administration fees, accordingly. If additional staff is needed to maintain the required claim ratio, Contractor will work with County to review staffing and funding options.
3. Examiners must have their Self-Insured Competency Certificate within one year of employment and must be supervised by an individual with a minimum of 5 years of claims experience and who has passed the State of California test for Administrator, Self-Insurance Plans, issued by the Self Insurance Plans Division of the Department of Workers' Compensation.
4. Contractor shall provide sufficient claims examiners to maintain a caseload of no more than 150 open indemnity claims per examiner with future medical cases designated at a 2:1 ratio. Contractor will conduct periodic reviews of caseload counts at least every 3 months to determine whether Contractor is in compliance with the caseload to examiner ratio and will report to County.
5. Contractor shall assign one (1) fully qualified and certified claims supervisor. This supervisor should possess at least five (5) years' experience in the claims industry to include three (3) years of experience with Public Agency accounts.

6. Contractor or the assigned claims supervisor shall run monthly reports to evaluate current caseloads and make adjustments in staffing, if necessary.
7. County shall participate in the final selection of staff assigned to the County account.

C. Claim Administration

Claim Management

Contractor will review all reports of injury as defined by Labor Code 3208 and 3208.1.

Contractor will also adhere to the [Philosophy and Expectations of the Public Risk Innovation, Solutions, and Management \(PRISM\) Workers' Compensation Claims Administration Standards and Audit Process](#) .

Payments and Expenses

1. Claims expenses are defined as all appropriate workers' compensation benefits pursuant to the California Labor Code, all Workers' Compensation Appeals Board or other court costs, interest upon awards and judgments, investigation and legal expenses, nurse case management, medical bill review, utilization review and other expenses as deemed appropriate and authorized by County personnel. Any of the above services performed by salaried employees of Contractor shall not be considered claims expense.
2. Settlement authority for all claims will be determined and agreed upon among assigned personnel of County and Contractor and require written approval from County Risk Manager or designee to ensure appropriate settlement authorization has been established. All settlements requiring payments (exclusive of permanent disability advances) require written approval from County Risk Manager and/or County Counsel depending upon authorization level. For all cases, a written analysis of the case, including settlement options and recommendations must be submitted to

Risk Management at least 30 working days prior to any settlement offers or conferences. All settlements in excess of \$100,000 require Board of Supervisors' approval. Contractor must provide at least 60 days' written notice to County for review of all proposed settlements. The Contractor will not have authority to settle the County's cases, including cases that involve third-party recovery.

3. Contractor will pay on behalf of the County, from County funds, those sums that should reasonably be paid under the California Workers' Compensation Laws for each reported claim.
4. Contractor will pay on behalf of the County, out of the County's fund, all allocated loss adjustment expenses.
5. Contractor will provide any and all necessary and required accounting and reconciliation information to County and will endeavor to ensure that all information is accurate. County will incur no additional expense for such accounting information.
6. County will establish a trust account which Contractor will utilize for the payment of all claims and benefit expenses incurred in the administration of workers' compensation claims of County.
7. Penalties paid by the Contractor through no fault of the County shall be reimbursed to the County, with reimbursement made on a monthly basis. Overpayment of benefits that occurs due to no-fault of County shall be reimbursed to the County as well. Any statutory penalties incurred by Contractor due to performance of Contractor and its employees, are to be paid through claims expense and reimbursed by Contractor quarterly by check to County. A monthly accounting of all penalty payments will be provided to County with a narrative explanation of the reason for the penalty payment. No penalty payments will be assessed until a full and thorough review has been completed with County. Any statutory penalty assessments

incurred by County will be a claims expense and will only be paid upon approval by County.

Contractor will be responsible for all penalties assessed except those that are the responsibility of the County, specifically limited to:

- i) Failure by the County to provide an employee claim form within twenty-four (24) hours upon request of the injured worker or his/her agent. Failure of employer to complete DWC-1 as required by the Labor Code, even when DWC-1 is submitted to the employer by an attorney.
- ii) Penalties incurred by CMS or DWC Audit and Enforcement Unit audit due to negligence of the County.

D. Reporting Requirements

1. Reports generated by the Contractor will be furnished to the County in electronic form. They should be available in both PDF and Excel format for analysis purposes, depending on the criteria of the request.
2. Contractor will have a contractual duty and accountability to report appropriate claims to The Centers for Medicare and Medicaid Services (CMS) in accordance with the MMSEA Section 111 Mandatory Insurance Reporting Act of 2007 and maintain compliance with any updates issued by CMS related to MMSEA Section 111.
3. Contractor will maintain loss data for claims reporting to State and Cal/OSHA as specified in the Request for Proposals.

