

1 **SERVICE AGREEMENT**

2 This Service Agreement (“Agreement”) is dated July 21, 2023 and is between
3 TFG Partners, a Pennsylvania LLC (“Contractor”) and the San Joaquin Valley Insurance
4 Authority, a California joint powers agency (“SJVIA”).

5 **Recitals**

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

10 B. The SJVIA desires to conduct a claims audit of the Plan Year 2019 and 2020
11 self-insured Medical and Dental claims.

12 The Parties therefore agree as follows:

13 **Article 1**

14 **Contractor’s Services**

15 1.1 **Scope of Services.** The Contractor shall perform all service provided in
16 Exhibit A to the Agreement, titled “Scope of Services.”

17 1.2 **Contractor’s Representation.** The Contractor represents that is ready,
18 willing, and able to provide the self-insured medical and dental claims audit services
19 desired by the SJVIA according to the terms of this Agreement.

20 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with
21 all applicable federal, state, and local laws and regulations in the performance of its

1 obligations under this Agreement, including but not limited to workers compensation,
2 labor, and confidentiality laws and regulations.

3 **Article 2**

4 **SJVIA’s Responsibilities**

5 2.1 Subject to the terms of this Agreement, the SJVIA will provide or authorize
6 the vendors of its Insurance Programs to provide the Contractor with data and
7 information that is necessary to the Contractor’s provision of services under this
8 Agreement.

9 **Article 3**

10 **Compensation, Invoices, and Payments**

11 3.1 **Compensation.** The SJVIA agrees to pay, and the Contractor agrees to
12 receive, compensation for the performance of its services under this Agreement as
13 described in Exhibit B to this Agreement, titled “Compensation.”

14 3.2 **Invoices.** For “Audit Fees” as provided in Exhibit B, the Contractor shall
15 submit an invoice, billed individually by audit, to the SJVIA for each stage of the audit
16 as described in Exhibit B. The Contractor shall include all of its “Travel Expenses,”
17 including supporting documentation, as provided in Exhibit B in its final invoice to the
18 SJVIA. If there are any “administrator-related costs for obtaining claims data or
19 responding to audit results” as provided in Exhibit B, the Contractor shall invoice those
20 separately to the SJVIA.

21 3.3 **Payment.** The SJVIA shall pay each correctly completed and timely
22 submitted invoice within 30 business days after receipt. The SJVIA shall remit any
23 payment to the Contractor’s address specified in the invoice.

1 5.2 **Change of Contact Information.** Either party may change the information
2 in section 5.1 by giving notice as provided in Section 5.3.

3 5.3 **Method of Delivery.** All notices between the SJVIA and the Contractor
4 provided for or permitted under this Agreement must be in writing and delivered either
5 by personal service, by first-class United States mail, by an overnight commercial
6 courier service, by telephonic facsimile transmission, or by Portable Document Format
7 (PDF) document attached to an email.

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

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

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

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

1 SJVIA or its Participating Entities. The Contractor is solely responsible for providing to
2 its own employees all employee benefits required by law. The Contractor shall save the
3 SJVIA harmless from all matters relating to the payment of Contractor's employees,
4 including compliance with Social Security withholding and all related regulations.

5 7.4 **Services to Others.** The parties acknowledge that, during the term of this
6 Agreement, the Contractor may provide services to others unrelated to the SJVIA.

7 **Article 8**

8 **Indemnity and Defense**

9 8.1 **Indemnifiable Losses.** For purposes of this Article 1, the phrase
10 "Indemnifiable Loss" includes all claims, demands, injuries, damages, costs, expenses
11 (including attorney fees and costs), fines, penalties, and liabilities of any kind.

12 8.2 **Indemnity.** The Contractor shall indemnify the SJVIA (including its
13 officers, agents, employees, and volunteers) against any Indemnifiable Loss to the
14 SJVIA, the Contractor, or any third party that arises from or relates to the performance
15 or failure to perform by the Contractor (or any of its officers, agents, or employees)
16 under this Agreement.

17 8.3 **Defense.** If requested by the SJVIA, the Contractor shall defend the
18 actions or proceedings brought or threatened against the SJVIA (including its officers,
19 agents, employees, and volunteers) for any Indemnifiable Loss to the SJVIA, or any
20 third party that arises from or relates to the performance or failure to perform by the
21 Contractor (or any of its officers(agents, or employees) under this Agreement. The
22 SJVIA may conduct or participate in its own defense without affecting the Contractor's
23 obligation to indemnity or defend the SJVIA.

