

1 **SERVICE AGREEMENT**

2 This Service Agreement (“Agreement”) is dated December 9, 2022, and is between
3 Navia Benefit Solutions, Inc., a Washington Corporation (“Contractor”), and the San Joaquin
4 Valley Insurance Authority, a California joint powers agency (“SJVIA”).

5 **Recitals**

6 A. The SJVIA is a joint powers agency that purchases health, pharmacy, vision, dental, and
7 life insurance for the employees of its Participating Entities. For purposes of this Agreement,
8 the County of Tulare and the County of Fresno are the “Participating Entities” of the SJVIA, and
9 each is a “Participating Entity” of the SJVIA.

10 B. The SJVIA desires to contract with Navia Benefit Solutions, Inc. for COBRA, FMLA, and
11 Retiree Billing.

12 C. The Contractor represents and warrants to the SJVIA that it is ready, willing, and able to
13 provide the services desired by the SJVIA according to the terms and conditions of this
14 agreement, and in cooperation with and under the direction of the SJVIA Board of Directors and
15 SJVIA management.

16 The parties therefore agree as follows:

17 **Article 1**

18 **Contractor’s Services**

19 1.1 **Scope of Services.** The Contractor shall perform the services provided in Exhibit A
20 to this Agreement, titled “Scope of Services.”

21 1.2 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all
22 applicable federal, state, and local laws and regulations in the performance of its obligations
23 under this Agreement, including but not limited to workers compensation, labor, and
24 confidentiality laws and regulations.

25 1.3 The Contractor shall at all times cooperate with SJVIA management, which includes
26 the SJVIA Manager, the SJVIA Assistant Manager, the SJVIA Auditor-Treasurer, any employee

1 of the County of Fresno or the County of Tulare who is designated by one of those persons to
2 administer the business and activities of the SJVIA, and counsel to the SJVIA. That cooperation
3 includes reporting promptly any material oral or written communications received by the
4 Contractor from a participating entity, prospective participating entity, or contractor of the SJVIA
5 to the SJVIA Manager and the SJVIA Assistant Manager.

6 **Article 2**

7 **SJVIA's Responsibilities**

8 2.1 **Information and Data.** Subject to the terms of this Agreement, the SJVIA will
9 provide or authorize the vendors of its Insurance Programs to provide the Contractor with data
10 and information necessary to the Contractor's provision of services under this Agreement.

11 2.2 **Insurance Program Premiums.** The SJVIA acknowledges that it is responsible for
12 payment of premiums for all Insurance Programs.

13 **Article 3**

14 **Compensation, Invoices, and Payments**

15 3.1 **Compensation.** The SJVIA agrees to pay, and the Contractor agrees to receive,
16 compensation for the performance of its services under this Agreement as described in Exhibit
17 B to this Agreement, titled "Compensation."

18 3.2 **Payment.** The Per Employee Per Month (PEPM) fee and Per Employee Per Cycle
19 (PEPC) fee described in Exhibit B will be paid biweekly for Fresno County Actives (PEPC) and
20 monthly (PEPM) for all other groups throughout the term of the Agreement. The fees will be
21 paid in arrears and are based on the actual number of eligible participants, not including
22 dependents, as determined by the SJVIA, and as used for all eligibility purposes for the specific
23 contract month.

24 3.3 **Incidental Expenses.** The Contractor is solely responsible for all of its expenses
25 that are not specified as payable by the SJVIA under this Agreement.

1 **Article 4**

2 **Term of Agreement**

3 4.1 **Term.** This Agreement is effective on January 1, 2023, and terminates on December
4 31, 2025. The term of this agreement may be extended for no more than two additional one-
5 year terms by modification as provided in section 13.1 of this agreement.

6 **Article 5**

7 **Notices**

8 5.1 **Contact Information.** The persons and their addresses having authority to give and
9 receive notices provided for or permitted under this Agreement include the following:

10 **For the SJVIA:**

11 SJVIA Manager
12 2220 Tulare Street, 14th Floor
13 Fresno, California 93721
14 SJVIA-Admin@fresnocountyca.gov

15 **For the Contractor:**

16 General Counsel
17 Navia Benefit Solutions, Inc.
18 Renton, WA 98057
19 425-452-3500
20 compliance@naviabenefits.com

21 5.2 **Change of Contact Information.** Either party may change the information in
22 section 5.1 by giving notice as provided in section 5.3.

23 5.3 **Method of Delivery.** All notices between the SJVIA and the Contractor provided for
24 or permitted under this Agreement must be in writing and delivered either by personal service,
25 by first-class United States mail, by an overnight commercial courier service, by telephonic
26 facsimile transmission, or by Portable Document Format (PDF) document attached to an email.

