

Attachment D
Changes to Boilerplate Contract Text

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As noted in the Key Contract Risks section of the Board Letter, certain modifications were made to the County's standard terms and conditions. This document indicates the specific changes made. Please refer to the Key Contract Risks section of the Board letter for further discussion regarding these changes.

Standard of Performance (Section 7)

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, ~~expertise~~~~experience~~, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. and in accordance to the specifications set forth in EXHIBIT A. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. Pursuant to Section 8, CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation. -

Acceptance (Section 8)

8. ACCEPTANCE

If a Deliverable does not meet the COUNTY's satisfaction, the County shall deliver written notice of such fact within five (5) business days ("Acceptance Period"), describing such nonconformity with particularity. CONTRACTOR shall undertake correction efforts and redeliver the revised Deliverable to the COUNTY. Upon completion of such corrections and CONTRACTOR's redelivery to the COUNTY of the Deliverable, a new Acceptance Period for such Deliverable shall commence. If CONTRACTOR is unable to correct the nonconforming Deliverable or correction of the nonconforming Deliverable is not commercially practical in CONTRACTOR's reasonable opinion, then the COUNTY shall cease use of the nonconforming Deliverable, and CONTRACTOR shall return an appropriate portion of any payment made by COUNTY for such nonconforming Deliverable.

Records, Audits and Reviews (Section 15)

14-15. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any ~~time during~~~~time during~~ CONTRACTOR's regular business hours or upon reasonable notice.- In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ~~CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.~~

Upon reasonable notice and no more frequent than once a year, CONTRACTOR shall participate in annual [MS] audits and reviews, whether by COUNTY or the State, at no charge to COUNTY. If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature.- Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.-

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Termination (Section 20)

3. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. ~~Upon receipt of notice; provided CONTRACTOR is granted a reasonable opportunity to cure any such default within ten (10) business days ("Cure Period"). If CONTRACTOR is unable or unwilling to cure the default within the Cure Period,~~ CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. -The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.

Time is of the Essence (removed)

~~23. TIME IS OF THE ESSENCE~~

~~Time is of the essence in this Agreement and each covenant and term is a condition herein.~~

Business Associate (removed)

~~33. BUSINESS ASSOCIATE~~

~~The parties agree to the terms and conditions set forth in Exhibit D – HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.~~

Indemnification with a Limitation of Liability (Exhibit C)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all third party claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from ~~any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim (a) death or bodily injury, (b) damage to real or tangible property, or (c) patent, copyright, or trademark infringement,~~ except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

LIMITATION OF LIABILITY.

~~Except to the extent finally determined to be prohibited by law, CONTRACTOR's aggregate liability for all claims, losses, liabilities, or damages in connection with this Agreement or its subject matter, whether as a result of breach of contract, tort (including negligence), or otherwise, regardless of the theory of liability asserted, is limited to no more than two times (2x) the total amount of fees paid to CONTRACTOR for the particular services giving rise to the liability under this Agreement. In addition, CONTRACTOR will not be liable for any lost profits, consequential, indirect, punitive, exemplary, or special damages. Also, CONTRACTOR shall have no liability arising from or relating to any third party hardware, software, information, or materials selected or supplied by the COUNTY.~~