

AMENDED AND RESTATED AGREEMENT

This agreement is dated December 9, 2022 and is between ELITE CORPORATE MEDICAL SERVICES, INC., a California professional corporation (“**Contractor**”), and the SAN JOAQUIN VALLEY INSURANCE AUTHORITY, a joint powers agency (“**SJVIA**”).

The SJVIA is a joint exercise of powers authority that negotiates, purchases, or otherwise funds health, pharmacy, vision, dental, and life insurance (each an “Insurance Program,” and collectively “Insurance Programs”). The SJVIA makes Insurance Programs available to participating entities, subject to the terms and conditions of an agreement by each participating entity to pay for its respective costs for the Insurance Programs in which it participates.

The SJVIA desires to contract with Contractor for on-site biometric health screening services. Health screening services include measurements of glucose, lipids, blood pressure, and body composition.

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

The parties therefore agree as follows:

Article 1 Contractor’s Obligations

1.1 **Scope of Services.** The Contractor shall provide the services described in Exhibit A to this agreement, which is attached.

1.2 **Additional Services.** The Contractor may provide additional services as the SJVIA and the Contractor mutually agree in writing.

1.3 **Key Persons.** The Contractor shall provide all services under this agreement through the following key persons:

Nicholas A. Gambini
Program Director
nick@ecwellness.net

Kate Nasalroad
Operations Analyst
kate@ecwellness.net

Tiffany Atteberry
Accounting
tiffany.atteberry@ecwellness.net

1.4 Cooperation with Management. The Contractor shall at all times cooperate with SJVIA management, which includes the SJVIA Manager, the SJVIA Assistant Manager, the SJVIA Auditor-Treasurer, any employee of the County of Fresno or the County of Tulare who is designated by one of those persons to administer the business and activities of the SJVIA, and counsel to the SJVIA. That cooperation includes reporting promptly to the SJVIA Manager and the SJVIA Assistant Manager any material oral or written communications received by the Contractor from a participating entity, prospective participating entity, or contractor of the SJVIA.

1.5 Confidentiality. The Contractor acknowledges that certain confidential information may be furnished by the SJVIA to the Contractor in connection with the services provided by the Contractor under this agreement ("Confidential Information"). The Contractor agrees that it will disclose Confidential Information only to persons who, in the Contractor's reasonable determination, need to know such information in order for the Contractor to provide services under this agreement. Disclosure by the Contractor of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency, or by a legislative body or committee is not a violation of this agreement. Confidential Information does not include information that:

(A) Is in the possession of the Contractor prior to its receipt of such information from the SJVIA;

(B) Is or becomes publicly available other than as a result of a breach of this agreement by the Contractor; or

(C) Is or can be independently acquired or developed by the Contractor without violating any of its obligations under this agreement.

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

Article 2 SJVIA's Obligations

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 that is 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 as described in Exhibit B to this agreement, which is attached.

3.2 **Invoices.** The Contractor shall submit invoices to the SJVIA within 30 days of services rendered.

3.3 **Payment.** The SJVIA shall pay all timely submitted invoices within 30 days of receipt.

3.4 **Incidental Expenses.** The Contractor is solely responsible for all expenses that are incidental to its performance under this agreement.

Article 4
Term and Termination

4.1 **Term.** This agreement is effective on December 9, 2022 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 11.1 of this agreement.

4.2 **Termination for Non-Allocation of Funds.** Both parties' obligations under this agreement are contingent on the approval of funds by the appropriating government agency or agencies. If sufficient funds are not allocated, then the SJVIA, upon 30 days advance written notice to the Contractor, may:

- (A) Modify either or both of the parties' obligations under this agreement; or
- (B) Terminate this agreement.

4.3 **Termination for Breach; Reinstatement.**

(A) Upon determining that a breach (as defined below) has occurred, the SJVIA Manager may give written notice of the breach to the Contractor. The written notice may suspend performance under this agreement and shall provide a reasonable time for the Contractor to cure the breach.

(B) If the Contractor fails to cure the breach within the reasonable time stated in the written notice, the SJVIA may terminate this agreement.

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

- (1) 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) Performed improperly as determined by the SJVIA.

4.4 **Termination for HIPAA Violation.** The SJVIA may terminate this agreement as provided in Article 8 of this agreement.