(A) A notice delivered by personal service is effective upon service to the recipient.

(B) A notice delivered by first-class United States mail is effective three County of
Fresno business days after deposit in the United States mail, postage prepaid,
addressed to the recipient.

1 (C) A notice delivered by an overnight commercial courier service is effective one
2 County of Fresno business day after deposit with the overnight commercial courier
3 service, delivery fees prepaid, with delivery instructions given for next day delivery,
4 addressed to the recipient.

5 (D) A notice delivered by PDF document attached to an email is effective when
6 transmission to the recipient is completed (but, if such transmission is completed outside
7 of County of Fresno or County of Tulare business hours, then such delivery is deemed to
8 be effective at the next beginning of a County of Fresno or County of Tulare business
9 day), provided that the sender maintains a machine record of the completed
10 transmission.

11 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement,
12 nothing in this Agreement establishes, waives, or modifies any claims presentation
13 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
14 of Title 1 of the Government Code, beginning with section 810).

15 **Article 6**

16 **Termination and Suspension**

17 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are
18 contingent on the approval of funds by the appropriating government agency. If sufficient funds
19 are not allocated, then the SJVIA, upon at least 30 days' advance written notice to the
20 Contractor, may:

21 (A) Modify the services provided by the Contractor under this Agreement; or

22 (B) Terminate this Agreement.

23 **6.2 Termination for Breach.**

24 (A) Upon determining that a breach (as defined in paragraph (C) below) has
25 occurred, the SJVIA may give written notice of the breach to the Contractor. The written
26

1 notice may suspend performance under this Agreement, and shall provide a reasonable
2 time, as determined by the SJVIA, for the Contractor to cure the breach.

3 (B) If the Contractor fails to cure the breach to the SJVIA's satisfaction within the
4 time stated in the written notice, the SJVIA may terminate this Agreement immediately.

5 (C) For purposes of this section, a breach occurs when, in the determination of the
6 SJVIA, the Contractor has:

7 (1) Obtained or used funds illegally or improperly;

8 (2) Failed to comply with any part of this Agreement;

9 (3) Submitted a substantially incorrect or incomplete report to the SJVIA; or

10 (4) Improperly performed any of its obligations under this Agreement as

11 determined by the SJVIA.
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13 **6.3 Termination for HIPAA Violation.** The SJVIA may terminate this agreement as
14 provided in Article 12 of this agreement.

15 **6.4 Termination without Cause.** In circumstances other than those set forth above, the
16 SJVIA may terminate this Agreement by giving at least 30 days advance written notice to the
17 Contractor. In circumstances other than those set forth above, the Contractor may terminate
18 this Agreement by giving at least ninety (90) days advance written notice to the SJVIA.

19 **6.5 No Penalty or Further Obligation.** Any termination of this Agreement by the SJVIA
20 under this Article 6 is without penalty to or further obligation of the SJVIA.

21 **6.6 SJVIA's Rights upon Termination.** Upon termination for breach under this Article
22 6, the SJVIA may demand repayment by the Contractor of any monies disbursed to the
23 Contractor under this Agreement that, in the SJVIA's sole judgment, were not expended in
24 compliance with this Agreement. The SJVIA shall promptly refund all such monies upon
25 demand. This section survives the termination of this Agreement.
26

1 **Article 7**

2 **Independent Contractor**

3 7.1 **Status.** In performing under this Agreement, the Contractor, including its officers,
4 agents, employees, and volunteers, is at all times acting and performing as an independent
5 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
6 venturer, partner, or associate of the SJVIA.

7 7.2 **Supervision.** The SJVIA has no right to control, supervise, or direct the manner or
8 method of the Contractor's performance under this Agreement, but the SJVIA may verify that
9 the Contractor is performing according to the terms of this Agreement.

10 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no
11 right to employment rights or benefits available to employees of the SJVIA or its Participating
12 Entities. The Contractor is solely responsible for providing to its own employees all employee
13 benefits required by law. The Contractor shall save the SJVIA harmless from all matters
14 relating to the payment of Contractor's employees, including compliance with Social Security
15 withholding and all related regulations.

16 7.4 **Services to Others.** The parties acknowledge that, during the term of this
17 Agreement, the Contractor may provide services to others unrelated to the SJVIA.

18 **Article 8**

19 **Indemnity and Defense**

20 8.1 **Indemnifiable Losses.** For purposes of this Article 8, the phrase "Indemnifiable
21 Loss" includes all claims, demands, injuries, damages, costs, expenses (including attorney fees
22 and costs), fines, penalties, and liabilities of any kind.