1 that the Contractor has determined in good faith to be (i) a trade secret of the
2 Contractor, (ii) subject to nondisclosure under a nondisclosure agreement to
3 which the Contractor is a party, or (iii) protected health information under the
4 federal Health Insurance Portability and Privacy Act.

5 (B) Notwithstanding the provisions of paragraph (A) of this section
6 10.5, the Contractor is obligated to provide the deliverables as described in
7 Exhibit A in a form that complies with the requirements of this Agreement. If the
8 Contractor determines that it is unable to do so, then Contractor shall notify the
9 SJVIA immediately and the SJVIA may terminate this Agreement as provided in
10 section 6.2 of this Agreement.

11 10.4 **Public Records.** Except as expressly provided in Article 12 of this
12 Agreement, the SJVIA is not limited in any manner with respect to its public disclosure
13 of this Agreement or the Records and Data. The SJVIA'S public disclosure of this
14 Agreement or the Records and Data may include but is not limited to the following:

15 (A) The SJVIA may voluntarily, or upon request by any member of the
16 public or governmental agency, disclose this Agreement to the public or such
17 governmental agency.

18 (B) The SJVIA may voluntarily, or upon request by any member of the
19 public or governmental agency, disclose to the public or such governmental
20 agency any of the Records and Data, unless such disclosure is prohibited by
21 court order.

1 (C) This Agreement, and the Records and Data, is subject to public
2 disclosure under the Ralph M. Brown Act (California Government Code, Title 5,
3 Division 2, Part 1, Chapter 9, beginning with section 54950).

4 (D) This Agreement, and the Records and Data, is subject to public
5 disclosure as a public record under the California Public Records Act (California
6 Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250)
7 (“CPRA”).

8 (E) This Agreement, and the Records and Data, is subject to public
9 disclosure as information concerning the conduct of the people’s business of the
10 State of California under California Constitution, Article 1, section 3, subdivision
11 (b).

12 (F) Any marking of confidentiality or restricted access upon or
13 otherwise made with respect to any of the Records and Data shall be
14 disregarded and have no effect on the SJVIA’s right or duty to disclose to the
15 public or governmental agency any such record or data.

16 **10.5 Public Records Act Requests.** If the SJVIA receives a written or oral
17 request under the CPRA to publicly disclose any record that is in the Contractor’s
18 possession or control, and which the SJVIA has a right, under any provision of this
19 Agreement or applicable law, to possess or control, such as the deliverables that the
20 Contractor is obligated to provide under this Agreement, then the SJVIA may demand,
21 in writing, that the Contractor deliver to the SJVIA, for purposes of public disclosure, the
22 requested records that may be in the possession or control of the Contractor. Within five
23 business days after the SJVIA’s demand, the Contractor shall (a) deliver to the SJVIA

1 all of the requested records that are in the Contractor's possession or control, together
2 with a written statement that the Contractor, after conducting a diligent search, has
3 produced all requested records that are in the Contractor's possession or control, or (b)
4 provide to the SJVIA a written statement that the Contractor, after conducting a diligent
5 search, does not possess or control any of the requested records. The Contractor shall
6 cooperate with the SJVIA with respect to any SJVIA demand for such records. If the
7 Contractor wishes to assert that any specific record or data is exempt from disclosure
8 under the CPRA or other applicable law, it must deliver the record or data to the SJVIA
9 and assert the exemption by citation to specific legal authority within the written
10 statement that it provides to the SJVIA under this section. The Contractor's assertion of
11 any exemption from disclosure is not binding on the SJVIA, but the SJVIA will give at
12 least 10 days' advance written notice to the Contractor before disclosing any record
13 subject to the Contractor's assertion of exemption from disclosure. The Contractor shall
14 indemnify the SJVIA for any court-ordered award of costs or attorney's fees under the
15 CPRA that results from the Contractor's delay, claim of exemption, failure to produce
16 any such records, or failure to cooperate with the SJVIA with respect to any SJVIA
17 demand for any such records.

18 **10.6 News and Promotional Releases.** New releases and promotional
19 activities regarding the services provided by the Contractor under this Agreement shall
20 be undertaken only in a manner that is mutually acceptable, in advance, to both parties
21 and upon their respective express, prior written approval. Nothing in this section limits
22 the information that may be provided by SJVIA staff to the board of directors for the

1 SJVIA that is subject to disclosure under the CPRA, or any other information that is
2 subject to disclosure under the CPRA.

3 **Article 11**

4 **Confidential Information**

5 11.1 The Contractor shall protect Confidential Information from inadvertent
6 disclosure to any third party in the same manner that is protects its own confidential
7 information, unless such disclosure is required in response to a validly issued subpoena
8 or other process of law. The provisions of this Article 11 survive the termination or
9 expiration of this Agreement.