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

Article 5 Independent Contractor

5.1 **Status.** In performing under this agreement, the Contractor, including its officers, agents, and employees, 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.

5.2 **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 and conditions of this agreement (for example by requesting records of communications under section 1.5 of this agreement).

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

Article 6 Notices

6.1 **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
SAN JOAQUIN VALLEY INSURANCE AUTHORITY
2220 Tulare Street, 14th Floor
Fresno, CA 93721
(559) 455-4787 (Fax)

For the Contractor:

Nicholas A. Gambini
Program Director
ELITE CORPORATE MEDICAL SERVICES, INC.
319 N. Church St.
Visalia, CA 93291
559-733-7772

6.2 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, or by telephonic facsimile transmission.

(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 SJVIA 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 on SJVIA 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 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of SJVIA business hours, then such delivery shall be deemed to be effective at the next beginning of a SJVIA business day), provided that the sender maintains a machine record of the completed transmission.

6.3 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 but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

Article 7

Audits, Inspections, and Public Records

7.1 On-Site Audits and Inspections. The Contractor shall at any time during business hours, and as often as the SJVIA may deem necessary for any reason, make available to the SJVIA for examination all of its records and data with respect to the matters covered by this agreement.

7.2 Document Requests. The Contractor shall at any time, and as often as the SJVIA may deem necessary for any reason, provide copies of any records or data with respect to the matters covered by this agreement as the SJVIA may request. Such requests shall be fulfilled within a reasonable time as determined by the parties at the time of the request.

7.3 Public Records Act Requests. If the SJVIA receives a request under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA") or a similar law to disclose any document that is in the Contractor's possession but which the SJVIA may review, request, or obtain from the Contractor under sections 7.1 or 7.2 of this agreement, then the SJVIA will promptly notify the Contractor and request the responsive documents that may be in the possession of the Contractor. The notification shall be in writing, which may include but is not limited to email addressed to the

appropriate key person or persons. Upon receiving that notification, the Contractor has five business days in which to provide responsive documents, use the procedure provided in section 7.4 of this agreement, or both. The Contractor shall promptly inform the SJVIA if the Contractor believes that five business days are not sufficient time in which to respond. The Contractor shall indemnify the SJVIA for any award of costs or attorney's fees under the CPRA that results from the Contractor's use of the procedure provided in section 7.4 of this agreement.

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

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

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

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

7.5 State Audit Requirements. If 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. The obligations under this section survive the termination of this agreement.

7.6 Ownership of Records.

(A) Upon the performance of services under this agreement by the Contractor and payment by the SJVIA to the Contractor for those services, every written or electronic writing, document, data, tables, analysis, or reports, including, but not limited to, all insurance documents, insurance policies, memoranda of coverage, certificates of coverage, endorsements to coverage, claims reports and records, loss reports, financial records and statements, claims management agreements and audits, program promotional materials and correspondence between the Contractor and the SJVIA, its participating entities, or both, that is generated as a result of the Contractor's performance of services under this agreement shall remain the exclusive property of the SJVIA. The Contractor shall be entitled to keep a copy of such files and documents as may be necessary to demonstrate its performance under this agreement.

(B) In the event of termination or cancellation of this agreement, the Contractor shall return all such records and files to the SJVIA unless the SJVIA requests the Contractor

to process any work or file in progress, which the Contractor will continue to process on a time and expense basis or as mutually agreed by the parties in writing. When such work is completed, all records and files relating to the work shall be returned to the SJVIA.

Article 8

Health Insurance Portability and Accountability Act

8.1 The parties 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 California 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; the Health Insurance Portability and Accountability Act, as amended, including but not limited to Section 1320 D et seq. of Title 42, United States Code, and its implementing regulations, including but not limited to Title 45, CFR, Parts 142, 160, 162, and 164 (collectively, HIPAA); the Health Information Technology for Economic and Clinical Health Act, as amended (HITECH), regarding the confidentiality and security of patient information; and the Genetic Information Nondiscrimination Act of 2008, as amended (GINA), regarding the confidentiality of genetic information.