23 8.2 **Indemnity.** The Contractor shall indemnify, and hold the SJVIA (including its
24 officers, agents, employees, and volunteers) harmless from and against any Indemnifiable Loss
25 to the SJVIA, the Contractor, or any third party that arises from or relates to the performance or
26 failure to perform by the Contractor (or any of its officers, agents, or employees) under this

1 Agreement including as a result of any violation by Contractor of any law, or any loss or
2 expense to the SJVIA caused by the misrepresentation, negligent act or omission, or any
3 breach of the Contractor's obligations under this agreement . Contractor shall not be
4 responsible for any consequences of SJVIA's breach of this Agreement, breach of applicable
5 laws, or unauthorized disclosure of information caused by SJVIA.

6 **8.3 Defense.** If requested by the SJVIA, the Contractor shall promptly defend actions or
7 proceedings brought or threatened against the SJVIA (including its officers, agents, employees,
8 and volunteers) for any Indemnifiable Loss to the SJVIA, or any third party that arises from or
9 relates to the performance or failure to perform by the Contractor (or any of its officers, agents,
10 or employees) under this Agreement. The SJVIA may conduct or participate in its own defense
11 without affecting the Contractor's obligation to indemnify or defend the SJVIA.

12 **8.4 Survival.** This Article 8 survives the termination of this Agreement.

13 **Article 9**

14 **Insurance**

15 **9.1** The Contractor shall comply with all of the insurance requirements in Exhibit D to this
16 Agreement.

17 **Article 10**

18 **Inspections, Audits, and Public Records**

19 **10.1 Inspection of Documents.** The Contractor shall make available to the SJVIA, and
20 the SJVIA may examine at any time during business hours and as often as the SJVIA deems
21 necessary, all of the Contractor's records and data with respect to the matters covered by this
22 Agreement. The Contractor shall, upon request by the SJVIA, permit the SJVIA to audit and
23 inspect all of such records and data to ensure the Contractor's compliance with the terms of this
24 Agreement and in compliance with all applicable privacy and security laws.

25 **10.2 State Audit Requirements.** If the compensation to be paid by the SJVIA under this
26 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the

1 California State Auditor, as provided in Government Code section 8546.7, for a period of three
2 years after final payment under this Agreement. This section survives the termination of this
3 Agreement.

4 **10.3 Public Records.** The SJVIA may publicly disclose this Agreement under the Ralph
5 M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with
6 section 54950). This Agreement, and any record or data that the Contractor may provide to the
7 SJVIA, regardless of whether it is marked as confidential or having restricted access, except for
8 records that are subject to the Health Insurance Portability and Accountability Act ("HIPAA") as
9 provided in Article 11 of this Agreement, is subject to public disclosure as a public record under
10 the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5,
11 beginning with section 6250) ("CPRA"). If SJVIA receives a request under the CPRA or a similar
12 law to disclose any document that is in the Contractor's possession but which the SJVIA may
13 review, request, or obtain from the Contractor under this agreement, then the SJVIA will
14 promptly notify the Contractor and request the responsive documents that may be in the
15 possession of the Contractor. The notification shall be in writing, which may include but is not
16 limited to the email addressed to the appropriate key person or persons. Upon receiving that
17 notification, the Contractor has five business days in which to provide responsive documents,
18 use the procedure provided in section 10.4 of this agreement, or both. The Contractor shall
19 promptly inform the SJVIA if the Contractor believes that five business days are not sufficient
20 time in which to respond. The Contractor shall indemnify the SJVIA for any award of costs or
21 attorney's fees under the CPRA that results from the Contractor's use of the procedure provided
22 in section 10.4 of this agreement.

23 **10.4 Withholding and Redacting.** If the SJVIA for any reason requests any records,
24 data, or documents from the Contractor and the Contractor believes that the responsive
25 documents contain trade secrets, proprietary information or other information that is subject to
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1 legal privilege or separate legally-enforceable obligation of the Contractor to withhold, then the
2 Contractor may do the following:

3 (A) The Contractor may redact the records or data before providing them, if that is
4 practicable, or withhold the records or data if redaction is not practicable.

5 (B) If the Contractor redacts or withholds any documents, it shall provide a privilege log
6 describing what has been redacted or withheld and identifying the legal privilege or legally-
7 enforceable obligation that is the reason for the redaction or withholding.

8 (C) If the SJVIA requests documents because of a CPRA request and the Contractor redacts or
9 withholds any documents, the Contractor shall also identify the specific provisions of the CPRA
10 (by citation to the California Government Code) which the Contractor believes would authorize
11 the SJVIA to redact or withhold the documents requested.

