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**SERVICE AGREEMENT**

This Service Agreement (“Agreement”) is dated January 1, 2024 and is between Keenan & Associates, a California corporation, through its division Keenan Pharmacy Services (KPS) (“Contractor”), and the San Joaquin Valley Insurance Authority, a California joint powers agency (“SJVIA”).

**Recitals**

A. The SJVIA is a joint powers agency 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.

B. The SJVIA desires to contract with the Contractor for coordinated pharmacy-related consulting services overseeing the SJVIA’s Pharmacy Benefit Manager (PBM), EmpiRx.

C. 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 Services**

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

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

1.3 **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



1 by law. SJVIA may disclose Confidential information to a third party (such as its accountants,  
2 reinsurers, brokers, case management consultants, and other third parties having a business  
3 relationship with SJVIA) with the prior written consent of Contractor and following the execution  
4 of Contractor's non-disclosure agreement by such third party. SJVIA shall cause any employee  
5 given access to the Confidential Information to be advised of the terms of this Agreement, and  
6 that they must comply with the terms of this Agreement. Under no circumstance may SJVIA use  
7 the Confidential Information for its private commercial gain, or to develop or market, or to assist  
8 any other party in developing or marketing any programs that are substantially similar to, or  
9 competes with Keenan or EmpiRx. If SJVIA receives a request under the California Public  
10 Records Act ("CPRA") seeking access to records, as defined by the CPRA, related to this  
11 Agreement that may be or include information identified by Contractor as confidential, non-  
12 public, or proprietary, SJVIA shall promptly notify Contractor of the request. Contractor shall  
13 have three (3) business days to provide evidence and argument establishing why the records  
14 should not be disclosed. Any such argument shall identify the specific provision of the CPRA (by  
15 statute number) which authorizes SJVIA to withhold the record(s). SJVIA will give due  
16 considerations to argument and evidence presented by Contractor. If SJVIA determines that the  
17 requested records are not exempt from disclosure pursuant to the CPRA, SJVIA shall notify  
18 Contractor at least three (3) business days prior to the date SJVIA anticipates disclosing the  
19 record(s) to the requesting party. The Contractor shall indemnify SJVIA for any court-ordered  
20 award of costs or attorney's fees under the CPRA that results from the Contractor's delay, claim  
21 of exemption, failure to produce any such records, or if failure to cooperate with SJVIA with  
22 respect to any SJVIA demand for any such records

23 2.3 SJVIA shall notify Contractor within three (3) days, upon discovery of any  
24 unauthorized disclosure or use of the Contractor Confidential Information.

25 2.4 SJVIA shall have no obligation to maintain the confidentiality of any Contractor  
26 Confidential Information which SJVIA can demonstrate, (i) was known by SJVIA prior to the

1 disclosure by Contractor; (ii) properly came into the possession of SJVIA from a third party  
2 which is not under any obligation to maintain the confidentiality of such information; (iii) has  
3 become part of the public domain through no act or fault on the part of SJVIA; and/or (iv) was  
4 independently developed by or for SJVIA without the use of Contractor's Confidential  
5 Information.

6 2.5 As applicable, each party shall provide a reasonable opportunity for the other party to  
7 cure the breach or end the violation, or if not, such party may terminate this Agreement if the  
8 other party does not cure the breach or end the violation within a reasonable time specified by  
9 the notifying party.

### 10 **Article 3**

#### 11 **SJVIA's Responsibilities**

12 3.1 **Information and Data.** Subject to the terms of this Agreement, the SJVIA will  
13 provide or authorize the vendors of its Insurance Programs to provide the Contractor with data  
14 and information necessary to the Contractor's provision of services under this Agreement.

15 3.2 **Insurance Program Premiums.** The SJVIA acknowledges that it is responsible for  
16 payment of premiums for all Insurance Programs.

### 17 **Article 4**

#### 18 **Compensation, Invoices, and Payments**

19 4.1 **Compensation.** The SJVIA agrees to pay, and the Contractor agrees to receive,  
20 compensation for the performance of its services under this Agreement as described in Exhibit  
21 B to the Agreement, which is attached.

22 4.2 **Invoices.** The Contractor shall submit monthly invoices to SJVIA.

23 4.3 **Payment.** The SJVIA shall pay all timely-submitted invoices within thirty (30) days of  
24 receipt.  
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1 4.4 **Incidental Expenses.** The Contractor is solely responsible for all its expenses that  
2 are incidental to its performance under this Agreement.

3 **Article 5**

4 **Term of Agreement**

5 5.1 **Term.** This Agreement is effective on January 1, 2024 and terminates on December  
6 31, 2024.

7 **Article 6**

8 **Notices**

9 6.1 **Contact Information.** The persons and their addresses having authority to give and  
10 receive notices provided for or permitted under this Agreement include the following:

11 **For the SJVIA:**

12 SJVIA Manager  
13 San Joaquin Valley Insurance Authority  
2220 Tulare Street, 14th Floor  
Fresno, California 93721

14 **For the Contractor:**

15 **For Legal Notices:**

16 Keenan & Associates  
17 Attn: Legal Dept.  
2355 Crenshaw Blvd., Suite 200  
Torrance, CA 90501  
18 (and include a courtesy copy, alone not sufficient as notice to Jeffrey Hall)

19 **Non-Legal Notices:**

20 Keenan & Associates  
Attn: Jeffrey Hall, Senior Vice President, Keenan Pharmacy Services  
2355 Crenshaw Blvd., Suite 200  
Torrance, CA 90501  
21

22 6.2 **Change of Contact Information.** Either party may change the information in  
23 section 6.1 by giving notice as provided in section 6.3.  
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1 written notice may suspend performance under this Agreement, and shall provide a  
2 reasonable time, as determined by the party providing the notice, for the party receiving  
3 the notice to cure the breach.