8.2 Except as otherwise provided in this agreement, the Contractor, as a business associate of the SJVIA, may use or disclose Protected Health Information (PHI) to perform functions, activities, or services for or on behalf of the SJVIA, as specified in this agreement provided that such use or disclosure does not violate HIPAA. The uses and disclosures of PHI may not be more expansive than those applicable to 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.

8.3 The Contractor, including its authorized subcontractors and employees, shall protect from unauthorized access, use, or disclosure the names and other identifying information, including genetic information, concerning persons receiving services under the Insurance Programs, except where permitted in order to carry out data aggregation for purposes of health care operations (45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A), and 164.504(e)(4)(i)). 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.

8.4 The Contractor, including its authorized 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 or 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 the intended purpose of the use, disclosure, or request.

8.5 For the purposes of the above sections, identifying information includes, but is not limited to, name, identifying number, symbol, or other identifying particular assigned to an individual, such as a finger- or voiceprint, or photograph.

8.6 For purposes of the above sections, genetic information includes, but is not limited to, genetic tests of an individual or family members of the individual, manifestation of disease or disorder of an individual or family members of the individual, or any request for or receipt of genetic services by an individual or family members of the individual. Family member means a dependent or any person who is a first, second, third, or fourth degree relative.

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

8.8 The Contractor shall make amendment or amendments to PHI in a designated record set in accordance with 45 CFR § 164.526.

8.9 The Contractor shall provide to the SJVIA or to an individual, in the time and manner specified by the SJVIA, information collected in accordance with 45 CFR § 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 § 164.528.

8.10 The Contractor shall, immediately and without unreasonable delay and in no case later than two business days after discovery, report to the SJVIA's Privacy Officer, 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. 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 of California laws and regulations. The Contractor shall investigate such breach and is responsible for all notifications required by law, regulation, or both, 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 30 working days of the discovery of the breach.

8.11 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, in compliance with the HIPAA Privacy Rule, including but not limited to the requirements set forth in 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 the SJVIA, or created or received by the Contractor on behalf of the SJVIA, available to the United States Department of Health and Human Services upon demand.

8.12 The Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. The Contractor must provide PHI access to the Secretary during the Contractor's normal business hours, but upon exigent circumstances shall also grant access at any time. Upon the Secretary's compliance or investigation review, if PHI is unavailable to the Contractor and in possession of a subcontractor, the Contractor must certify to the Secretary its efforts to obtain the information.

8.13 **Safeguards.** 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 the 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 confidential, 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.

8.14 **Security Safeguards and Precautions.** The 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.

8.15 **Password Controls.** Those 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.

(A) Passwords must not be:

(1) 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;

(2) A dictionary word; or

(3) Stored in clear text

(B) Passwords must be:

(1) Eight characters or more in length;

(2) Changed every 90 days;

(3) Changed immediately if revealed or compromised; and

(4) 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).

8.16 Security Controls. 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:

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

(B) Continuously updated anti-virus software; and

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

8.17 Encryption. The Contractor shall use 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).

8.18 Data Transmission. 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.

8.19 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 this Article 8. The Contractor must document suspected or known harmful effects and the outcome of any mitigation.

8.20 Contractor's Subcontractors. The Contractor shall ensure that each of its contractors, including subcontractors, if applicable, to whom the Contractor provides PHI received from or created or received by the Contractor from or on behalf of the SJVIA, agrees 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.

8.21 Employee Training and Discipline. The Contractor shall train and use reasonable measures to ensure compliance with the requirements of the provisions of this Article 8 by employees who assist in the performance of functions or activities on behalf of the 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.

8.22 Termination for Breach. Upon the SJVIA's knowledge of a material breach of these provisions 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 the SJVIA; or

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

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

8.23 Termination after Judicial or Administrative Proceedings. The SJVIA may terminate this agreement if: (1) the Contractor is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) 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.

8.24 Obligations upon Termination. Upon termination or expiration of this agreement for any reason, the Contractor shall return or destroy all PHI received from the SJVIA (or created or received by the Contractor on behalf of 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, the Contractor 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 applies to PHI that is in the possession of subcontractors or agents, if applicable, of the Contractor. If the Contractor destroys the PHI data, the Contractor shall provide to the SJVIA a certification of date and time of destruction

8.25 Disclaimer. The SJVIA makes no warranty or representation that compliance by the Contractor with the provisions of this Article 8, HIPAA, or HITECH 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.