12 **10.5 News and Promotional Releases.** News releases and promotional activities
13 regarding the services provided by the Contractor under this Agreement shall be undertaken
14 only in a manner that is mutually acceptable, in advance, to both parties and upon their
15 respective express, prior written approval. Nothing in this section limits the information that may
16 be provided by SJVIA staff to the board of directors for the SJVIA that is subject to disclosure
17 under the CPRA, or any other information that is subject to disclosure under the CPRA.

18 **Article 11**

19 **Confidential Information**

20 11.1 All data, programs, and other materials provided to the Contractor by the SJVIA, by
21 Participating Entities, or by eligible employees or participants in connection with this Agreement
22 are deemed "Confidential Information." Except for purposes of administration of the benefits and
23 as required or permitted in this Agreement, the Contractor, including its officers, agents, and
24 employees shall not disclose Confidential Information to any third party without the express prior
25 written consent of the SJVIA, and the affected eligible employee or participant.

1 11.2 The Contractor shall protect Confidential Information from inadvertent disclosure to
2 any third party in the same manner that it protects its own confidential information unless such
3 disclosure is required in response to a validly issued subpoena or other process of law. The
4 provisions of this Article 11 survive the termination or expiration of this Agreement.

5 **Article 12**

6 **Health Insurance Portability and Accountability Act (HIPAA)**

7 12.1 The parties to this Agreement shall be in strict conformance with all applicable
8 Federal and State of California laws and regulations, including but not limited to Sections 5328,
9 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et*
10 *seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil
11 Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the
12 Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section
13 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations,
14 including, but not limited to Title 45, CFR, Parts 142, 160, 162, and 164, The Health Information
15 Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and
16 security of patient information, and the Genetic Information Nondiscrimination Act (GINA) of
17 2008 regarding the confidentiality of genetic information.

18 12.2 Except as otherwise provided in this Agreement, the Contractor, as a Business
19 Associate of SJVIA, may use or disclose Protected Health Information (PHI) to perform
20 functions, activities or services for or on behalf of SJVIA, as specified in this Agreement,
21 provided that such use or disclosure shall not violate the Health Insurance Portability and
22 Accountability Act (HIPAA), 42 USC 1320d *et seq.* The uses and disclosures of PHI may not be
23 more expansive than those applicable to the SJVIA, as the "Covered Entity" under the HIPAA
24 Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or
25 legal responsibilities of the Business Associate.
26

1 12.3 The Contractor, including its subcontractors and employees, shall protect, from
2 unauthorized access, use, or disclosure of names and other identifying information, including
3 genetic information, concerning persons receiving services pursuant to this Agreement, except
4 where permitted in order to carry out data aggregation purposes for health care operations [45
5 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any
6 and all persons receiving services pursuant to a SJVIA funded program. This requirement
7 applies to electronic PHI. The Contractor shall not use such identifying information or genetic
8 information for any purpose other than as permitted by this Agreement or for carrying out the
9 Contractor's obligations under this Agreement.

10 12.4 The Contractor, including its subcontractors and employees, shall not disclose any
11 such identifying information or genetic information to any person or entity, except as otherwise
12 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other
13 law, required by the Secretary, or authorized by the client/patient in writing. In using or
14 disclosing PHI that is permitted by this Agreement or authorized by law, the Contractor shall
15 make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose
16 of use, disclosure, or request.

17 12.5 For purposes of the above sections, identifying information shall include, but not be
18 limited to name, identifying number, symbol, or other identifying particular assigned to the
19 individual, such as finger or voice print, or photograph.

20 12.6 For purposes of the above sections, genetic information shall include genetic tests of
21 family members of an individual or individual, manifestation of disease or disorder of family
22 members of an individual, or any request for or receipt of, genetic services by individual or
23 family members. Family member means a dependent or any person who is first, second, third,
24 or fourth degree relative. The Contractor shall provide access, at the request of SJVIA, and in
25 the time and manner designated by the SJVIA, to PHI in a designated record set (as defined in
26 45 CFR Section 164.501), to an individual or to the SJVIA in order to meet the requirements of

1 45 CFR Section 164.524 regarding access by individuals to their PHI. With respect to individual
2 requests, access shall be provided within thirty (30) days from request. Access may be
3 extended if the Contractor cannot provide access and provides individual with the reasons for
4 the delay and the date when access may be granted. PHI shall be provided in the form and
5 format requested by the individual or SJVIA.