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

6 (C) For purposes of this section, a breach occurs when, in the determination of a  
7 party, the other party has:

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

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

10 (3) Submitted a substantially incorrect or incomplete report to the other party (as  
11 applicable); or

12 (4) Improperly performed any of its obligations under this Agreement as  
13 determined by the other party.

14 **7.3 Termination for HIPAA Violation.** The SJVIA may terminate this agreement as  
15 provided in Article 13 of this agreement.

16 **7.4 Termination without Cause.** In circumstances other than those set forth above,  
17 SJVIA may terminate this Agreement by giving at least thirty (30) days advance written notice to  
18 Contractor.

19 **7.5 No Penalty or Further Obligation.** Any termination of this Agreement by either  
20 party under this Article 7 is without penalty to or further obligation of the party.

21 **7.6 SJVIA's Rights upon Termination.** Upon termination for breach under this Article  
22 7, the SJVIA may demand repayment by the Contractor of any monies disbursed to the  
23 Contractor under this Agreement that, in the SJVIA's sole judgment, were not expended in  
24 compliance with this Agreement. Such monies to be returned will be prorated based on the  
25 amount of the prepaid month or term remaining. The Contractor shall promptly refund all such  
26 monies upon demand. This section survives the termination of this Agreement.

1 **Article 8**

2 **Independent Contractor**

3 8.1 **Status.** In performing under this Agreement, the Contractor, including its officers,  
4 agents, employees, and volunteers, is at all times, acting and performing as an independent  
5 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint  
6 venturer, partner, or associate of the SJVIA.

7 8.2 **Supervision.** The SJVIA has no right to control, supervise, or direct the manner or  
8 method of the Contractor's performance under this Agreement, but the SJVIA may verify that  
9 the Contractor is performing according to the terms of this Agreement.

10 8.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no  
11 right to employment rights or benefits available to employees of the SJVIA or its Participating  
12 Entities. The Contractor is solely responsible for providing to its own employees all employee  
13 benefits required by law. The Contractor shall save the SJVIA harmless from all matters  
14 relating to the payment of Contractor's employees, including compliance with Social Security  
15 withholding and all related regulations.

16 8.4 **Services to Others.** The parties acknowledge that, during the term of this  
17 Agreement, the Contractor may provide services to others unrelated to the SJVIA.

18 **Article 9**

19 **Indemnity and Defense**

20 9.1 **Indemnifiable Losses.** For purposes of this Article 9, the phrase "Indemnifiable  
21 Loss" includes all claims, demands, injuries, damages, costs, expenses (including attorney fees  
22 and costs), fines, penalties, and liabilities of any kind.

23 9.2 **Indemnity.** The Contractor shall indemnify, and hold the SJVIA (including its  
24 officers, agents, employees, and volunteers) harmless from and against any Indemnifiable Loss  
25 to the SJVIA, the Contractor, or any third party that arises from or relates to the performance or  
26 failure to perform by the Contractor (or any of its officers, agents, or employees) under this



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

6 9.3 **Defense.** If requested by the SJVIA, the Contractor shall promptly defend actions or  
7 proceedings brought or threatened against the SJVIA (including its officers, agents, employees,  
8 and volunteers) for any Indemnifiable Loss to the SJVIA, or any third party that arises from or  
9 relates to the performance or failure to perform by the Contractor (or any of its officers, agents,  
10 or employees) under this Agreement. The SJVIA may conduct or participate in its own defense  
11 without affecting the Contractor's obligation to indemnify or defend the SJVIA.

12 9.4 **Survival.** This Article 9 survives the termination or expiration of this Agreement.

## 13 **Article 10**

### 14 **Insurance**

15 10.1 The Contractor shall comply with all of the insurance requirements in Exhibit C to this  
16 Agreement.

## 17 **Article 11**

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

19 11.1 **Inspection of Documents.** The Contractor shall make available to the SJVIA, and  
20 the SJVIA may examine at any time during business hours and as often as the SJVIA deems  
21 necessary, all of the Contractor's records and data with respect to the matters covered by this  
22 Agreement. The Contractor shall, upon request by the SJVIA, permit the SJVIA to audit and  
23 inspect all of such records and data to ensure the Contractor's compliance with the terms of this  
24 Agreement and in compliance with all applicable privacy and security laws.