10 **Article 12**

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

12 12.1 The parties to this Agreement shall be in strict conformance with all
13 applicable Federal and State of California laws and regulations, including but not limited
14 to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code,
15 Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR),
16 Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of
17 the California Code of Regulations, and the Health Insurance Portability and
18 Accountability Act (HIPAA), including but not limited to Section 1320 D *et. seq.* of Title
19 42, United States Code (USC) and its implementing regulations, including, but not
20 limited to Title 45, CFR, Parts 142, 160, 162, and 164, The Health Information
21 Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality
22 and security of patient information, and the Genetic Information Nondiscrimination Act
23 (GINA) of 2008 regarding the confidentiality of genetic information.

1 12.2 Except as otherwise provided in this Agreement, the Contractor, as a
2 Business Associate of SJVIA, may use or disclose Protected Health Information (PHI) to
3 perform functions, activities, or services for or on behalf of SJVIA, as specified in this
4 Agreement, provided that such use or disclosure shall not violate the Health Insurance
5 Portability and Accountability Act (HIPAA), 45 USC 1320d *et seq.* The uses and
6 disclosures of PHI may not be more expansive than those applicable to the SJVIA, as
7 the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as
8 authorized for management, administrative or legal responsibilities of the Business
9 Associate.

10 12.3 The Contractor, including its subcontractors and employees, shall protect,
11 from unauthorized access, use, or disclosure of names and other identifying
12 information, including genetic information, concerning persons receiving services
13 pursuant to this Agreement, except where permitted in order to carry out data
14 aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i),
15 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons
16 receiving services pursuant to the SJVIA funded program. This requirement applies to
17 electronic PHI. The Contractor shall not use such identifying information or genetic
18 information for any purpose other than carrying out the Contractor’s obligations under
19 this Agreement.

20 12.4 The Contractor, including its subcontractors and employees, shall not
21 disclose any such identifying information or genetic information to any person or entity,
22 except as otherwise specifically permitted by this Agreement, authorized by Subpart E
23 of 45 CFR Part 164 or other law, required by the Secretary, or authorized by the

1 client/patient in writing. In using or disclosing PHI that is permitted by this Agreement or
2 authorized by law, the Contractor shall make reasonable efforts to limit PHI to the
3 minimum necessary to accomplish intended purpose of use, disclosure, or request.

4 12.5 For purposes of the above sections, identifying information shall include,
5 but not be limited to name, identifying number, symbol, or other identifying particular
6 assigned to the individual, such as finger or voice print, or photograph.

7 12.6 For purposes of the above sections, genetic information shall include
8 genetic tests of family members of an individual or individual, manifestation of disease
9 or disorder of family members of an individual, or any request for our receipt of, genetic
10 services by individual or family members. Family member means a dependent or any
11 person who is first, second, third, or fourth degree relative.

12 12.7 The Contractor shall provide access, at the request of SJVIA, and in the
13 time and manner designated by the SJVIA, to PHI in a designated record set (as
14 defined in 45 CFR Section 164.501), to an individual or to the SJVIA in order to meet
15 the requirements of 45 CFR Section 164.524 regarding access by individuals to their
16 PHI. With respect to individual requests, access shall be provided within thirty (30) days
17 from request. Access may be extended if the Contractor cannot provide access and
18 provides individual with the reasons for the delay and the date when access may be
19 granted. PHI shall be provided in the form and format requested by the individual of
20 SJVIA.

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

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

5 12.8 The Contractor shall report to the SJVIA, in writing, any knowledge or
6 reasonable belief that there has been unauthorized access, viewing, use, disclosure,
7 security incident, or breach of unsecured PHI not permitted by this Agreement of which
8 it becomes aware, immediately and without reasonable delay and in no case later than
9 two (2) business days of discovery. Immediate notification shall be made to the SJVIA's
10 Privacy Officer within two (2) business days of discovery. The notification shall include,
11 to the extent possible, the identification of each individual whose unsecured PHI has
12 been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or
13 breached. The Contractor shall take prompt corrective action to cure any deficiencies
14 and any action pertaining to such unauthorized disclosure required by applicable
15 Federal and State Laws and regulations. The Contractor shall investigate such breach
16 and is responsible for all notifications required by law and regulation or deemed
17 necessary by the SJVIA and shall provide a written report of the investigation and
18 reporting required to the SJVIA's Privacy Officer. This written investigation and
19 description of any reporting necessary shall be postmarked as mailed to the SJVIA's
20 Privacy Officer within the thirty (30) working days of the discovery of the breach.