8.26 Amendment. The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of these provisions 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, HITECH, 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 and HITECH.

8.27 **Interpretation.** The terms of this Article 8 shall be interpreted as broadly as necessary to implement and comply with HIPAA and applicable State of California laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA.

8.28 **Regulatory References.** Any reference in this agreement to a law or regulation means the law or regulation as in effect or as amended.

8.29 **Survival.** The obligations of the Contractor as provided in this Article 8 survive the termination or expiration of this agreement.

8.30 **Definitions.** For purposes of this Article 8:

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

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

Article 9 Indemnity

9.1 **Indemnification.** Each party ("Indemnifying Party") will promptly defend, indemnify, and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses, or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this agreement.

9.2 **Limitation of Liability.** Notwithstanding any other term of this agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential, or punitive damages. Further, the aggregate liability under this agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

Article 10 Insurance

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

Article 11 General Provisions

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

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

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

11.4 **Jurisdiction and Venue.** This agreement is signed and performed in Fresno County, California. The 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.

11.5 **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 is to be resolved by construing the terms of this agreement according to their generally accepted meaning, and not by construing the terms of this agreement for or against either party.

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

11.7 **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.

11.8 **No Waiver.** Payment, change, waiver, or discharge 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 and does not prohibit enforcement by the SJVIA of any obligation on any other occasion.

11.9 **Entire Agreement.** This agreement 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.

11.10 **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.

11.11 **Authorized Signatures.** 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 will legally bind the Contractor to the terms of this agreement.

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

[SIGNATURE PAGE FOLLOWS]

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

CONTRACTOR



(Authorized signature)

Nicholas Gambini

Nicholas Gambini, Program Director

SAN JOAQUIN VALLEY INSURANCE
AUTHORITY

Steve Brandau, President, Board of Directors

Reviewed and recommended for approval.

SJVIA Manager

Exhibit A Scope of Work

The Contractor shall provide the following services:

On-site Finger-stick Biometric Screening

On-site Biometric Health Screenings at mutually agreeable SJVIA designated locations. Participants will be encouraged to sign-up for a prescheduled time prior to on-site events. Walk-ins will be accommodated as schedule and screening technician(s) availability allows. Events will be staffed based on SJVIA provided eligible population for each respective location as well as pre-scheduled enrollment through secure on-line scheduling portal. Contractor will provide scheduling portal, unless SJVIA prefers alternative scheduling methodology. Screenings will be facilitated on a one-on-one basis using a finger-stick puncture. Results are immediate and will be provided in a comprehensive results packet reviewed with each participant.

Services shall include measurement of the following health parameters:

- Non-fasting glucose
- Non-fasting lipids
 - Total Cholesterol
 - HDL
- Blood Pressure
 - Systolic & Diastolic
 - Heart rate
- Body Composition
 - Height/weight
 - Body fat percentage
 - Body Mass Index

The Contractor shall provide each participant with a printed results packet of all recorded measurements listed above.

The Contractor shall review individual results with each participant at the time of service.

The Contractor shall create and submit (electronically via email), an Aggregate Report with no individually identifying information. Aggregate Report shall be submitted to SJVIA designated representative within 30 days of service completion, unless additional time is needed for the Contractor's review and evaluation of results.

On-site Biometric 35-panel Venipuncture Screening

On-site 35-panel Biometric Health Screenings at mutually agreeable SJVIA designated locations. Participants will be encouraged to sign-up for a prescheduled time prior to on-site events. Walk-ins will be accommodated as schedule and screening technician(s) availability allows. Events will be staffed based on SJVIA provided eligible population for each respective location as well as pre-scheduled enrollment through secure on-line scheduling portal. Contractor will provide scheduling portal, unless SJVIA prefers alternative

Exhibit A Scope of Work

scheduling methodology. Screenings will be facilitated on a one-on-one basis using a venipuncture blood draw. Blood sample will be sent off for diagnostic study. Results report will be provided to the participant upon receipt from the diagnostic laboratory.