25 11.2 **State Audit Requirements.** If the compensation to be paid by the SJVIA under this  
26 Agreement exceeds ten thousand dollars (\$10,000), the Contractor is subject to the examination

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

4       **11.3 Public Records.** The SJVIA may publicly disclose this Agreement under the Ralph  
5 M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with  
6 section 54950). This Agreement, and any record or data that the Contractor may provide to the  
7 SJVIA, regardless of whether it is marked as confidential or having restricted access, except for  
8 records that are subject to the Health Insurance Portability and Accountability Act (“HIPAA”) as  
9 provided in Article 13 of this Agreement, is subject to public disclosure as a public record under  
10 the California Public Records Act (California Government Code, section 7920.000 et seq.)  
11 (“CPRA”). If SJVIA receives a request under the CPRA or a similar law to disclose any  
12 document that is in the Contractor’s possession but which the SJVIA may review, request, or  
13 obtain from the Contractor under this agreement, then the SJVIA will promptly notify the  
14 Contractor and request the responsive documents that may be in the possession of the  
15 Contractor. The notification shall be in writing, which may include but is not limited to the email  
16 addressed to the appropriate key person or persons. Upon receiving that notification, the  
17 Contractor has five (5) business days in which to provide responsive documents, use the  
18 procedure provided in section 11.4 of this agreement, or both. Alternatively, the Contractor shall  
19 promptly inform the SJVIA if the Contractor believes that five (5) business days are not sufficient  
20 time in which to respond, and the justification for this belief. The Contractor shall indemnify the  
21 SJVIA for any award of costs or attorney’s fees under the CPRA that results from the  
22 Contractor’s use of the procedure provided in section 11.4 of this agreement.

23       **11.4 Withholding and Redacting.** If the SJVIA for any reason requests any records,  
24 data, or documents from the Contractor and the Contractor believes that the responsive  
25 documents contain trade secrets, proprietary information or other information that is subject to  
26

1 legal privilege or separate legally-enforceable obligation of the Contractor to withhold, then the  
2 Contractor may do the following:

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

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

8 (C) If the SJVIA requests documents because of a CPRA request and the Contractor  
9 redacts or withholds any documents, the Contractor shall also identify the specific provisions  
10 of the CPRA (by citation to the California Government Code) which the Contractor believes  
11 would authorize the SJVIA to redact or withhold the documents requested. If SJVIA's legal  
12 counsels do not agree any the withholding or redactions are authorized by the CPRA, the  
13 Contractor shall promptly produce the unredacted document to SJVIA.

14 **11.5 News and Promotional Releases.** News releases and promotional activities  
15 regarding the services provided by the Contractor under this Agreement shall be undertaken  
16 only in a manner that is mutually acceptable, in advance, to both parties and upon their  
17 respective express, prior written approval. Nothing in this section limits the information that may  
18 be provided by SJVIA staff to the Board of Directors for the SJVIA that is subject to disclosure  
19 under the CPRA, or the Ralph M. Brown Act, Gov. Code § 54950 et. seq., or any other  
20 information that is subject to disclosure under the CPRA.

## 21 **Article 12**

### 22 **Confidential Information**

23 12.1 All data, programs, and other materials provided to the Contractor by the SJVIA, by  
24 Participating Entities, or by eligible employees or participants in connection with this Agreement  
25 are deemed "SJVIA Confidential Information." Except for purposes of administration of the  
26 benefits and as required or permitted in this Agreement, the Contractor, including its officers,

1 agents, and employees shall not disclose SJVIA Confidential Information to any third party  
2 without the express prior written consent of the SJVIA, and the affected eligible employee or  
3 participant.

4 12.2 The Contractor shall protect SJVIA Confidential Information from inadvertent  
5 disclosure to any third party in the same manner that it protects its own confidential information  
6 unless such disclosure is required in response to a validly issued subpoena or other process of  
7 law. The provisions of this Article 12 survive the termination or expiration of this Agreement.

### 8 **Article 13**

#### 9 **Health Insurance Portability and Accountability Act (“HIPAA”)**

10 13.1 The parties to this Agreement shall be in strict conformance with all applicable  
11 Federal and State of California laws and regulations, including but not limited to Sections 5328,  
12 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et*  
13 *seq.* of Title 42, Code of Federal Regulations (“CFR”), Section 56 *et seq.* of the California Civil  
14 Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the  
15 Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section  
16 1320 D *et seq.* of Title 42, United States Code (“USC”) and its implementing regulations,  
17 including, but not limited to Title 45, CFR, Parts 142, 160, 162, and 164, The Health Information  
18 Technology for Economic and Clinical Health Act (“HITECH”) regarding the confidentiality and  
19 security of patient information, and the Genetic Information Nondiscrimination Act (“GINA”) of  
20 2008 regarding the confidentiality of genetic information.

21 13.2 Except as otherwise provided in this Agreement, the Contractor, as a Business  
22 Associate of SJVIA, may use or disclose Protected Health Information (“PHI”) to perform  
23 functions, activities or services for or on behalf of SJVIA, as specified in this Agreement,  
24 provided that such use or disclosure shall not violate the Health Insurance Portability and  
25 Accountability Act (“HIPAA”), 42 USC 1320d *et seq.* The uses and disclosures of PHI may not  
26 be more expansive than those applicable to the SJVIA, as the “Covered Entity” under the

1 HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management,  
2 administrative or legal responsibilities of the Business Associate.