21 12.9 The Contractor shall make its internal practices, books, and records
22 related to the use and disclosure of PHI received from SJVIA, or created or received by
23 the Contractor on behalf of SJVIA, in compliance with HIPAA's Privacy Rule, including,

1 but not limited to the requirements set forth in Title 45, CFR, Parts 160 and 164. The
2 Contractor shall make its internal practices, books, and records relating to the use and
3 disclosure of PHI received from SJVIA, or created or received by the Contractor on
4 behalf of the SJVIA, available to the Secretary upon demand.

5 12.10 The Contractor shall cooperate with the compliance and investigation
6 reviews conducted by the Secretary. PHI access to the Secretary must be provided
7 during the Contractor's normal business hours, however, upon exigent circumstances
8 access at any time must be granted. Upon the Secretary's compliance or investigation
9 review, if PHI is unavailable to the Contractor and in possession of a subcontractor, it
10 must certify efforts to obtain the information to the Secretary.

11 12.11 **Safeguards.**

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

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

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

9 1) Passwords must NOT be:

- 10 a. Shared or written down where they are accessible or
- 11 recognizable by anyone else; such as taped to computer
- 12 screens, stored under 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 every 90 days;
- 18 c. Changed immediately if revealed or compromised; and
- 19 d. Composed of characters from at least three of the following four
20 groups from the standard keyboard:
 - 21 i. Upper case letters (A-Z);
 - 22 ii. Lowercase letters (a-z);
 - 23 iii. Arabic numerals (0 through 9); and

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

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

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

6 2) Continuously updated anti-virus software; and

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

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

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

21 **12.12 Mitigation of Harmful Effects.** The Contractor shall mitigate, the extent
22 practicable, any harmful effect that is suspected or known to the Contractor of an
23 unauthorized access, viewing, use, disclosure, or breach of PHI by the Contractor or its

1 subcontractors in violation of the requirements of these provisions. The Contractor must
2 document suspected or known harmful effects and the outcome.

3 **12.13 Contractor's Subcontractors.** The Contractor shall ensure that any of its
4 contractors, including subcontractors, if applicable, to whom the Contractor provides
5 PHI received from or created or received by the Contractor on behalf of SJVIA, agree to
6 the same restrictions, safeguards, and conditions that apply to the Contractor with
7 respect to such PHI and to incorporate, when applicable, the relevant provisions of
8 these provisions into each subcontract or sub-award to such agents or subcontractors.

9 **12.14 Employee Training and Discipline.** The Contractor shall train and use
10 reasonable measures to ensure compliance with the requirements of these provisions
11 by employees who assist in the performance of functions or activities on behalf of SJVIA
12 under this Agreement and use or disclose PHI and discipline such employees who
13 intentionally violate any provisions of these provisions, including termination of
14 employment.

15 **12.15 Termination for Cause.** Upon the SJVIA's knowledge of a material
16 breach of this Article 12 by the Contractor, the SJVIA shall either:

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

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

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

1 12.16 **Judicial or Administrative Proceedings.** The SJVIA may terminate this
2 agreement in accordance with the provisions of this Agreement if:

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

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

9 12.17 **Effective of Termination.** Upon termination or expiration of this
10 Agreement for any reason, the Contractor shall return or destroy all PHI received from
11 SJVIA (or created or received by the Contractor on behalf of the SJVIA) that the
12 Contractor still maintains in any form and shall retain no copies of such PHI. If return or
13 destruction of PHI is not feasible, it shall continue to extend the protections of these
14 provisions to such information, and limit further use of such PHI to those purposes that
15 make the return or destruction of such PHI infeasible. This provision shall apply to PHI
16 that is in the possession of subcontractors or agents, if applicable, of the Contractor. If
17 the Contractor destroys the PHI data, a certification of date and time of destruction shall
18 be provided to the SJVIA by the Contractor.

19 12.18 **Disclaimer.** The SJVIA makes to warranty or representation that
20 compliance by the Contractor with these provisions, the HITECH Act, HIPAA, or the
21 HIPAA regulations will be adequate or satisfactory for the Contractor's own purposes or
22 that any information in the Contractor's possession or control, or transmitted or received
23 by the Contractor, is or will be secure from unauthorized access, viewing, use

1 disclosure, or breach. The Contractor is solely responsible for all decisions made by the
2 Contractor regarding the safeguarding of PHI.