6 (A) The Contractor shall make any amendment(s) to PHI in a designated record set
7 at the request of SJVIA or individual, and in the time and manner designated by the
8 SJVIA in accordance with 45 CFR Section 164.526.

9 (B) The Contractor shall provide to the SJVIA or to an individual, in a time and
10 manner designated by the SJVIA, information collected in accordance with 45 CFR
11 Section 164.528, to permit the SJVIA to respond to a request by the individual for an
12 accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

13 12.7 The Contractor shall report to the SJVIA, in writing, any knowledge or reasonable
14 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or
15 breach of unsecured PHI not permitted by this Agreement of which it becomes aware,
16 immediately and without reasonable delay and in no case later than five (5) days of discovery,
17 unless applicable law requires earlier notice. Immediate notification shall be made to the
18 SJVIA's Privacy Officer within five (5) business days of discovery. The notification shall include,
19 to the extent possible, the identification of each individual whose unsecured PHI has been, or is
20 reasonably believed to have been, accessed, acquired, used, disclosed, or breached. The
21 Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining
22 to such unauthorized disclosure required by applicable Federal and State Laws and regulations.
23 The Contractor shall investigate such breach and is responsible for all notifications required by
24 law and regulation or deemed necessary by the SJVIA and shall provide a written report of the
25 investigation and reporting required to the SJVIA's Privacy Officer. This written investigation
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1 and description of any reporting necessary shall be postmarked as mailed to the SJVIA's
2 Privacy Officer within the thirty (30) working days of the discovery of the breach.

3 12.8 The Contractor shall make its internal practices, books, and records relating to the
4 use and disclosure of PHI received from SJVIA, or created or received by the Contractor on
5 behalf of SJVIA, in compliance with HIPAA's Privacy Rule, including, but not limited to the
6 requirements set forth in Title 45, CFR, Parts 160 and 164. The Contractor shall make its
7 internal practices, books, and records relating to the use and disclosure of PHI received from
8 SJVIA, or created or received by the Contractor on behalf of the SJVIA, available to the
9 Secretary upon demand.

10 12.9 The Contractor shall cooperate with the compliance and investigation reviews
11 conducted by the Secretary. PHI access to the Secretary must be provided during the
12 Contractor's normal business hours, however, upon exigent circumstances access at any time
13 must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable
14 to the Contractor and in possession of a subcontractor, it must certify efforts to obtain the
15 information to the Secretary.

16 12.10 **Safeguards.**

17 (A) The Contractor shall implement administrative, physical, and technical
18 safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR Part 164, that
19 reasonably and appropriately protects the confidentiality, integrity, and availability of PHI,
20 including electronic PHI, that it creates, receives, maintains or transmits on behalf of
21 SJVIA and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI
22 other than as provided for by this Agreement. The Contractor shall conduct an accurate
23 and thorough assessment of the potential risks and vulnerabilities to the confidentiality,
24 integrity, and availability of electronic PHI. The Contractor shall develop and maintain a
25 written information privacy and security program that includes administrative, technical,
26 and physical safeguards appropriate to the size and complexity of the Contractor's

1 operations and the nature and scope of its activities. Upon the SJVIA's request, the
2 Contractor shall provide the SJVIA with information concerning such safeguards.

3 (B) CONTRACTOR shall implement strong access controls and other security
4 safeguards and precautions in order to restrict logical and physical access to
5 confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said
6 safeguards and precautions shall include the following administrative and technical
7 password controls for all systems used to process or store confidential, personal, or
8 sensitive data:

9 (1) **Passwords must NOT be:**

- 10 (a) Shared or written down where they are accessible or recognizable by
11 anyone else; such as taped to computer screens, stored under
12 keyboards, or visible in a work area;
13 (b) A dictionary word; or
14 (c) Stored in clear text

15 (2) **Passwords must be:**

- 16 (a) Eight characters or more in length;
17 (b) Changed immediately if revealed or compromised; and
18 (c) Composed of characters from at least three of the following four groups
19 from the standard keyboard:
20 (i) Upper case letters (A-Z);
21 (ii) Lowercase letters (a-z);
22 (iii) Arabic numerals (0 through 9); and
23 (iv) Non-alphanumeric characters (punctuation symbols).

24 (C) The Contractor shall implement the following security controls on each
25 workstation or portable computing device (e.g., laptop computer) containing confidential,
26 personal, or sensitive data:

- 1 (1) Network-based firewall and/or personal firewall;
2 (2) Continuously updated anti-virus software; and
3 (3) Patch management process including installation of all operating
4 system/software vendor security patches.

