

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
Cross Country Staffing, Inc.**

This Agreement is made this 1st day of July, 2017, in the City and County of San Francisco, State of California, by and between Cross Country Staffing, Inc. 5201 Congress Avenue, Boca Raton, FL 33487 ("Contractor") and City.

**Recitals**

WHEREAS, the Department of Public Health ("Department") wishes to secure as-needed nursing staffing services; and,

WHEREAS, Department is authorized under to Administrative Code Section 21A.2 to procure certain goods and services through a Group Purchasing Organization, and Department selected Contractor through that process; and

WHEREAS, there is no Local Business Entity ("LBE") subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 49137-14/15 on 6/19/2017;

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and Department of Public Health."

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means Cross Country Staffing, Inc. 5201 Congress Avenue, Boca Raton, FL 33487.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) July 1, 2017; or (ii) the Effective Date and expire on June 30, 2019, unless earlier terminated as otherwise provided herein.

## **Article 3 Financial Matters**

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Director of Health, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Nine Million Eight Hundred Forty Thousand Dollars (\$9,840,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until Department of Public Health approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.3.3 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 Reserved. (LBE Payment and Utilization Tracking System)**

**3.3.6 Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.4.1 Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. If Contractor expends \$500,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Said requirements can be found at the following website address: <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

If Contractor expends less than \$500,000 a year in Federal awards, Contractor is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Contractor agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

3.4.2 The Director of Public Health or his / her designee may approve a waiver of the audit requirement in Section 3.4.1 above, if the contractual Services are of a consulting or personal

services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the DIRECTOR ninety (90) calendar days before the end of the Agreement term or Contractor's fiscal year, whichever comes first.

3.4.3 Any financial adjustments necessitated by this audit report shall be made by Contractor to the City. If Contractor is under contract to the City, the adjustment may be made in the next subsequent billing by Contractor to the City, or may be made by another written schedule determined solely by the City. In the event Contractor is not under contract to the City, written arrangements shall be made for audit adjustments.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

### 3.6 **Reserved. (Payment of Prevailing Wages)**

## Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

### 4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of

the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 Contractor will not employ subcontractors.

**4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already

paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.5 Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.6 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.7 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.9 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.



**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. Contractor shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of health information, electronic records or related topics, arising directly or indirectly from Contractor's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT

LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

## 8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information
13.4	Protected Health Information		

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

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(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

#### 8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services		9.1	Ownership of Results
3.4	Audit and Inspection of Records		9.2	Works for Hire
3.5	Submitting False Claims		11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity		11.7	Agreement Made in California; Venue
6.1	Liability of City		11.8	Construction
6.3	Liability for Incidental and Consequential Damages		11.9	Entire Agreement
Article 7	Payment of Taxes		11.10	Compliance with Laws
8.1.6	Payment Obligation		11.11	Severability
13.4	Protected Health Information		13.1	Nondisclosure of Private, Proprietary or Confidential Information

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

#### **Article 9 Rights In Deliverables**

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Reserved.**

**10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P.

Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 **Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 **Reserved. (Slavery Era Disclosure)**



10.13 **Reserved. (Working with Minors)**

10.14 **Consideration of Criminal History in Hiring and Employment Decisions**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 **Reserved. (Public Access to Nonprofit Records and Meetings)**

10.16 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved. (Preservative Treated Wood Products)**

## Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To CITY: Office of Contract Management and  
Compliance  
Department of Public Health  
101 Grove Street, Room 410  
San Francisco, California 94102 e-mail: arlene.lee@sfdph.org

And: Gillian Otway  
ZUCKERBERG SAN FRANCISCO  
GENERAL HOSPITAL & TRAUMA  
CENTER  
1001 PORTRERO AVENUE, ROOM 7G15  
SAN FRANCISCO, CA 94110 e-mail: gillian.otway@sfdph.org

To  
CONTRACTOR: CROSS COUNTRY STAFFING, INC.  
5201 CONGRESS AVENUE  
BOCA RATON, FL 33487 e-mail: cherbert@crosscountrystaffing.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Reserved.**

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

## 11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, and implementing task orders. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over any Contractor's pre-printed terms.