3 12.19 **Amendment.** The parties acknowledge that federal and State laws
4 relating to electronic data security and privacy are rapidly evolving and that amendment
5 of this Agreement may be required to provide for procedures to ensure compliance with
6 such developments. The parties specifically agree to take such action as is necessary
7 to amend this Agreement in order to implement the standards and requirements of
8 HIPAA, the HIPAA regulations, the HITECH Act, and other applicable laws relating to
9 the security or privacy of PHI. The SJVIA may terminate this Agreement upon 30 days'
10 written notice if the Contractor does not enter into an amendment providing assurances
11 regarding the safeguarding of PHI that the SJVIA, in its sole discretion, deems sufficient
12 to satisfy the standards and requirements of HIPAA, the HIPAA regulations, and the
13 HITECH Act.

14 12.20 **No Third-Party Beneficiaries.** Nothing express or implied in the terms
15 and conditions of these provisions is intended to confer, nor shall anything herein
16 confer, upon any person other than the SJVIA or the Contractor and their respective
17 successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

18 12.21 **Interpretation.** The provisions of this Article 12 shall be interpreted as
19 broadly as necessary to implement and comply with HIPAA regulations and applicable
20 State laws. The parties agree that any ambiguity in the provisions of this Article 12 shall
21 be resolved in favor of a meaning that complies and is consistent with HIPAA and the
22 HIPAA regulations.

1 12.22 **Regulatory References.** A reference in the provisions of this Article 12 to
2 a section in the HIPAA regulations means the section as in effected or as amended.

3 12.23 **Survival.** The provisions of this Article 12 survive the termination or
4 expiration of this Agreement.

5 12.24 **No Waiver of Obligations.** No change, waiver, or discharge of any
6 liability or obligation under this Article 12 on any one or more occasions shall be
7 deemed a waiver of performance of any continuing or other obligations or shall prohibit
8 enforcement of any obligation on any other occasion.

9 12.25 **Definitions.** For the purposes of this Article 12:

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

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

12 **Article 13**

13 **General Terms**

14 13.1 **Modification.** This Agreement may not be modified, and no waiver is
15 effective, except by another written agreement that is signed by both parties.

16 13.2 **Non-Assignment.** Neither party may assign rights or delegate its
17 obligations under this Agreement without prior written consent of the other party.

18 13.3 **Government Law.** The laws of the State of California govern all matters
19 arising from or related to this Agreement.

20 13.4 **Jurisdiction and Venue.** This Agreement is signed and performed in
21 Fresno County, California. Contractor consents to California jurisdiction for actions
22 arising from or related to this Agreement, and, subject to the Government Claims Act, all
23 such actions must be brought and maintained in the Fresno County Superior Court.

1 13.5 **Construction.** The final form of this Agreement is the result of the parties'
2 combined efforts. If anything in this Agreement is found by a court of competent
3 jurisdiction to be ambiguous, that ambiguity shall not be resolved by construing the
4 terms of this Agreement against either party.

5 13.6 **Headings.** The heading and section titles in this Agreement are for
6 convenience only and are not part of this Agreement.

7 13.7 **Severability.** If anything in this Agreement is found by a court of
8 competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this
9 Agreement remains in effect, and the parties shall make best efforts to replace the
10 unlawful or unenforceable part of this Agreement with lawful and enforceable terms
11 intended to accomplish the parties' original intent.

12 13.8 **Nondiscrimination.** During the performance of this Agreement, the
13 Contractor shall not unlawfully discriminate against any employee or applicant for
14 employment, or recipient of services, because of race, religious creed, color, national
15 origin, ancestry, physical disability, mental disability, medical condition, genetic
16 information, marital status, sex, gender, gender identity, gender expression, age, sexual
17 orientation, military status or veteran status pursuant to all applicable State of California
18 and Federal statutes and regulation.

19 13.9 **No Waiver.** Payment, waiver, or discharge by the SJVIA of any liability or
20 obligation of the Contractor under this Agreement on any one or more occasions is not
21 a waiver of performance of any continuing or other obligation of the Contractor and does
22 not prohibit enforcement by the SJVIA of any obligation on any other occasion.

1 13.10 **Entire Agreement.** This Agreement, including its exhibits, is the entire
2 agreement between the Contractor and the SJVIA with respect to the subject matter of
3 this agreement, and it supersedes all previous negotiations, proposals, commitments,
4 writings, advertisements, publications, and understandings of any nature unless those
5 things are expressly included in this Agreement. If there is any inconsistency between
6 the terms of this Agreement without its exhibits and the terms of the exhibits, then the
7 inconsistency will be resolved by giving precedence first to the terms of this Agreement
8 without its exhibits, and then to the terms of the exhibits.

9 13.11 **No Third-Party Beneficiaries.** This Agreement does not and is not
10 intended to create any rights or obligations for any person or entity except for the
11 parties.