5 (D) The Contractor shall utilize a commercial encryption solution that has received
6 FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on
7 portable electronic media (including, but not limited to, compact disks and thumb drives)
8 and on portable computing devices (including, but not limited to, laptop and notebook
9 computers).

10 (E) The Contractor shall not transmit confidential, personal, or sensitive data via e-
11 mail or other internet transport protocol unless the data is encrypted by a solution that
12 has been validated by the National Institute of Standards and Technology (NIST) as
13 conforming to the Advanced Encryption Standard (AES) Algorithm. The Contractor must
14 apply appropriate sanctions against its employees who fail to comply with these
15 safeguards. The Contractor must adopt procedures for terminating access to PHI when
16 employment of employee ends.

17 **12.11 Mitigation of Harmful Effects.** The Contractor shall mitigate, to the extent
18 practicable, any harmful effect that is suspected or known to the Contractor of an unauthorized
19 access, viewing, use, disclosure, or breach of PHI by the Contractor or its subcontractors in
20 violation of the requirements of these provisions. The Contractor must document suspected or
21 known harmful effects and the outcome.

22 **12.12 Contractor's Subcontractors.** The Contractor shall ensure that any of its
23 contractors, including subcontractors, if applicable, to whom the Contractor provides PHI
24 received from or created or received by the Contractor on behalf of SJVIA, agree to the same
25 restrictions, safeguards, and conditions that apply to the Contractor with respect to such PHI
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1 and to incorporate, when applicable, the relevant provisions of these provisions into each
2 subcontract or sub-award to such agents or subcontractors.

3 **12.13 Employee Training and Discipline.** The Contractor shall train and use reasonable
4 measures to ensure compliance with the requirements of these provisions by employees who
5 assist in the performance of functions or activities on behalf of SJVIA under this Agreement and
6 use or disclose PHI and discipline such employees who intentionally violate any provisions of
7 these provisions, including termination of employment.

8 **12.14 Termination for Breach.** Upon the SJVIA's knowledge of a material breach of this
9 Article 12 by the Contractor, the SJVIA shall either:

10 (A) Provide an opportunity for the Contractor to cure the breach or end the violation
11 and terminate this Agreement if the Contractor does not cure the breach or end the
12 violation within the time specified by SJVIA; or

13 (B) Immediately terminate this Agreement if the Contractor has breached a material
14 term of these provisions and cure is not possible.

15 If neither cure nor termination is feasible, the SJVIA's Privacy Officer shall report the
16 violation to the Secretary.

17 **12.15 Judicial or Administrative Proceedings.** The SJVIA may terminate this
18 Agreement in accordance with the provisions of this Agreement if:

19 (A) The Contractor is found guilty in a criminal proceeding for a violation of the
20 HIPAA Privacy or Security Laws or the HITECH Act; or

21 (B) There is a finding or stipulation that the Contractor has violated a privacy or
22 security standard or requirement of the HITECH Act, HIPAA or other security or privacy
23 laws in an administrative or civil proceeding in which the Contractor is a party.

24 **12.16 Effect of Termination.** Upon termination or expiration of this Agreement for any
25 reason, the Contractor shall return or destroy all PHI received from SJVIA (or created or
26 received by the Contractor on behalf of the SJVIA) that the Contractor still maintains in any

1 form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it
2 shall continue to extend the protections of these provisions to such information, and limit further
3 use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
4 This provision shall apply to PHI that is in the possession of subcontractors or agents, if
5 applicable, of the Contractor. If the Contractor destroys the PHI data, upon request by SJVIA, a
6 certification of date and time of destruction shall be provided to the SJVIA by the Contractor.

7 **12.17 Disclaimer.** The SJVIA makes no warranty or representation that compliance by the
8 Contractor with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
9 adequate or satisfactory for the Contractor's own purposes or that any information in the
10 Contractor's possession or control, or transmitted or received by the Contractor, is or will be
11 secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely
12 responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

13 **12.18 Amendment.** The parties acknowledge that federal and State laws relating to
14 electronic data security and privacy are rapidly evolving and that amendment of this Agreement
15 may be required to provide for procedures to ensure compliance with such developments. The
16 parties specifically agree to take such action as is necessary to amend this Agreement in order
17 to implement the standards and requirements of HIPAA, the HIPAA regulations, the HITECH
18 Act and other applicable laws relating to the security or privacy of PHI. The SJVIA may
19 terminate this Agreement upon 30 days' written notice if the Contractor does not enter into an
20 amendment providing assurances regarding the safeguarding of PHI that the SJVIA in its sole
21 discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA
22 regulations and the HITECH Act.