E. Excess Coverage

All claims administration services performed by the Contractor shall comply with those provisions and timelines set forth in Public Risk Innovation, Solutions, and Management (PRISM) Claims Administration Guidelines (formerly the California State Association of Counties–Excess Insurance

Authority (CSAC-EIA) Standards for Workers' Claims Administration Services (and the CSAC Excess Insurance Authority Workers' Compensation Claims Administration Guidelines).

In the event that those provisions and/or timelines differ from the County's provisions and/or timelines for the administration of claims, the stricter provisions and/or timelines will prevail.

F. Medical Managed Care Services and Utilization Review

Contractor will provide bill review and nurse case management (both telephonic and field) and utilization review services through various identified subcontractors and will be responsible for the work of all of its subcontractors. Payment for medical bill review services will be paid from the claim file consistent with other claim payments, with the vendor providing a monthly accounting of detailed charges to the County for reconciliation. Any discrepancies will be reviewed and resolved prior to next month's reconciliation review. Payment for utilization review and nurse case management services will be posted to the claim file as a voucher. Contractor will provide a monthly electronic invoice with detailed reporting of nurse case management and utilization review vouchers to the County for separate payment authorization.

As needed and with notice to the County, Contractor may make changes to any vendor(s) assigned to the County's program, and will replace services with a comparable vendor, pursuant to the same terms and conditions of payment for the particular service(s).

1. Bill Review

Contractor will provide bill review and preferred provider (PPO) network pricing services. Payment and reporting will be made as indicated above.

2. Utilization Review

Contractor will provide internal Utilization Review Process to approve, modify, delay, or deny treatment plans based on whether the proposed treatment is medically necessary to cure and relieve the industrial injury.

Contractor will provide the County with monthly summary reports, detailing activities, results, costs and savings.

Contractor and the County will establish utilization review referral guidelines. These guidelines will outline which treatment and services an examiner and/or nurse case manager will approve, delay or deny and which procedures are forwarded to Utilization Review.

Contractor is responsible for all required utilization review reporting to the State of California and is financially responsible for any fees and penalties impose by the State for failure to report.

Physician file review will be made only by prior authorization of the County.

3. Nurse Case Management

Contractor will provide nurse case management personnel to work with the claims administration team. Claims administration personnel and the County's Disability Management staff will be provided direct access to assigned nurse case management personnel. Contractor will execute all training and orientation necessary to facilitate and optimize the nurse case management personnel. Contractor will ensure access to all electronic information systems to support the nurse case management personnel.

Telephonic Case Manager (TCM): The TCM will work together with the claims team and the Disability Management Unit to establish a plan of action which proactively promotes return to work.

The TCM may be involved in Field Case Management or may assign other field case managers in more severe or catastrophic cases where face to face contact is necessary. Field case managers (FCM) may also be

appropriate to help facilitate return to work. Contractor will provide a written analysis to the County prior to referring the claim to a field nurse for authorization. County must have access to the FCM's written report which should be in the electronic file within 10 days of service.

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Exhibit B

Fee Schedule

Claims Administration Services: (Paid for by the County via Invoice)

Services	Description	Rates
Claims Administration ^a	Administration of workers' compensation claims including as outlined in Exhibit A Scope of Work	
Base Contract	Year 1: 7/1/26-6/30/27	\$1,503,887.00
	Year 2: 7/1/27-6/30/28	\$1,549,003.61
	Year 3: 7/1/28-6/30/29	\$1,603,218.74
Option Year 1	Year 4: 7/1/29-6/30/30	\$1,667,347.49
Option Year 2	Year 5: 7/1/30-6/30/31	\$1,734,041.39

Medical Managed Care Services:^b (Paid within Claim)

Services	Description	Rates
Medical Bill Review ^c	Comprehensive bill review per appropriate statutory fee schedules for accepted workers' compensation claims. Secondary Bill Review for complex bills – applicable to out of network bills and bills not subject to fee schedule that requires negotiation by a clinical professional. Fee is applied only if savings is achieved.	Flat Fee of \$20.00 per bill inclusive of PPO Access Fee 15% of savings; capped at \$7000.00 per bill

