SERVICE AGREEMENT

This Service Agreement ("Agreement") is dated October 14, 2022, and is between MyWorkplace, Inc., a Texas corporation, registered to do business in the State of California and operating at 400 N Loop 1604 E, Suite 110, San Antonio, Texas ("Contractor"), and the San Joaquin Valley Insurance Authority, a California joint powers agency ("SJVIA").

Recitals

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

B. The SJVIA desires to implement a benefits management and enrollment SaaS system for use by SJVIA Participating Entities to complete benefit related management functions as outlined in Exhibit A.

C. The Contractor represents that it is ready, willing, and able to provide the services desired by the SJVIA according to the terms of this agreement.

The parties therefore agree as follows:

Article 1

Contractor's Services

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

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

Article 2

SJVIA's Responsibilities

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

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

Article 3

Compensation, Invoices, and Payments

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

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

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

Article 4

Term of Agreement

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

Article 5

Notices

5.1   **Contact Information.** The persons and their addresses having authority to give and

receive notices provided for or permitted under this Agreement include the following:

> **For the SJVIA:**
> SJVIA Manager
> 2220 Tulare Street, 14th Floor
> Fresno, California 93721
> SJVIA-Admin@fresnocountyca.gov
>
> **For the Contractor:**
> Seth Bostelman
> Vice President Sales and Marketing
> MyWorkplace, Inc.
> 400 N Loop 1604 E, Suite 110
> San Antonio, TX 78232
> seth.bostelman@myworkplace.net

5.2   **Change of Contact Information.** Either party may change the information in section

5.1 by giving notice as provided in section 5.3.

5.3   **Method of Delivery.** All notices between the SJVIA and the Contractor provided for

or permitted under this Agreement must be in writing and delivered either by personal service,

by first-class United States mail, by an overnight commercial courier service, by telephonic

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.

(C) A notice delivered by an overnight commercial courier service is effective one

County of Fresno business day after deposit with the overnight commercial courier

service, delivery fees prepaid, with delivery instructions given for next day delivery,

addressed to the recipient.

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

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

Article 6

Termination and Suspension

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

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

(B) Terminate this Agreement.

6.2   **Termination for Breach.**

(A) Upon determining that a breach (as defined in paragraph (C) below) has occurred, the SJVIA may give written notice of the breach to the Contractor. The written notice may suspend performance under this Agreement and must provide at least 30 days for the Contractor to cure the breach.

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

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

      (1) Obtained or used funds illegally or improperly;

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

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

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

6.3   **Termination without Cause.** In circumstances other than those set forth above, the SJVIA may terminate this Agreement by giving at least 30 days advance written notice to the Contractor.

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

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

Article 7

Independent Contractor

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

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

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

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

Article 8

Indemnity and Defense

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

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

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

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

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Article 9

Insurance

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9.1   The Contractor shall comply with all of the insurance requirements in Exhibit C to this Agreement.

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Article 10

Inspections, Audits, and Public Records

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

10.2   **State Audit Requirements.** If the compensation to be paid by the SJVIA under this Agreement exceeds $10,000, the Contractor is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this Agreement. This section survives the termination of this Agreement.

10.3   **Public Records.** The SJVIA may publicly disclose this Agreement under the Ralph M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950). This Agreement, and any record or data that the Contractor may provide to the SJVIA, regardless of whether it is marked as confidential or having restricted access, except for records that are subject to the Health Insurance Portability and Accountability Act ("HIPAA") as provided in Article 11 of this Agreement, is subject to public disclosure as a public record under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA").

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

Article 11

Confidential Information

11.1 All data, programs, and other materials provided to the Contractor by the SJVIA, by Participating Entities, or by eligible employees or participants in connection with this Agreement are deemed "Confidential Information." The Contractor, including its officers, agents, and employees shall not disclose Confidential Information to any third party without the express prior written consent of the SJVIA, and the affected eligible employee or participant.

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

Article 12

Health Insurance Portability and Accountability Act (HIPAA)

12.1 The parties to this Agreement shall be in strict conformance with all applicable Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations,

including, but not limited to Title 45, CFR, Parts 142, 160, 162, and 164, The Health Information

Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and

security of patient information, and the Genetic Information Nondiscrimination Act (GINA) of

2008 regarding the confidentiality of genetic information.

12.2   Except as otherwise provided in this Agreement, the Contractor, as a Business

Associate of SJVIA, may use or disclose Protected Health Information (PHI) to perform

functions, activities or services for or on behalf of SJVIA, as specified in this Agreement,

provided that such use or disclosure shall not violate the Health Insurance Portability and

Accountability Act (HIPAA), 42 USC 1320d *et seq.* The uses and disclosures of PHI may not be

more expansive than those applicable to the SJVIA, as the "Covered Entity" under the HIPAA

Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or

legal responsibilities of the Business Associate.