3 13.3 The Contractor, including its subcontractors and employees, shall protect, from  
4 unauthorized access, use, or disclosure of names and other identifying information, including  
5 genetic information, concerning persons receiving services pursuant to this Agreement, except  
6 where permitted in order to carry out data aggregation purposes for health care operations [45  
7 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any  
8 and all persons receiving services pursuant to a SJVIA funded program. This requirement  
9 applies to electronic PHI. The Contractor shall not use such identifying information or genetic  
10 information for any purpose other than as permitted by this Agreement or for carrying out the  
11 Contractor's obligations under this Agreement.

12 13.4 The Contractor, including its subcontractors and employees, shall not disclose any  
13 such identifying information or genetic information to any person or entity, except as otherwise  
14 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other  
15 law, required by the Secretary, or authorized by the client/patient in writing. In using or  
16 disclosing PHI that is permitted by this Agreement or authorized by law, the Contractor shall  
17 make reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose  
18 of use, disclosure, or request.

19 13.5 For purposes of the above sections, identifying information shall include, but not be  
20 limited to name, identifying number, symbol, or other identifying particular assigned to the  
21 individual, such as finger or voice print, or photograph.

22 13.6 For purposes of the above sections, genetic information shall include genetic tests of  
23 family members of an individual or individual, manifestation of disease or disorder of family  
24 members of an individual, or any request for or receipt of, genetic services by individual or  
25 family members. Family member means a dependent or any person who is first, second, third,  
26 or fourth degree relative. The Contractor shall provide access, at the request of SJVIA, and in

1 the time and manner designated by the SJVIA, to PHI in a designated record set (as defined in  
2 45 CFR Section 164.501), to an individual or to the SJVIA in order to meet the requirements of  
3 45 CFR Section 164.524 regarding access by individuals to their PHI. With respect to individual  
4 requests, access shall be provided within thirty (30) days from request. Access may be  
5 extended if the Contractor cannot provide access and provides individual with the reasons for  
6 the delay and the date when access may be granted. PHI shall be provided in the form and  
7 format requested by the individual or SJVIA.

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

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

15 13.7 The Contractor shall report to the SJVIA, in writing, any knowledge or reasonable  
16 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or  
17 breach of unsecured PHI not permitted by this Agreement of which it becomes aware,  
18 immediately and without reasonable delay and in no case later than five (5) days of discovery,  
19 unless applicable law requires earlier notice. Immediate notification shall be made to the  
20 SJVIA's Privacy Officer within five (5) business days of discovery. The notification shall include,  
21 to the extent possible, the identification of each individual whose unsecured PHI has been, or is  
22 reasonably believed to have been, accessed, acquired, used, disclosed, or breached. The  
23 Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining  
24 to such unauthorized disclosure required by applicable Federal and State Laws and regulations.  
25 The Contractor shall investigate such breach and is responsible for all notifications required by  
26 law and regulation or deemed necessary by the SJVIA and shall provide a written report of the

1 investigation and reporting required to the SJVIA's Privacy Officer. This written investigation  
2 and description of any reporting necessary shall be postmarked as mailed to the SJVIA's  
3 Privacy Officer within the thirty (30) working days of the discovery of the breach.

4 13.8 The Contractor shall make its internal practices, books, and records relating to the  
5 use and disclosure of PHI received from SJVIA, or created or received by the Contractor on  
6 behalf of SJVIA, in compliance with HIPAA's Privacy Rule, including, but not limited to the  
7 requirements set forth in Title 45, CFR, Parts 160 and 164. The Contractor shall make its  
8 internal practices, books, and records relating to the use and disclosure of PHI received from  
9 SJVIA, or created or received by the Contractor on behalf of the SJVIA, available to the  
10 Secretary upon demand.

11 13.9 The Contractor shall cooperate with the compliance and investigation reviews  
12 conducted by the Secretary. PHI access to the Secretary must be provided during the  
13 Contractor's normal business hours, however, upon exigent circumstances access at any time  
14 must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable  
15 to the Contractor and in possession of a subcontractor, it must certify efforts to obtain the  
16 information to the Secretary.

17 13.10 **Safeguards.**

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

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

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

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

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

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

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

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



- (1) 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.

13.11 **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.

13.12 **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

1 and to incorporate, when applicable, the relevant provisions of these provisions into each  
2 subcontract or sub-award to such agents or subcontractors.

3 **13.13 Employee Training and Discipline.** The Contractor shall train and use reasonable  
4 measures to ensure compliance with the requirements of these provisions by employees who  
5 assist in the performance of functions or activities on behalf of SJVIA under this Agreement and  
6 use or disclose PHI and discipline such employees who intentionally violate any provisions of  
7 these provisions, including termination of employment.