Utilization Review	<p>Selected medical treatment request for authorization will be reviewed by nurses and physicians, to compare guidelines or criteria deemed appropriate for such services, and making a recommendation based on that comparison to ensure that employees are receiving appropriate care and to maintain costs:</p> <ul style="list-style-type: none"> • Level 1 – Claims Adjuster • Level 2 - Nurse Utilization Review • Level 3 - Medical Director/Advisor • Specialty Peer Review 	<p>No charge \$125.00 per RFA \$250.00 per review \$300.00 per review</p>
Nurse Case Manager	<p>Telephonic and field case management services to assist with workers' comp case management and return to work – as outlined in Exhibit A.</p> <ul style="list-style-type: none"> • Telephonic Nurse Case Management • Field Nurse Case Management • Nurse Triage – includes 1 follow up call 	<p>\$100.00 per hour \$120.00 per hour \$105.00 per call</p>

^a The fixed flat annual fee for claims administration is based on a 150 caseload per adjuster with FM and MO weighted on a 2:1 ratio of FM to IN. The staffing model below reflects the current model on the program.

^b All managed care services are provided in-house by Intercare's managed care division, InterMed Cost Containment Services except Specialty Peer Review services are subcontracted to Dane Street.

^c There shall be no bill review charge for in-network prescription bills. This is approximately 15-18% savings in bill review cost to the County.

Position	FTE	
Claims Supervisor	1.00	Dedicated
Claims Adjusters (Senior)	3.00	Dedicated
Claims Adjuster	2.00	Dedicated
Associate Adjuster	1.00	Dedicated
Claims Assistants	2.00	Dedicated
Total FTE	9.00	Dedicated

Dedicated staff will handle County of Sonoma claims exclusively. The claims team is turn-key, and all services are provided domestically in the United States.

The team will be supported by an Account Manager, a claims manager and senior management team.

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Exhibit C

Insurance Requirements

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a.** Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b.** Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c.** Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d.** The County of Sonoma, its Officers, Agents, and Employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- e.** The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f.** The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g.** The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.

h. Required Evidence of Insurance:

- Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by County.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

5. Cyber Liability Insurance

Network Security & Privacy Liability Insurance:

Required if Consultant/consultant has access to individuals' private, personally identifiable information, or if the agreement involves sharing of data or electronic information.

- a. Minimum Limit: \$2,000,000 per claim per occurrence, \$2,000,000.00 aggregate
- b. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs (including notification costs), regulatory fines and penalties as well as credit monitoring expenses.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

Technology Errors and Omissions Insurance:

Required if Consultant is providing a technology service (data storage, website designers, etc..) or product (software providers).

- a. Minimum Limit: \$2,000,000 per claim or per occurrence, \$2,000,000.00 aggregate.
- b. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs (including notification costs), regulatory fines and penalties as well as credit monitoring expenses.
- c. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the County in the care, custody, or control of the Consultant. If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.

- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims made retroactive date.

6. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

7. Documentation

- a. The Certificate of Insurance must include the following reference: WC TPA
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is:
 - County of Sonoma
 - Human Resources Department
 - Attn: Department Analyst
 - 575 Administration Drive, Suite 116
 - Santa Rosa, CA 95403
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

8. Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Material Breach

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

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Exhibit D

BUSINESS ASSOCIATE ADDENDUM
TO THE
AGREEMENT FOR WORKERS COMPENSATION CLAIMS ADMINISTRATION
SERVICES / MANAGED CARE SERVICES
BETWEEN
THE COUNTY OF SONOMA
AND
INTERCARE HOLDINGS INSURANCE SERVICES, INC.

This Business Associate Addendum (“Addendum”) supplements and is made a part of the Agreement for Workers Compensation Claims Administration Services / Managed Care Services (“Agreement”) by and between County of Sonoma (“County”) and Intercare Holdings Insurance Services, Inc. (“Business Associate”).

R E C I T A L S

WHEREAS, County is a Hybrid Entity as defined under 45 CFR Section 164.504;

WHEREAS, Intercare Holdings Insurance Services, Inc. is a Business Associate as defined under 45 CFR Section 160.103;

WHEREAS, County wishes to disclose certain information to Business Associate pursuant to the terms of the Addendum, some of which may constitute Protected Health Information (“PHI”); including electronic Protected Health Information (“ePHI”);

WHEREAS, County and Business Associate intend to protect the privacy and provide for the security of PHI, including ePHI, disclosed to Business Associate pursuant to the Addendum in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“the HIPAA Regulations”) and other applicable laws; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and Security Rule requires County to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Section 164.502(e), 164.504(e), and 164.308(b)(1) of the Code of Federal Regulations (“CFR”) and contained in the Addendum.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions.**

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Regulations found in Section 160.103, 164.304, and 164.501. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Regulations: Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, and Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Protected Health Information (PHI) includes electronic Protected Health Information (ePHI).