12 13.12 **Authorized Signature.** The Contractor represents and warrants to the
13 SJVIA that:

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

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

19 13.13 **Counterparts.** This Agreement may be signed in counterparts, each of
20 which is an original, and all of which together constitute this Agreement.

21 *[SIGNATURE PAGE FOLLOWS]*

22
23

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

3 TFG Partners, LLC

SAN JOAQUIN VALLEY INSURANCE
AUTHORITY

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Reviewed and recommended for
approval.

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SJVIA Manager

Exhibit A

SCOPE OF SERVICES

TFG Partners will review 100 percent of SJVIA's medical claims administered by Anthem Blue Cross ("Anthem") and Delta Dental ("Delta") (each an "Administrator" and together, "Administrators") under SJVIA's eight benefit plan designs ("100% Claims Audit"), as provided in this Exhibit A. This review will cover the period the 2020 and 2021 plan years up to the maximum allowable period under SJVIA's Administrative Service Agreements with Anthem and Delta.

TFG Partners will also perform a Medical Plan members' Eligibility Review, Operational Review, and Discount Analysis as provided in this Exhibit A.

DESCRIPTION OF TASKS

100% Claims Audit

The 100% Claims Audit consists of the following six tasks to be performed by TFG Partners.

Task 1. Audit Commencement & Data Gathering

This task consists of a series of activities. TFG Partners will arrange for all contractual Health Insurance Portability and Accountability Act ("HIPAA") business associate agreements and other confidentiality agreements to be executed to obtain the paid claims files for the audit period from Anthem and Delta. TFG Partners will obtain a copy of SJVIA's Administrative Services Agreements from SJVIA and review the documents within the context of the audit services and other contract compliance provisions.

TFG Partners will thoroughly review all SJVIA's medical and dental plan benefit provisions and work with SJVIA team members to define each plan element and group application, specifically reflecting SJVIA's unique plan design information.

Upon execution by TFG Partners of any required pre-audit documents (e.g., nondisclosure agreements from the Administrators), TFG Partners receives the paid claims file for the audit period from Anthem and Delta. TFG Partners requires from Anthem and Delta:

- All data elements needed for the audit in a single and consistent file format;
- Accurate documentation of the file format and data dictionary used.

Task 2. System Programming

Once task 1 is complete, TFG Partners will customize its system's program logic to include the plan elements specific for SJVIA. This custom logic will provide the basis for conducting the electronic audit and manual claims reviews identified in Task 3.

Task 3. Electronic Audit, Manual Claims Reviews and Claim Sample Selection

This task consists of a variety of electronic audits, manual reviews, and claim sample selection for both the Anthem as well as the Delta audits that involve both general or universal medical claim analysis logic and specific analysis unique to SJVIA's medical and dental health care claims administration.

The following reviews are included:

Review: Duplicate and Erroneous Claims

In the duplicate and erroneous claims review, TFG Partners will conduct a comprehensive electronic review of SJVIA's medical claims paid during the audit period to identify any actual duplicate, erroneous or inappropriate charges applied to overall claims utilization. TFG Partners will conduct three levels of electronic duplicate and erroneous payment reviews at both the individual claim summary and claim detail (line item) level. Level I will identify pure potential duplicate claims, using a match on specified data fields.

The final two levels incorporate additional data elements to identify complex duplicate claim exceptions (e.g., individual unbundled charges while a global fee applies) and a variety of other erroneous claim conditions.

Review: Other Party Liability (OPL)

A major component of the medical cost containment effort typically resides in the administration of the following programs:

- Coordination of Benefits (COB)
- Workers' Compensation Exclusion
- Automobile Liability Subrogation
- Medicare Coordination and Medicare End Stage Renal Disease

In the OPL review, TFG Partners will perform OPL consistency reviews and code logic, such as identification of other party coverage with coverage gaps, high probability Medicare covered claims, and presence of car accident related or workers compensation related codes in ER claims, all designed to identify erroneously paid other party liability claims. This review will list all exception claims that potentially should be paid by the other carriers, Medicare,

automobile carriers and workers' compensation and therefore should not have been covered and paid under the medical plan.

Review: Plan Benefit Compliance and Exclusions

In the plan benefit compliance and exclusions review, TFG Partners will electronically identify benefit payment errors made over the entire audit period. TFG Partners' system will electronically reprocesses 100 percent of the claims to identify payments for non-covered services, misapplied deductibles, co-payments, maximums, and payment levels.