8 **13.14 Termination for Breach.** Upon the SJVIA's knowledge of a material breach of this  
9 Article 13 by the Contractor, the SJVIA shall either:

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

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

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

17 **13.15 Judicial or Administrative Proceedings.** The SJVIA may terminate this  
18 Agreement in accordance with the provisions of this Agreement if:

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

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

24 **13.16 Effect of Termination.** Upon termination or expiration of this Agreement for any  
25 reason, the Contractor shall return or destroy all PHI received from SJVIA (or created or  
26 received by the Contractor on behalf of the SJVIA) that the Contractor still maintains in any form

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

7 13.17 **Disclaimer.** The SJVIA makes no warranty or representation that compliance by the  
8 Contractor with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be  
9 adequate or satisfactory for the Contractor's own purposes or that any information in the  
10 Contractor's possession or control, or transmitted or received by the Contractor, is or will be  
11 secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely  
12 responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

13 13.18 **Amendment.** The parties acknowledge that federal and State laws relating to  
14 electronic data security and privacy are rapidly evolving and that amendment of this Agreement  
15 may be required to provide for procedures to ensure compliance with such developments. The  
16 parties specifically agree to take such action as is necessary to amend this Agreement in order  
17 to implement the standards and requirements of HIPAA, the HIPAA regulations, the HITECH  
18 Act, and other applicable laws relating to the security or privacy of PHI. The SJVIA may  
19 terminate this Agreement upon 30 days' written notice if the Contractor does not enter into an  
20 amendment providing assurances regarding the safeguarding of PHI that the SJVIA in its sole  
21 discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA  
22 regulations and the HITECH Act.

23 13.19 **No Third-Party Beneficiaries.** Nothing express or implied in the terms and  
24 conditions of these provisions is intended to confer, nor shall anything herein confer, upon any  
25 person other than the SJVIA or the Contractor and their respective successors or assigns, any  
26 rights, remedies, obligations, or liabilities whatsoever.

1 13.20 **Interpretation.** The provisions of this Article 13 shall be interpreted as broadly as  
2 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State  
3 laws. The parties agree that any ambiguity in the provisions of this Article 13 shall be resolved  
4 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

5 13.21 **Regulatory References.** A reference in the provisions of this Article 13 to a section  
6 in the HIPAA regulations means the section as in effect or as amended.

7 13.22 **Survival.** The provisions of this Article 13 survive the termination or expiration of  
8 this Agreement.

9 13.23 **No Waiver of Obligations.** No change, waiver or discharge of any liability or  
10 obligation under this Article 13 on any one or more occasions shall be deemed a waiver of  
11 performance of any continuing or other obligation or shall prohibit enforcement of any obligation  
12 on any other occasion.

13 13.24 **Definitions.** For the purposes of this Article 13:

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

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

## 16 **Article 14**

### 17 **General Terms**

18 14.1 **Modification.** This Agreement may not be modified, and no waiver is effective,  
19 except by another written agreement that is signed by both parties.

20 14.2 **Non-Assignment.** Neither party may assign rights or delegate its obligations under  
21 this Agreement without the prior written consent of the other party.

22 14.3 **Governing Law.** The laws of the State of California govern all matters arising from  
23 or related to this Agreement.

24 14.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno  
25 County, California. Contractor consents to California jurisdiction for actions arising from or  
26

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

3 14.5 **Construction.** The final form of this Agreement is the result of the parties' combined  
4 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be  
5 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement  
6 against either party.

7 14.6 **Headings.** The headings and section titles in this Agreement are for convenience  
8 only and are not part of this Agreement.

9 14.7 **Severability.** If anything in this Agreement is found by a court of competent  
10 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in  
11 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of  
12 this Agreement with lawful and enforceable terms intended to accomplish the parties' original  
13 intent.

14 14.8 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall  
15 not unlawfully discriminate against any employee or applicant for employment, or recipient of  
16 services, because of race, religious creed, color, national origin, ancestry, physical disability,  
17 mental disability, medical condition, genetic information, marital status, sex, gender, gender  
18 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to  
19 all applicable State of California and Federal statutes and regulation.

20 14.9 **No Waiver.** Payment, waiver, or discharge by the SJVIA of any liability or obligation  
21 of the Contractor under this Agreement on any one or more occasions is not a waiver of  
22 performance of any continuing or other obligation of the Contractor and does not prohibit  
23 enforcement by the SJVIA of any obligation on any other occasion.

24 14.10 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
25 between the Contractor and the SJVIA with respect to the subject matter of this Agreement, and  
26 it supersedes all previous negotiations, proposals, commitments, writings, advertisements,

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

6 14.11 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
7 create any rights or obligations for any person or entity except for the parties.

8 14.12 **Authorized Signature.** The Contractor represents and warrants to the SJVIA that:

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

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

14 14.13 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
15 original, and all of which together constitute this Agreement.

16 [SIGNATURE PAGE FOLLOWS]  
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The parties are signing this Agreement on the date stated in the introductory clause.

KEENAN & ASSOCIATES  
KEENAN PHARMACY SERVICES

SAN JOAQUIN VALLEY INSURANCE  
AUTHORITY

  
\_\_\_\_\_  
Jeffrey Hall  
Senior Vice President

\_\_\_\_\_  
Steve Brandau, President of the Board of  
Directors

Reviewed and recommended for approval.