12.3   The Contractor, including its subcontractors and employees, shall protect, from

unauthorized access, use, or disclosure of names and other identifying information, including

genetic information, concerning persons receiving services pursuant to this Agreement, except

where permitted in order to carry out data aggregation purposes for health care operations [45

CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any

and all persons receiving services pursuant to a SJVIA funded program. This requirement

applies to electronic PHI. The Contractor shall not use such identifying information or genetic

information for any purpose other than carrying out the Contractor's obligations under this

Agreement.

12.4   The Contractor, including its subcontractors and employees, shall not disclose any

such identifying information or genetic information to any person or entity, except as otherwise

specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other

law, required by the Secretary, or authorized by the client/patient in writing. In using or

disclosing PHI that is permitted by this Agreement or authorized by law, the Contractor shall

make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose of use, disclosure or request.

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

12.6 For purposes of the above sections, genetic information shall include genetic tests of family members of an individual or individual, manifestation of disease or disorder of family members of an individual, or any request for or receipt of, genetic services by individual or family members. Family member means a dependent or any person who is first, second, third, or fourth degree relative.

12.7 The Contractor shall provide access, at the request of SJVIA, and in the time and manner designated by the SJVIA, to PHI in a designated record set (as defined in 45 CFR Section 164.501), to an individual or to the SJVIA in order to meet the requirements of 45 CFR Section 164.524 regarding access by individuals to their PHI. With respect to individual requests, access shall be provided within thirty (30) days from request. Access may be extended if the Contractor cannot provide access and provides individual with the reasons for the delay and the date when access may be granted. PHI shall be provided in the form and format requested by the individual or SJVIA.

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

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

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

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

12.10   The Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the Contractor's normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable

to the Contractor and in possession of a subcontractor, it must certify efforts to obtain the
information to the Secretary.

    12.11 **Safeguards.**

        (A) The Contractor shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR Part 164, that reasonably and appropriately protects the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of SJVIA and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. The Contractor shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of electronic PHI. The Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Upon the SJVIA's request, the Contractor shall provide the SJVIA with information concerning such safeguards.

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

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

                (a) Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

                (b) A dictionary word; or

(c) Stored in clear text

(2) **Passwords must be**:

 (a) Eight characters or more in length;

 (b) Changed every 90 days;

 (c) Changed immediately if revealed or compromised; and

 (d) Composed of characters from at least three of the following four groups from the standard keyboard:

  (i) Upper case letters (A-Z);

  (ii) Lowercase letters (a-z);

  (iii) Arabic numerals (0 through 9); and

  (iv) Non-alphanumeric characters (punctuation symbols).

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

 (1) Network-based firewall and/or personal firewall;

 (2) Continuously updated anti-virus software; and

 (3) Patch management process including installation of all operating system/software vendor security patches.

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

(E) The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as

conforming to the Advanced Encryption Standard (AES) Algorithm. The Contractor must apply appropriate sanctions against its employees who fail to comply with these safeguards. The Contractor must adopt procedures for terminating access to PHI when employment of employee ends.

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

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

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

12.15 **Termination for Cause.** Upon the SJVIA's knowledge of a material breach of this Article 12 by the Contractor, the SJVIA shall either:

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

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(B) Immediately terminate this Agreement if the Contractor has breached a material

term of these provisions and cure is not possible.

If neither cure nor termination is feasible, the SJVIA's Privacy Officer shall report the

violation to the Secretary.

12.16 **Judicial or Administrative Proceedings.** The SJVIA may terminate this Agreement

in accordance with the provisions of this Agreement if:

(A) The Contractor is found guilty in a criminal proceeding for a violation of the

HIPAA Privacy or Security Laws or the HITECH Act; or

(B) There is a finding or stipulation that the Contractor has violated a privacy or

security standard or requirement of the HITECH Act, HIPAA or other security or privacy

laws in an administrative or civil proceeding in which the Contractor is a party.

12.17 **Effect of Termination.** Upon termination or expiration of this Agreement for any

reason, the Contractor shall return or destroy all PHI received from SJVIA (or created or

received by the Contractor on behalf of the SJVIA) that the Contractor still maintains in any

form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall

continue to extend the protections of these provisions to such information, and limit further use

of such PHI to those purposes that make the return or destruction of such PHI infeasible. This

provision shall apply to PHI that is in the possession of subcontractors or agents, if applicable,

of the Contractor. If the Contractor destroys the PHI data, a certification of date and time of

destruction shall be provided to the SJVIA by the Contractor.

12.18 **Disclaimer.** The SJVIA makes no warranty or representation that compliance by the

Contractor with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be

adequate or satisfactory for the Contractor's own purposes or that any information in the

Contractor's possession or control, or transmitted or received by the Contractor, is or will be

secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely

responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

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

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

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

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

12.23 **Survival.** The provisions of this Article 12 survive the termination or expiration of this Agreement.

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

12.25 **Definitions.** For the purposes of this Article 12:

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

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

Article 13

General Terms

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

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

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

13.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno County, California. Contractor consents to California jurisdiction for actions arising from or related to this Agreement, and, subject to the Government Claims Act, all such actions must be brought and maintained in the Fresno County Superior Court.