23 **12.19 No Third-Party Beneficiaries.** Nothing express or implied in the terms and
24 conditions of these provisions is intended to confer, nor shall anything herein confer, upon any
25 person other than the SJVIA or the Contractor and their respective successors or assigns, any
26 rights, remedies, obligations, or liabilities whatsoever.

1 **12.20 Interpretation.** The provisions of this Article 12 shall be interpreted as broadly as
2 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State
3 laws. The parties agree that any ambiguity in the provisions of this Article 12 shall be resolved
4 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

5 **12.21 Regulatory References.** A reference in the provisions of this Article 12 to a section
6 in the HIPAA regulations means the section as in effect or as amended.

7 **12.22 Survival.** The provisions of this Article 12 survive the termination or expiration of
8 this Agreement.

9 **12.23 No Waiver of Obligations.** No change, waiver or discharge of any liability or
10 obligation under this Article 12 on any one or more occasions shall be deemed a waiver of
11 performance of any continuing or other obligation, or shall prohibit enforcement of any obligation
12 on any other occasion.

13 **12.24 Definitions.** For the purposes of this Article 12:

14 (A) The SJVIA's Privacy Officer is the SJVIA Manager.

15 (B) The Secretary is as defined in 45 CFR Section 160.103.

16 **Article 13**

17 **General Terms**

18 **13.1 Modification.** This Agreement may not be modified, and no waiver is effective,
19 except by another written agreement that is signed by both parties.

20 **13.2 Non-Assignment.** Neither party may assign rights or delegate its obligations under
21 this Agreement without the prior written consent of the other party.

22 **13.3 Governing Law.** The laws of the State of California govern all matters arising from
23 or related to this Agreement.

24 **13.4 Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
25 County, California. Contractor consents to California jurisdiction for actions arising from or
26

1 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
2 brought and maintained in the Fresno County Superior Court.

3 13.5 **Construction.** The final form of this Agreement is the result of the parties' combined
4 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
5 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
6 against either party.

7 13.6 **Headings.** The headings and section titles in this Agreement are for convenience
8 only and are not part of this Agreement.

9 13.7 **Severability.** If anything in this Agreement is found by a court of competent
10 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
11 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
12 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
13 intent.

14 13.8 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
15 not unlawfully discriminate against any employee or applicant for employment, or recipient of
16 services, because of race, religious creed, color, national origin, ancestry, physical disability,
17 mental disability, medical condition, genetic information, marital status, sex, gender, gender
18 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
19 all applicable State of California and Federal statutes and regulation.

20 13.9 **No Waiver.** Payment, waiver, or discharge by the SJVIA of any liability or obligation
21 of the Contractor under this Agreement on any one or more occasions is not a waiver of
22 performance of any continuing or other obligation of the Contractor and does not prohibit
23 enforcement by the SJVIA of any obligation on any other occasion.

24 13.10 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
25 between the Contractor and the SJVIA with respect to the subject matter of this Agreement, and
26 it supersedes all previous negotiations, proposals, commitments, writings, advertisements,

1 publications, and understandings of any nature unless those things are expressly included in
2 this Agreement. If there is any inconsistency between the terms of this Agreement without its
3 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
4 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
5 exhibits.

6 13.11 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
7 create any rights or obligations for any person or entity except for the parties.

8 13.12 **Authorized Signature.** The Contractor represents and warrants to the SJVIA that:

9 (A) The Contractor is duly authorized and empowered to sign and perform its
10 obligations under this Agreement.

11 (B) The individual signing this Agreement on behalf of the Contractor is duly
12 authorized to do so and his or her signature on this Agreement legally binds the
13 Contractor to the terms of this Agreement.

14 13.13 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
15 original, and all of which together constitute this Agreement.

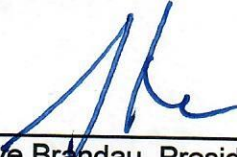
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The parties are signing this Agreement on the date stated in the introductory clause.

Navia Benefit Solutions, Inc.

SAN JOAQUIN VALLEY INSURANCE
AUTHORITY



Hilarie Aitken
CEO

Steve Brandau, President of the Board of
Directors

Reviewed and recommended for approval.