\_\_\_\_\_  
SJVIA Manager

# Exhibit A

## Scope of Services

The Contractor shall deliver the following services for the San Joaquin Valley Insurance Authority (SJVIA):

### A. New PBM Implementation Services

- Facilitate implementation of the new PBM services including transition of benefit design, formulary, eligibility and pre-existing prior authorization approvals to new PBM

### B. Evaluation of PBM Services

- Conduct annual reviews of PBM services, contract compliance, and performance guarantees
- Assist in developing a plan to rectify any deficiencies
- Perform follow-up activities as necessary to ensure contract compliance, efficient program management and responsive account management
- Update pharmacy rates and effect contract addenda as needed
- Recommend whether a given PBM contract should be renewed, modified or terminated

### C. Pharmacy Benefit Consulting Services

- Review pharmacy benefit packages options and assist in SJVIA in selecting best option for their business needs
- Evaluate and recommend options for managing specialty pharmacy products
- Analyze the performance of the retail, mail order, and specialty pharmacy benefit option and make recommendations to improve the management of the drug cost trends
- Select clinical and other optional programs of behalf of SJVIA or assist SJVIA in making selections on their own behalf
- Assist SJVIA in securing and interpreting utilization and other key reports
- Provide independent oversight for the formulary
- Provide oversight of performance of rebate agreements between the PBM and drug companies on behalf of SJVIA
- Meet with SJVIA at least once quarterly to review drug plan performance and identify recommended changes going forward before final renewal. This review, with Contractor's recommendations, must occur prior to the Board meeting addressing final renewal.



## Exhibit A

1 D. Account Management Services

- 2 • Manage the ongoing relationship and communications with the PBM including
- 3 SJVIA specific eligibility and benefit updates
- 4 • Represent and advocate for the SJVIAs needs to the PBM
- 5 • Participate in all PBM and SJVIA meetings related to pharmacy benefit and mail

6 E. Underwriting Services

- 7 • Project preliminary and final funding/renewal calculations
- 8 • Perform financial and utilization analysis of paid claims with quarterly, semi-
- 9 annual or annual reporting
- 10 • Generate drug cost trend analysis based on market, SJVIA group (e.g.,
- 11 coalition), and individual SJVIA basis
- 12 • Perform annual risk assessment projecting future value of claims vs. existing
- 13 claims data
- 14 • Develop IBNR (incurred but not reported claims reserves)
- 15 • Supply monthly/quarterly reports on premium, claims and lives loss ratio and
- 16 funding, claims and lives loss ratio
- 17 • Perform claims lag analysis
- 18 • Provide annual accounting true-up or profit/loss analysis as needed

19 F. Auditing Services

- 20 • Perform quarterly review of all claims paid
- 21 • Ensure contract compliance and appropriate rebate administration
- 22 • Keep the KPS members apprised of industry updates and provide
- 23 recommendations and guidance
- 24 • Provide specific oversight on emerging Specialty Rx trends
- 25
- 26

## Exhibit B

### Compensation & Fee Schedule

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2  
3 In consideration of the services rendered by Contractor pursuant to this Agreement,  
4 Contractor shall receive a monthly administrative services fee (Contractor Fee), based upon the  
5 Monthly Enrollment of enrolled members of SJVIA and their dependents. EmpiRx shall report to  
6 Contractor and SJVIA the actual Monthly Enrollment for each month.

7 Contractor shall not receive any commission, rebates, overrides, or any other  
8 compensation or benefit from EmpiRx.

9 The fees received by Contractor under this Agreement shall not be considered  
10 "compensation" or "commission" for the purposes of the Contractor Broker and Consulting  
11 Agreement and/or any other agreement executed by and between SJVIA and Contractor. No  
12 fees collected by Contractor pursuant to this Agreement shall be considered for the purpose of  
13 determining the maximum amount of Contractor's compensation due or permitted under any  
14 such agreement(s).

15 The fees for the one (1) year term of this Agreement are based on Per Member Per Month  
16 (PMPM) and are:

- 17  
18 • \$0.85 PMPM  
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## 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 Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). 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 (5) 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 (5) 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 claim.

**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 Exhibit D of this Agreement; (iii) OMITTED; (iv) invasion of privacy, including release of private information; (v) information theft; (vi) damage to or destruction or alteration of electronic information; (vii)

## Exhibit C

### Insurance

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 thirty (30) days after the Contractor signs this Agreement, the Contractor shall deliver, or cause its broker or producer to deliver, to 2220 Tulare St., 14<sup>th</sup> Floor, Fresno, CA 93721, or SJVIA-Admin@fresnocountyca.gov copies of certificates of insurance and endorsements for all of the coverages required under this Agreement.
- (i) 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.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by authorized 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 ten (10) days in advance of cancellation. For cancellation of the policy for any other reason, the Contractor shall, or shall cause the insurer to, provide written notice to the SJVIA not less than thirty (30) days in advance of cancellation or

## Exhibit C

### Insurance

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 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.

## Exhibit D

### Data Security

#### 1. Definitions

14.14 Capitalized terms used in this Exhibit D have the meanings set forth in this section 1.

- a. **“Authorized Employees”** means the Contractor’s employees who have access to Personal Information.
- b. **“Authorized Persons”** means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit D.
- c. **“Manager”** means the SJVIA Manager or his or her designee.
- d. **“Disclose”** or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.
- e. **“Person”** means any natural person, corporation, partnership, limited liability company, firm, or association.
- f. **“Personal Information”** means any and all information, including any data, provided, or to which access is provided, to the Contractor by or upon the authorization of the SJVIA, under this Agreement, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or (iii) is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e). Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- g. **“Privacy Practices Complaint”** means a complaint received by the SJVIA relating to the Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit D.
- h. **“Security Safeguards”** means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of

## Exhibit D

### Data Security

Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in section 3(C) of this Exhibit D.