- a. **HIPAA Regulations.** “HIPAA Regulations” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- b. **Breach.** “Breach” shall mean the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart e of part 164 which compromises the security or privacy of protected health information as defined at 45 CFR 164.402.
- c. **Business Associate.** “Business Associate” shall have the same meaning as the term “Business Associate” in Section 160.103.
- d. **Data Aggregation.** “Data Aggregation” shall have the same meaning as the term “Data aggregation” in Section 164.501.

- e. **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- f. **Disclosure.** “*Disclosure*” means the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information in accordance with Section 160.103.
- g. **Health Care Operations.** “Health Care Operations” shall have the same meaning as “Health care operations” in Section 164.501.
- h. **Individual.** “Individual” shall have the same meaning as the term “Individual” in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- i. **Minimum Necessary.** “Minimum Necessary” shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Sections 164.502(b) & 164.514(d): *Standard: Minimum Necessary*.
- j. **Privacy Rule.** “Privacy Rule” shall mean the HIPAA regulation that is codified at 45 CFR Parts 160 and 164 Subparts A and E.
- k. **Protected Health Information.** “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
- l. **Required by Law.** “Required by law” shall have the same meaning as the term “required by law” in Section 164.103
- m. **Secretary.** “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his/her designee.

- n. **Security Incident.** “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes Protected Health Information that is under the control of Covered Entity, or Business Associate of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.
- o. **Security Rule.** “Security Rule” shall mean the HIPAA regulation that is codified at 45 CFR Parts 160 and 164, Subparts A and C.
- p. **Subcontractor.** “Subcontractor” means a subcontractor of Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of the Business Associate.
- q. **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in Section 164.402, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
- r. **Use.** “Use” means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information in accordance with Section 160.103.

2. **Obligations of Business Associate.**

Business Associate acknowledges that it is directly required to comply with the HIPAA Regulations and that Business Associate (including its subcontractors) may be held directly liable and subject to penalties for failure to comply. To the extent the Business

Associate is to carry out one or more of the County's obligations under Subpart E of 45 CFR Part 164 of the Privacy Rule, Business Associate agrees to comply with the requirements of Subpart E that apply to the County in the performance of such obligations.

a. Use or Disclosure of Protected Health Information.

Except as otherwise provided in this Addendum, Business Associate, shall use and/or disclose PHI only as necessary to perform functions, activities or services, documented in **Exhibit A** for or on behalf of County, as specified in this Addendum, provided that such use does not violate the HIPAA Regulations. Business Associate agrees not to further use or disclose Protected Health Information other than as permitted or required by this Addendum, or as required by law. Business Associate must make reasonable efforts to limit Protected Health Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request. The uses of PHI may not exceed the limitations applicable to County under the HIPAA Regulations.

b. Safeguarding Protected Health Information.

Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum. Business Associate shall implement administrative, physical, and technical safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI created, received, maintained or transmitted on behalf of County and prevent use or disclosure of PHI other than as provided for by the Agreement.

- i. Encryption Requirements for Transmission of Electronic Data. All PHI transmitted to Business Associate by County; and/or for or on behalf of County by Business Associate; and/or to County by Business Associate shall be provided or transmitted in a manner which renders such PHI unusable, unreadable or indecipherable to unauthorized

persons, through the use of a technology or methodology set forth by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5, and in accordance with the National Institute of Standards Technology (NIST) and Standards and Federal Information Processing Standards (FIPS), as applicable.

- ii. Destruction of PHI on paper, film, or other hard copy media must involve either shredding or otherwise destroying the PHI so that it cannot be read or reconstructed.
- iii. Should any employee or subcontractor of Business Associate have direct, authorized access to County computer systems that contain PHI, Business Associate shall immediately notify County of any change of such personnel (e.g. employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for County to disable the previously authorized access.

c. Notification of Breach, Unauthorized Use or Improper Disclosure.

Business Associate must notify County in writing of any access, use or disclosure of PHI not permitted or provided for by this Addendum and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations, of which it becomes aware. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of the Business Associate.