## **Article 12 Department Specific Terms**

### **12.1 Third Party Beneficiaries.**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

13.1.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

### **13.2 Reserved. (Payment Card Industry ("PCI") Requirements.**

### **13.3 Business Associate Agreement.**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, transmission, and storage of health information.

The parties acknowledge that CONTRACTOR is one of the following:

- CONTRACTOR will render services under this contract that include possession or knowledge of identifiable Protected Health Information (PHI), such as health status, health care history, or payment for health care history obtained from CITY. Specifically, CONTRACTOR will do one or more of the following:
- Create PHI
  - Receive PHI
  - Maintain PHI
  - Transmit PHI and/or
  - Access PHI

**The Business Associate Agreement (BAA) in Appendix E is required and is incorporated into this Agreement by reference as though set forth herein. Please note that BAA requires attachments to be completed.**

- CONTRACTOR will not have knowledge of, create, receive, maintain, transmit, or have access to any Protected Health Information (PHI), such as health status, health care history, or payment for health care history obtained from CITY.

**The Business Associate Agreement is not required.**

**13.4 Protected Health Information.** Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

#### **Article 14 MacBride And Signature**

**14.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

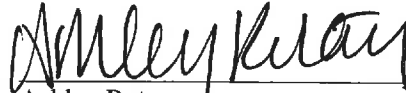
Recommended by:



Barbara A. Garcia, MPA  
Director of Health  
Department of Public Health

**CONTRACTOR**

Cross Country Staffing, Inc.



Ashley Retay  
~~6551 Park of Commerce Blvd., NW~~ 5201 Conquest Ave.  
Boca Raton, FL 33487

Supplier ID: 0000022073

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:



Virginia Dario Elizondo  
Deputy City Attorney

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Reserved
- D: Reserved
- E: HIPAA Business Associate Agreement
- F: Invoice

## **Appendix A Scope of Services**

### **1. Terms**

#### **A. Contract Administrator:**

In performing the Services hereunder, Contractor shall report to Gillian Otway, Contract Administrator for the City, or his / her designee.

#### **B. Reports:**

Contractor shall submit written reports as requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports is a necessary and material term and condition of this Agreement. All reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

For services solicited under a Group Purchasing Organization (GPO) the Contractor shall report all applicable sales under this agreement to the respective GPO.

#### **C. Evaluation:**

Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Contractor's Services. Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City.

For contracts for the provision of services at San Francisco General or Laguna Honda Hospital and Rehabilitation Center, the evaluation program shall include agreed upon performance measures as specified in the Performance Improvement Plan and Performance Measure Grid which is presented in Attachment 1 to Appendix A. Performance measures are reported annually to the Zuckerberg San Francisco General performance improvement committees (PIPS and Quality Council) or the to the Administration Office of Laguna Honda Hospital and Rehabilitation Center.

The City agrees that any final written reports generated through the evaluation program shall be made available to Contractor within thirty (30) working days. Contractor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

#### **D. Possession of Licenses/Permits:**

Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this Agreement.

#### **E. Adequate Resources:**

Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such Services.

F. Infection Control, Health and Safety:

(1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

(2) Contractor must demonstrate personnel policies/procedures for protection of staff and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.

(3) Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.

(4) Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.

(5) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(6) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(7) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including safe needle devices, and provides and documents all appropriate training.

(8) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

G. Aerosol Transmissible Disease Program, Health and Safety:

(1) Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases (<http://www.dir.ca.gov/Title8/5199.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

(2) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(3) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.



(4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

H. Acknowledgment of Funding:

Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco."