Review: High Dollar Claims

In the High Dollar claims review, TFG Partners will identify all high dollar claims by diagnostic category. Additionally, TFG Partners will review the claim history of each SJVIA plan member with a high dollar claim, to review the total available cost for the treatment episode of which the high dollar claim is part. After identification of the high-cost claims and claimants, TFG Partners will confirm member eligibility, and check that all prior authorization criteria have been met.

With the information acquired on-site, TFG Partners will verify that the appropriate network or out-of-network pricing rates have been applied and will calculate the payment rate and check it against any contractual provisions. TFG Partners will review all procedure codes in relation to the diagnostic documentation for appropriateness (i.e., to determine whether procedures performed supported by the diagnostic codes) and check for unusual high medical supply charge outliers (e.g., pacemakers, prostheses).

TFG Partners will also review the diagnostic and procedure codes for potential other party liability and check if proper subrogation procedures have been implemented. The TFG Partners audit team will request information from the Administrators on OPL process status and total of dollars recovered for identified subrogation claims.

Review: Administrative Technical Correct Coding

In the administrative technical correct coding review, TFG Partners will assess all claims adjudicated in the audit period for technical processing and entry errors such as incorrect reversal of debits or credits, entry and transaction problems, claims processing system insufficiencies, manual processing errors or non-approved billing for administrative functions.

Review: Administrative Medical Correct Coding

In the administrative medical correct coding review, TFG Partners will assess all claims adjudicated in the audit period for compliance to medical correct coding practices such as

proper reductions of surgical procedures, application of global fees, repeat procedure billings and unbundling of procedure codes.

As part of task three and, as a result, of the initial 100 percent electronic audits and subsequent manual reviews of the identified exception categories described above, TFG Partners will select a claims sample for on-site or virtual off-site review. The sample and review process encompasses both the selection of sample claims that, based on the information available to TFG Partners, demonstrate potential as a payment exception, as well as the selection of sample claims for which there is insufficient claim file data available to TFG Partners to make a determination when it selects the sample. All sample claims require further investigation through review of Anthem and Delta's claim documentation (typically additional detail not on the claims tape such as case management notes or plan sponsor emails explaining exceptions or approving any deviations from the plan benefit design), or access to the member history file, which is done on-site by TFG Partners.

Review: Administrative : Dental Medical and Technical Correct Coding

For the dental audit, TFG Partners reviews dentally specific medical logic (e.g., extraction of same tooth twice), procedural frequency limits (e.g., root canals), bundling, and unbundling of procedures.

Task 4. Claims Sample Validation

TFG Partners will conduct an on-site or virtual off-site claim validation commensurate with the Administrative Services Only Agreement audit terms. In this process, TFG Partners will confirm adjudication exceptions and identify any deficiencies that support the findings of the electronic audits. The process consists of a number of steps: First Anthem and Delta will be presented with a sample of exception claims. TFG and each Administrator's audit team will then follow a formal resolution process to come to claim by claim conclusions: Both parties either agree that a claim is in error or is not in error. If no agreement can be reached it will be documented in the "Agree" to "Disagree" category. Claims in the latter category will be documented as such (see task 5 below). Subsequently in task 6 below, the claims will be presented for review and resolution to SJVIA, the plan sponsor responsible for benefit design and interpretation. This happens as part of the final closing activities (see task 6 below).

Upon completion of the validation review, TFG Partners will conduct individual exit meetings with Anthem and Delta and address any open issues as well as any questions that Anthem and Delta might have.

Task 5. Exception Analysis and Audit Report

Upon completion of the on-site validation process and operational review, and by utilizing all Anthem and Delta responses, TFG Partners will conduct a final exception analysis to develop a comprehensive written audit report, which includes an itemization of agreed upon payment exceptions, like and related claims to the sample claims by error category, and constructive process improvement recommendations.

Task 6. Final Recommendations and Closing Strategy Summary

This task is intended to assist SJVIA in the presentation of a Final Recommendations and Closing Summary to Anthem and Delta to ensure clear goals for closure are defined.

Goals for closure that may be defined in the Final Recommendations and Closing Summary may include, but are not limited to:

- Resolution of processing issues with Anthem and Delta, such as:
 - Benefit applications or interpretation not according to SJVIA’s plan design or intent often requiring plan sponsor confirmation of true intent;
 - Anthem and Delta processing policies versus SJVIA’s plan design and intent; and
 - Systemic processing problems
- Implementation of process improvements; and
- Recovery of findings agreed-upon by Anthem or Delta and related claims, or a settlement as deemed appropriate by both SJVIA and Anthem or Delta and under direction of SJVIA.