- i. **“Security Breach”** means (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, any Personal Information.
- j. **“Use”** or any derivative of that word means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

#### 2. **Standard of Care**

- a. The Contractor acknowledges that, in the course of its engagement by the SJVIA under this Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted in this Agreement.
- b. The Contractor acknowledges that Personal Information is deemed to be confidential information of, or owned by, the SJVIA (or persons from whom the SJVIA receives or has received Personal Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information remains in the SJVIA (or persons from whom the SJVIA receives or has received Personal Information) regardless of the Contractor’s, or any Authorized Person’s, Use of that Personal Information.
- c. The Contractor agrees and covenants in favor of the SJVIA that the Contractor shall:
  - i. keep and maintain all Personal Information in strict confidence, using such degree of care under this section 2 as is reasonable and appropriate to avoid a Security Breach;
  - ii. Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit D;
  - iii. not Use, Disclose, sell, rent, license, or otherwise make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the SJVIA, without the SJVIA’s express prior written consent, which the SJVIA may give or withhold in its sole and absolute discretion; and
  - iv. not, directly or indirectly, Disclose Personal Information to any person (an “Unauthorized Third Party”) other than Authorized Persons pursuant to this Agreement, without the Manager’s express prior written consent.
- d. Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, Contractor shall (i) immediately notify the SJVIA of the

## Exhibit D

### Data Security

specific demand for, and legal authority for the disclosure, including providing SJVIA with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in relation to any legal proceeding, and (ii) promptly notify the SJVIA before such Personal Information is offered by the Contractor for such disclosure so that the SJVIA may have sufficient time to obtain a court order or take any other action the SJVIA may deem necessary to protect the Personal Information from such disclosure, and the Contractor shall cooperate with the SJVIA to minimize the scope of such disclosure of such Personal Information.

- e. The Contractor shall remain liable to the SJVIA for the actions and omissions of any Unauthorized Third Party concerning its Use of such Personal Information as if they were the Contractor's own actions and omissions.

### 3. Information Security

- a. The Contractor covenants, represents and warrants to the SJVIA that the Contractor's Use of Personal Information under this Agreement does and will at all times comply with all applicable federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor Uses credit, debit or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- b. The Contractor covenants, represents and warrants to the SJVIA that, as of the effective date of this Agreement, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by, any government regulatory authority regarding same.
- c. Without limiting the Contractor's obligations under section 3(A) of this Exhibit D, the Contractor's (or Authorized Person's) Security Safeguards shall be no less rigorous than accepted industry practices and, at a minimum, include the following:
  - i. limiting Use of Personal Information strictly to the Contractor's and Authorized Persons' technical and administrative personnel who are necessary for the Contractor's, or Authorized Persons', Use of the Personal Information pursuant to this Agreement;
  - ii. ensuring that all of the Contractor's connectivity to SJVIA computing systems will only be through the SJVIA's security gateways and firewalls, and only through security procedures approved upon the express prior written consent of the Manager;



## Exhibit D

### Data Security

- iii. to the extent that they contain or provide access to Personal Information, (a) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all mobile devices and other equipment, operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures, both internally and externally, to protect (1) the Personal Information from potential loss or misappropriation, or unauthorized Use, and (2) the SJVIA's operations from disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within media, computing equipment, operating systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld devices a secure internet connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled, all of which is subject to express prior written consent of the Manager;
  - iv. encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection, all of which is subject to express prior written consent of the Manager);
  - v. strictly segregating Personal Information from all other information of the Contractor, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that Personal Information is not commingled with any other types of information;
  - vi. having a patch management process including installation of all operating system and software vendor security patches;
  - vii. maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent with applicable law; and
  - viii. providing appropriate privacy and information security training to Authorized Employees.
- d. During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit D. The Contractor shall maintain a disciplinary process to address any unauthorized Use of Personal Information by any Authorized Employees.
  - e. The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information received from the SJVIA, and the SJVIA shall have immediate, real time access, at all times, to such

## Exhibit D

### Data Security

backups via a secure, remote access connection provided by the Contractor, through the Internet.

- f. The Contractor shall provide the SJVIA with the name and contact information for each Authorized Employee (including such Authorized Employee's work shift, and at least one alternate Authorized Employee for each Authorized Employee during such work shift) who shall serve as the SJVIA's primary security contact with the Contractor and shall be available to assist the SJVIA twenty-four (24) hours per day, seven (7) days per week as a contact in resolving the Contractor's and any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.
- g. The Contractor shall not knowingly include or authorize any Trojan Horse, back door, time bomb, drop dead device, worm, virus, or other code of any kind that may disable, erase, display any unauthorized message within, or otherwise impair any SJVIA computing system, with or without the intent to cause harm.

#### 4. Security Breach Procedures

- a. Immediately upon the Contractor's awareness or reasonable belief of a Security Breach, the Contractor shall (i) notify the Manager of the Security Breach, such notice to be given first by telephone at the following telephone number, followed promptly by email at the following email address: (559) 636-4900; SJVIA-Admin@fresnocountyca.gov (which telephone number and email address the SJVIA may update by providing notice to the Contractor), and (ii) preserve all relevant evidence (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall include, to the extent reasonably possible, the identification of each type and the extent of Personal Information that has been, or is reasonably believed to have been, breached, including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction, corruption, or damage.
- b. Immediately following the Contractor's notification to the SJVIA of a Security Breach, as provided pursuant to section 4(A) of this Exhibit D, the Parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the SJVIA, including, without limitation:
  - i. assisting the SJVIA in conducting any investigation;
  - ii. providing the SJVIA with physical access to the facilities and operations affected;
  - iii. facilitating interviews with Authorized Persons and any of the Contractor's other employees knowledgeable of the matter; and
  - iv. making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the SJVIA.