SJVIA Manager

Exhibit A

Scope of Services

The Contractor shall deliver the following services for Fresno County Actives and Fresno County Special Districts:

Federal COBRA/FMLA administrative services

- Administration of mandatory notices required under COBRA provided Navia Benefit Solutions, Inc. timely receives all necessary information
- COBRA/FMLA tracking
- Client and participant on-line COBRA account access
- COBRA letters regarding early termination of COBRA coverage
- Process enrollment/change/termination forms to facilitate administration
- COBRA training and support
- Provide COBRA updates to clients
- Receive Premiums
- Interaction with carriers upon request of the client and carrier approval
- Navia Benefit Solutions will track the deadline for issuing mandatory notices once complete information is received from employer

COBRA Initial notices are sent at the time the client informs Navia Benefit Solutions of the new enrollee. Navia Benefit Solutions does not send annually or at the change of any plans unless specifically requested to do so by the employer. Additional fees may apply for these requests.

The Contractor shall deliver the following services for Fresno County Retirees:

Retiree Billing administrative services:

- Process the Retirees' enrollment paperwork once received from the client
- Send the Retiree an introductory letter that includes:

Exhibit A

- 1 ○ Coupons to either mail the monthly premiums by check or money order
- 2 ○ ACH Form that allows Navia Benefit Solutions to establish ACH for auto-payment
- 3 ○ Offer credit card payment options
- 4 ● Track and collect the monthly premiums
- 5 ● Remit premiums to client directly as Navia Benefit Solutions does not send to the carrier
- 6 ● Notify client of all retiree terminations

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8 The Contractor shall deliver on an on-going basis the following services:

- 9 ● Provide reimbursement checks or direct deposits payable to employees
- 10 ● Process payroll contributions
- 11 ● On an annual basis, Navia Benefit Solutions will reconcile each plan after the designated
- 12 run out period
- 13 ● Provide plan document amendments/restatements as required (fees may apply)

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15 The Contract shall provide, as requested, reports as to utilization and ad-hoc reports.

16 Navia Benefit Solutions reserves the right to deactivate debit cards and/or suspend the

17 processing of claims due to a delinquent account or misuse of the debit card.

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Exhibit B

Compensation

Fresno County Actives and Special Districts

Fees paid to Contractor will be on a Per Employee Per Month (PEPM) or Per Employee Per Cycle (PEPC) structure. The fee breakdown is as follows:

- COBRA Services: \$2.00 PEPM
- FMLA Services: \$0.92 PEPC

Fresno County Retirees

Fees paid to Contractor will be on a Per Participant Per Month. The fee breakdown is as follows:

- Retiree Billing: \$2.00 Per Participant Per Month

Exhibit C

Insurance

1. Required Policies

Without limiting the SJVIA's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). This policy must be issued on a per occurrence basis. The Contractor shall obtain an endorsement to this policy naming the San Joaquin Valley Insurance Authority, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the SJVIA is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the California Labor Code.
- (D) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the SJVIA annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (E) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include, but not be limited to, claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any PHI, which may include disclosure of Confidential Information or PHI (collectively, "Personal Information") to an unauthorized third party or any loss or destruction of, or any corruption or damage to, any Personal Information ("Security Breach"); (ii) any act or omission that compromises the physical, technical, administrative, or organizational

Exhibit C

Insurance

security procedures and practices put in place by the Contractor that relate to the protection of the security, confidentiality, value, or integrity of Personal Information; (ii) breach of any of the Contractor's obligations under Articles 11 or 12 of this Agreement; (iii) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (iv) invasion of privacy, including release of private information; (v) information theft; (vi) damage to or destruction or alteration of electronic information; (vii) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (viii) network security; (ix) data breach response costs, including Security Breach response costs; (x) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xi) credit monitoring expenses.

2. Additional Requirements

(A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, the Contractor shall deliver, or cause its broker or producer to deliver, to 2220 Tulare St., 14th Floor, Fresno, CA 93721, or SJVIA-Admin@fresnocountyca.gov copies of insurance policies as produced by the broker or producer, and certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) All insurance certificates must state that: (1) the insurance coverage has been obtained and is in full force; (2) the SJVIA, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the SJVIA, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state that: (1) the San Joaquin Valley Insurance Authority, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned; (2) the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the SJVIA shall be excess only and not contributing with insurance provided under the Contractor's policy.
- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (v) The technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.

Exhibit C

Insurance

- (vi) The cyber liability insurance certificate must also state that it is endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of A:VII or greater.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the SJVIA, or ensure that the policy requires the insurer to provide to the SJVIA, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the SJVIA not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the SJVIA not less than 30 days in advance of cancellation or change. The SJVIA in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **SJVIA's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the SJVIA requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the SJVIA Manager copies of insurance policies that have such broader coverage, higher limits, or both, as produced by the broker or producer, and certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives its right to recover from the SJVIA, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **SJVIA's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the SJVIA may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The SJVIA may offset such charges against any amounts owed by the SJVIA to the Contractor under this Agreement.