Once the goals for closure are defined, TFG Partners will:

- Develop a strategy to assist SJVIA in achieving its goals, both from a prevention, as well as recovery perspective;
- Create the documentation, required back-up data files and support to fulfill the strategy, including provision of preliminary lists of charges by category likely billed in error, and final lists of claims by category paid in error that, after consultation with SJVIA, can be used by Anthem and Delta for recovery; and
- Ensure that all expected corrective actions were taken by Anthem and Delta via post audit corrective action verification.

TFG Partners shall work with SJVIA and Anthem and Delta to develop a common understanding of the SJVIA’s issues, and receipt of firm written commitments from Anthem or Delta that address specific goals. TFG Partners shall work with Anthem and Delta throughout the closing meeting (final meeting to close out the audit) until all exceptions and issues identified during the audit are appropriately resolved.

Eligibility Review

The electronic eligibility review consists of the following tasks to be performed by TFG Partners:

1. Collection of eligibility files or change files. TFG Partners will create a “negative” file with all non-eligible members to be excluded before a specific effective or after termination date by member;
2. 100% paid claims files review by TFG Partners, against the non-eligible file to detect any exception claims paid;
3. Provision by TFG Partners of “non-eligible members” list and claims paid before or after their eligibility period.

The non-eligible member list is for internal review by SJVIA and is intended to help SJVIA eliminate any false positives that TFG Partners cannot detect (such as dismissed employees re-instated after, e.g., union appeals). The eligibility review is contingent upon availability of eligibility data.

Operational Review

TFG Partners will perform an operational review to assess whether Anthem has the appropriate , industry standard processes and controls in place when paying claims:

- Operational Processes and Controls Assessment – Assesses the operational controls and administrative procedures used by Anthem to adjudicate claims. The review by TFG Partners includes an in-depth survey of the operational set-up (including, but not limited to, systems, security, appeals approach and timeliness, subrogation, customer service follow-up and timeliness, paper claims handing) and review of key issues in parallel with the 100% claim audit;
- Security and Fraud Waste and Abuse Review – TFG Partners will assess to what extent Anthem complies with HIPAA, Health Information Technology for Economic and Clinical Health Act (“HITECH”), and Patient Protection and Affordable Care Act (“ACA”) related privacy and security requirements, including review of their most recent SSAE-16 and SOC2 audit results, as well as review of Fraud, Waste and Abuse (FWA²) controls.

Discount Analysis

TFG Partners will perform an assessment of discount levels for all claims during the audit period. This assessment will cover all in-network and out-of-network claims, as well as specialty drug claims, such as injectables and J-code discounts.

Exhibit B

AUDIT FEES

The fee to perform the medical claims audit portion of the 100% Claims Audit is \$48,000.00 (“Medical Claims Audit Fee”). The fee to perform the dental claims audit portion of the 100% Claims Audit is \$17,000.00 (“Dental Claims Audit Fee”). The fee will be invoiced to the SJVIA as follows:

- One third (1/3) of the Medical Claims Audit Fee and one third (1/3) of the Dental Claims Audit Fee upon execution of this Agreement, billed individually by audit;
- One third (1/3) of the Medical Claims Audit Fee upon the completion and written acceptance by the SJVIA Manager of the on-site or virtual off-site claim validation, as included in Task 4, and one third (1/3) of the Dental Claims Audit Fee upon delivery and written acceptance by the SJVIA Manager of the dental claims audit sample to Dental, as included in Task 3, billed individually by audit; and
- One third (1/3) of the Medical Claims Audit Fee and one third (1/3) of the Dental Claims Audit Fee upon delivery and written acceptance by the SJVIA Manager of the Final Recommendations and Closing Summary, as included in Task 6, billed individually by audit.

TRAVEL EXPENSES

TFG Partners is entitled to reimbursement from SJVIA only for documented travel expenses that are reasonably incurred and necessary for TFG Partners’ performance of the audits under this Agreement. Such reimbursements are subject to SJVIA’s policy concerning reimbursement of such expenses, as updated by SJVIA from time to time. TFG Partners represents that, under Anthem and Delta COVID-19 restrictions, travel expenses are not likely to be incurred.

ADMINISTRATOR-RELATED COSTS FOR OBTAINING CLAIMS DATA OR RESPONDING TO AUDIT RESULTS

If an Administrator (as defined in Exhibit A of this Agreement) charges a fee for claims data required for any audit under this Agreement, or for responding to audit results, TFG Partners shall inform the SJVIA Manager of the amount of the fee and provide a reasonable opportunity of at least three SJVIA business days for the SJVIA Manager to approve or object to the fee before TFG Partners incurs it. TFG Partners shall separately invoice the SJVIA for all such fees actually incurred by TFG Partners.