To that end, the Contractor shall, with respect to a Security Breach, be solely

responsible, at its cost, for all notifications required by law and regulation, or deemed

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reasonably necessary by the SJVIA, and the Contractor shall provide a written report of the investigation and reporting required to the Manager within 30 days after the Contractor's discovery of the Security Breach.

- c. SJVIA shall promptly notify the Contractor of the Manager's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of that notification, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit D, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the SJVIA whether the matter is a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to require corrective action and the reason for that determination.
- d. The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. The Contractor shall reimburse the SJVIA for all reasonable costs incurred by the SJVIA in responding to, and mitigating damages caused by, any Security Breach, including all costs of the SJVIA incurred relation to any litigation or other action described section 4(E) of this Exhibit D.
- e. The Contractor agrees to cooperate, at its sole expense, with the SJVIA in any litigation or other action to protect the SJVIA's rights relating to Personal Information, including the rights of persons from whom the SJVIA receives Personal Information.

#### 5. Oversight of Security Compliance

- a. The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
- b. Upon the SJVIA's written request, to confirm the Contractor's compliance with this Exhibit D, as well as any applicable laws, regulations and industry standards, the Contractor grants the SJVIA or, upon the SJVIA's election, a third party on the SJVIA's behalf, permission to perform an assessment, audit, examination or review of all controls in the Contractor's physical and technical environment in relation to all Personal Information that is Used by the Contractor pursuant to this Agreement. The Contractor shall fully cooperate with such assessment, audit or examination, as applicable, by providing the SJVIA or the third party on the SJVIA's behalf, access to all Authorized Employees and other knowledgeable personnel, physical premises, documentation,

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infrastructure and application software that is Used by the Contractor for Personal Information pursuant to this Agreement. In addition, the Contractor shall provide the SJVIA with the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information Used by the Contractor or Authorized Persons during the course of this Agreement under this Exhibit D.

- c. The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to the same restrictions and conditions in this Exhibit D. that apply to the Contractor with respect to such Personal Information by incorporating the relevant provisions of these provisions into a valid and binding written agreement between the Contractor and such Authorized Persons, or amending any written agreements to provide same.

6. **Return or Destruction of Personal Information.** Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the SJVIA all Personal Information, whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a machine readable form used by the SJVIA at the time of such return, or upon the express prior written consent of the Manager, securely destroy all such Personal Information, and certify in writing to the SJVIA that such Personal Information have been returned to the SJVIA or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information, as provided in this Exhibit D, such certification shall state the date, time, and manner (including standard) of disposal and by whom, specifying the title of the individual. The Contractor shall comply with all reasonable directions provided by the Manager with respect to the return or disposal of Personal Information and copies of Personal Information. If return or disposal of such Personal Information or copies of Personal Information is not feasible, the Contractor shall notify the SJVIA according, specifying the reason, and continue to extend the protections of this Exhibit D to all such Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any Personal Information after returning or disposing of Personal Information as required by this section 6. The Contractor's obligations under this section 6 survive the termination of this Agreement and apply to all Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal Information that the Contractor may later discover.

7. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit D may cause the SJVIA irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the SJVIA is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the SJVIA may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available to the SJVIA at law or in equity or under this Agreement.

8. **Indemnity.** The Contractor shall defend, indemnify and hold harmless the SJVIA, its officers, employees, and agents, (each, a "**SJVIA Indemnitee**") from and against any and all infringement of intellectual property including, but not limited to infringement of copyright,

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trademark, and trade dress, invasion of privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, Personal Information, Security Breach response and remedy costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, fines and penalties (including regulatory fines and penalties), costs or expenses of whatever kind, including attorneys' fees and costs, the cost of enforcing any right to indemnification or defense under this Exhibit D and the cost of pursuing any insurance providers, arising out of or resulting from any third party claim or action against any SJVIA Indemnitee in relation to the Contractor's, its officers, employees, or agents, or any Authorized Employee's or Authorized Person's, performance or failure to perform under this Exhibit D or arising out of or resulting from the Contractor's failure to comply with any of its obligations under this section 8. The provisions of this section 8 do not apply to the acts or omissions of the SJVIA. The provisions of this section 8 are cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any SJVIA Indemnitee under this Agreement. The provisions of this section 8 shall survive the termination of this Agreement.

9. **Survival.** The respective rights and obligations of the Contractor and the SJVIA as stated in this Exhibit D shall survive the termination of this Agreement.

10. **No Third Party Beneficiary.** Nothing express or implied in the provisions of in this Exhibit D is intended to confer, nor shall anything in this Exhibit D confer, upon any person other than the SJVIA or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

11. **No SJVIA Warranty.** The SJVIA does not make any warranty or representation whether any Personal Information in the Contractor's (or any Authorized Person's) possession or control, or Use by the Contractor (or any Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.