Services shall include measurement of the following health parameters:

- Comprehensive Metabolic Panel
- Complete Blood Count
- Lipid Panel
- Hemoglobin A1c
- Blood Pressure
 - Systolic & Diastolic
 - Heart rate
- Body Composition
 - Height/weight
 - Body fat percentage
 - Body Mass Index
- Additional PSA Screening available for age and gender appropriate participants.

The Contractor shall provide each participant with a printed results packet of all recorded measurements listed above upon receipt from diagnostic laboratory.

The Contractor shall be available to review individual results with each participant.

The Contractor shall create and submit (electronically via email), an Aggregate Report with no individually identifying information. Aggregate Report shall be submitted to SJVIA designated representative within 30 days of service completion, unless additional time is needed for the Contractor's review and evaluation of results.

Digital Health Risk Assessment

Participants will be encouraged to participate in an on-line digital health risk assessment. The confidential digital health risk assessment will address health and wellness topics that include personal safety, tobacco/alcohol/substance abuse, mental health, nutrition, and physical fitness. Upon completion of the participants' health risk assessment they will receive a personalized report focusing on areas of opportunity and risks.

The Contractor shall create and submit (electronically via email), an Aggregate Report with no individually identifying information. Aggregate Report shall be submitted to SJVIA designated representative within 30 days of service completion, unless additional time is needed for the Contractor's review and evaluation of results.

Exhibit B Compensation

On-site Finger-stick Biometric Screening

The SJVIA shall pay \$39.50 per screening, within 30 days of invoicing of services. In the event of an incomplete screening, SJVIA will still be responsible for full compensation for the engagement unless incomplete screening is due to Contractor's fault. Participant refusal to complete any aspect of the screening (i.e. body composition, finger-stick) leading to an incomplete screening will not be the fault of Contractor.

SJVIA can provide an event coordinator at all on-site events to confirm eligibility and ensure multiple screenings. In the event that SJVIA does not provide an on-site coordinator, SJVIA will be responsible for providing a reasonable eligibility confirmation system for Contractor to utilize to confirm participation eligibility. Contractor will utilize their internal systems as a secondary/additional protocol to ensure participants to not engage multiple times in the screening process.

On-site Biometric 35-panel Venipuncture Screening

The SJVIA shall pay according to the outlined fee schedule below within 30 days of invoicing of services. In the event of an incomplete screening, SJVIA will still be responsible for full compensation for the engagement unless incomplete screening is due to Contractor's fault. Participant refusal to complete any aspect of the screening (i.e. body composition, finger-stick) leading to an incomplete screening will not be the fault of Contractor.

- 35 Panel Venipuncture Screening: \$56.00 per screening
- A1c Venipuncture Screening: \$17.00 per screening
- PSA Venipuncture Screening: \$21.00 per screening

SJVIA can provide an event coordinator at all on-site events to confirm eligibility and ensure multiple screenings. In the event that SJVIA does not provide an on-site coordinator, SJVIA will be responsible for providing a reasonable eligibility confirmation system for Contractor to utilize to confirm participation eligibility. Contractor will utilize their internal systems as a secondary/additional protocol to ensure participants to not engage multiple times in the screening process.

Digital Health Risk Assessment

The SJVIA shall pay \$12.00 per digital health risk assessment, within 30 days of invoicing of services.

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 and can be satisfied with a combination of commercial general liability and commercial Umbrella or Excess Liability coverage parts. 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 (Combined Single Limit). 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 One Million Dollars (\$1,000,000) per occurrence and in the aggregate. Coverage must include, but not be limited to Third Party Liability for claims involving Cyber Risk including the following Insuring Agreements: Multimedia Liability Coverage, Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage, and PCI DSS Liability Coverage with a deductible not to exceed \$5,000.
- (F) Digital Assets means: with respect to System Failure Coverage: Data Recovery only, Data and computer programs that exist in an Insured Computer System; and (b) with respect to Dependent System Failure Coverage: Data Recovery only, Data owned by or **entrusted to You that is being held, stored, maintained, transferred or processed**

Exhibit C Insurance

by an Outsourced IT Service Provider on Your behalf. Digital Assets does not include computer hardware. Digital Assets does not include computer hardware.

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 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; (iii) breach of any of the Contractor's obligations under Article 8 of this Agreement; (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.

Exhibit C Insurance

- (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.

- (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.