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

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

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

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

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

13.10   **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement between the Contractor and the SJVIA with respect to the subject matter of this Agreement, and it supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature unless those things are expressly included in this Agreement. If there is any inconsistency between the terms of this Agreement without its exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving precedence first to the terms of this Agreement without its exhibits, and then to the terms of the exhibits.

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

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

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

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

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

<div align="center">[SIGNATURE PAGE FOLLOWS]</div>

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

MyWorkplace, Inc.   SAN JOAQUIN VALLEY INSURANCE
                                                     AUTHORITY

Seth Bostelman
_____   _____
Seth Bostelman   Steve Brandau, President of the Board of
Vice President Sales and Marketing   Directors

                                                     Reviewed and recommended for approval.

                                                     _____
                                                     SJVIA Manager

Exhibit A

Scope of Services

County of Fresno

- Provide MyWorkplace Benefits Management and Enrollment System Access – Self Service

- Provide system technical support to County end users

- Produce Eligibility Electronic Data Interface (EDI) files to Carriers - Weekly Feeds

- Weekly COBRA data feed to Navia

- EDI Monitoring and Discrepancy Resolution with Carriers

- Multiple eligibility/billing scheme management and closings

- Active and Retiree payroll deduction imports and premium applications

- Compile Bi-Weekly and Monthly Transmittal Worksheets and Accounting breakouts for Actives, Retirees, Special District, Cobras, FMLA

- Assist County with reconciliation of member accounts and benefits that appear on accounting discrepancy reports

- Manual PGP Encryption and SFTP of All Files Uploaded/Downloaded - County won't allow the use of existing secure file transfer mechanism within AD

- Manual Bi-Weekly Import of Payroll Eligibility Data File For Active Employees From PeopleSoft System Including Review Of Log File for discrepancies and distribution/notification of import. Process is stable, but still needs to be run manually and monitored for discrepancies each and every bi-weekly cycle

- Manual Imports Of OnCycle/OffCycle deduction files for active employees including validation checking for bad/missing information prior to application of deposits

- Fulfill ad-hoc requests from County staff, ASI, and broker, i.e. custom queries, etc.

- Import Retiree Payroll Deductions into SQL tables and perform monthly comparisons to eligibility; take query results and compile a change file for FCERA to send to State Street

Exhibit A

bank for retiree deduction processing; process involves forwarding file to Benefits for review and any last-minute adjustments that might need to be made, file then transferred back to MyWorkplace, MyWorkplace converts spreadsheet data into bank specific flat file format, bank formatted file sent back through County IT to Benefits Department

- Modify MyWorkplace benefit setups at renewal to comply with changes made by County for new plan years

- At plan year changes, complete any employee/dependent data migrations necessary within database to meet plan year changes made by County

- Review rates provided by Keenan & Associates, break down rates into component pieces necessary for completing bi-weekly and monthly accounting transmittals, work with Keenan & Associates to verify rate breakouts are correct and approved for use, and provide copies of approved premiums and breakouts to County and Navia

- Input new plan year rates into MyWorkplace rate tables

- Coordinate and complete programming required to support new Carriers and/or benefit changes for EDI transmittals

County of Tulare

- Provide MyWorkplace Benefits Management and Enrollment System Access - Self Service

- Provide system technical support to Tulare County end users

- Produce Eligibility Electronic Data Interface (EDI) files to Carriers - Weekly Feeds

- EDI Monitoring and Discrepancy Resolution with Carriers

- Eligibility/billing scheme management and closings

- Monthly Transmittal Worksheets and Accounting breakouts for Actives

- Assist County of Tulare with reconciliation of member accounts and benefits that appear on accounting discrepancy reports

A-2

Exhibit A

1   •   Fulfill ad-hoc requests from County of Tulare staff, and broker, i.e. custom queries, etc.

2   •   Modify MyWorkplace benefit setups at renewal to comply with changes made by County

3   of Tulare for new plan years

4   •   At plan year changes, complete any employee/dependent data migrations necessary

5   within database to meet plan year changes made by County of Tulare

6   •   Review rates provided by County of Tulare and SJVIA Consultant, break down rates into

7   component pieces necessary for completing bi-weekly and monthly accounting

8   transmittals, work with SJVIA Consultant to verify rate breakouts are correct and

9   approved for use

10   •   Input new plan year rates into MyWorkplace rate table

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Exhibit B

Compensation

Fees paid to Contractor will be on a Per Employee Per Month (PEPM) or Per Employee Per Cycle (PEPC) structure and paid per the compiled monthly (PEPM) and biweekly (PEPC) disbursement transmittals prepared for SJVIA funding disbursement. The fee breakdown is as follows:

- 2023: $2.75 PEPM / $1.27 PEPC

- 2024: $2.90 PEPM / $1.34 PEPC

- 2025: $3.05 PEPM / $1.41PEPC

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

Exhibit C

Insurance

omission that compromises the physical, technical, administrative, or organizational 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,

Exhibit C

including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.

(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

Exhibit C

Insurance

charges against any amounts owed by the SJVIA to the Contractor under this Agreement.