- i. Notification must be made as soon as practicable but not later than 24 hours after discovery by telephone call at 707-565-5703, plus e-mail at DHS-Privacy&Security@sonomacounty.gov, and will include:

1. The identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed; and
 2. A description of any remedial action taken or proposed to be taken by Business Associate.
- ii. Business Associate must mitigate any harm that results or may result from the breach, security incident, or unauthorized access, use, or disclosure of unsecured PHI by Business Associate or its employees, officer, subcontractors, agents, or other representatives.
 - iii. Following a breach or unauthorized access, use or disclosure of unsecured PHI, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make this documentation available to County.

d. Agents and Subcontractors of Business Associate.

In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), and to the extent that Business Associate uses any agent, including a subcontractor, to which Business Associate provides PHI received from, created, maintained or received by Business Associate on behalf of County, Business Associate shall execute an agreement with such agent or contractor containing requirement to ensure compliance with the same restrictions and conditions that apply through this Addendum to Business Associate with respect to PHI.

e. Access to Protected Health Information.

At the request of County, and in the time and manner designated by County, Business Associate shall provide access to PHI in Designated Record Set to an Individual or County to meet the requirements of 45 CFR section 164.524.

f. Amendments to Designated Record Set.

Business Associate shall make any amendment(s) to PHI in a designated record set as directed or agreed to by the County, or to take other measures necessary to satisfy the County's obligations under 45 CFR 164.526.

g. Accounting of Disclosures.

Business Associate shall document and make available such disclosures of PHI and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

h. Records Available to County, State and Secretary.

Business Associate shall make available internal practices, books and records related to the use, disclosure and privacy protection of PHI received from County, or created, maintained or received by Business Associate on behalf of County, to the County, State, or to the Secretary of the United States Department of Health and Human Services for the purposes of investigating or auditing Business Associate's compliance with the HIPAA Regulations, in the time and manner designated by County, State or Secretary.

i. Return or Destruction of Protected Health Information.

Upon termination of this Addendum for any reason, Business Associate shall:

- i. Return all PHI received from County, created, maintained or received by Business Associate on behalf of County and required to be retained by the HIPAA regulations; or
- ii. At the discretion of County, destroy all PHI received from County, or created, maintained or received on behalf of County by Business Associate on behalf of County. Destruction of PHI on paper, film, or other hard copy media must involve shredding or otherwise destroying the PHI in a manner which would render the PHI unreadable,

undecipherable, or unable to be reconstructed. Business Associate shall certify in writing that such PHI has been destroyed.

- iii. Should any employee or subcontractor of Business Associate have direct, authorized access to computer systems of the County, that contain PHI, Business Associate shall immediately notify County of any change in such personnel in order for County to disable the previously authorized access.

j. Data Aggregation.

Business Associate may provide data aggregation services related to the health care operations of County as permitted by 45 CFR 164.504(e)(2)(i)(B).

k. Other Applicable Laws.

Business Associate shall comply with all other applicable laws to extent that such state confidentiality laws are not preempted by HIPAA.

- 1. **Penalties/Fines for Failure to Comply with HIPAA.** Business Associate shall pay any penalty or fine assessed against covered entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

3. Amendments to Addendum.

No amendment of this Addendum shall be effective unless and until such amendment is evidenced by a writing signed by the parties. County and Business Associate agree to take such action as is necessary to amend this Addendum as required for County to comply with the requirements of the HIPAA Regulations. However, any provision required by HIPAA Regulations to be in this Addendum, shall bind the parties whether or not provided for in this Addendum.

4. Termination of Addendum.

If Business Associate should fail to perform any of its obligations hereunder, or materially breach any of the terms of this Addendum, County may terminate this Addendum immediately upon provision of notice to Contractor stating the reason for such termination. County, within its sole discretion, may elect to give Business Associate an opportunity to cure such breach.

- a. **Material Breach.** A breach by Business Associate or any of its agents or subcontractors of any provision of this Addendum, as determined by County, shall constitute a material breach of the Addendum and shall provide grounds for immediate termination of the Addendum.

5. **Indemnification.**

Business Associate agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees from and against any actions, claims, damages, liabilities, disabilities, or expenses that may be asserted by any person or entity, including Business Associate that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Business Associate agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Business Associates' or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Business Associates' obligations under this Article apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Business Associate's expense, subject to Business Associates' approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Business Associate or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.