**2. Description of Services**

Contractor agrees to perform the following Services:

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

Detailed description of services are listed below and are attached hereto

Appendix A-1 Cross Country Staffing, Inc. Services to be Performed by Contractor Traveling Nursing Personnel Services

**3. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney to the City must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**Attachment 1 to Appendix A**

**PERFORMANCE IMPROVEMENT PLAN  
AND PERFORMANCE MEASURE GRID**

**Contract Services**

**AIM:** All ZSFG services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

**AIM:** All LHH services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

<b>Contract Name</b>	<b>Services Provided</b>	<b>Measure Name</b>	<b>Metric (What data is being collected? )</b>
<b>1. Cross Country Staffing, Inc.</b>	<b>RN, LVN, MEA, C.N.A, PCA</b>	<b>Completes Hospital Unit Orientations</b>	<b>NUM: # of contracted staff documented as meeting criteria DENOM: # of contracted staff used at ZSFG</b>
<b>2. Cross Country Staffing, Inc.</b>	<b>RN, LVN, MEA, C.N.A, PCA</b>	<b>Contract Staff Completed Medication Pass / Narcotic Audits</b>	<b>NUM: # of contracted staff meeting verification requirements DENOM: # of contracted staff</b>
<b>3. Cross Country Staffing, Inc.</b>	<b>RN, LVN, MEA, C.N.A, PCA</b>	<b>Contract Staff Evaluation Completed</b>	<b>NUM: # of contracted staff with completed evaluation DENOM: # of contracted staff</b>

<b>4. Cross Country Staffing, Inc.</b>	<b>RN, LVN, MEA, C.N.A, PCA</b>	<b>Meets Verification Requirements</b>	<b>NUM: # of contracted staff documented as meeting criteria DENOM: # of contracted staff used at ZSFG</b>
<b>5. Cross Country Staffing, Inc.</b>	<b>RN, LVN, MEA, C.N.A, PCA</b>	<b>Perform Checklist Skills</b>	<b>NUM: # of contracted staff able to perform check list skills DENOM: # of contracted staff</b>

## Appendix A-1

### CROSS COUNTRY STAFFING, INC.

#### Services to be performed by contractor

#### TRAVELING NURSING PERSONNEL SERVICES

#### Department of Public Health — San Francisco Health Network

#### SCOPE OF SERVICES TO BE PERFORMED

Contractor shall perform in a professional and diligent manner and shall provide temporary Traveling Nursing Personnel with expertise to the San Francisco Health Network, (Zuckerberg San Francisco General Hospital & Trauma Center (also referred to as Hospital or ZSFG), Laguna Honda Hospital (LHH) and other network facilities as needed. Each nurse who is referred to the Hospital shall be qualified for the position to which said nurse is referred and meet the qualifications specified below.

The Department of Public Health, City and County of San Francisco shall maintain the exclusive right, through its agents, to approve or disapprove of any person or persons sent by the Contractor in response to orders of services. This shall include such issues as quality assurance, patient and employee safety, clinical care issues, professional performance, professional appearance, attendance and personal behavior. Questions pertaining to personnel performance will be resolved by the Director of Nursing Operations (Director) or his/her designee. The Director or his/her designee shall specify and supervise the kind, quality, and amount of the Contractor's services to be provided under this agreement.

#### REQUIREMENTS AND QUALIFICATIONS FOR NURSING PERSONNEL

- The Contractor must be compliant with the Business Associates provisions of the Health Insurance Portability and Accountability Act (HIPAA).
- Each nurse shall be required to wear an appropriate nurse's uniform and a name badge at all times.
- No perfume or artificial nails will be permitted. Nails must be trim.
- All Registered Nurses must have a cell phone in order that ZSFG or the requesting unit can contact them during off-shift hours for issues that may come up such as medication administration. The cell phone number must be provided to ZSFG or the requesting unit upon assignment.
- All nurses must be oriented clinically and, to the hospitals' computer/electronic systems and policies/procedures at agency expense.

Each nurse who is referred to the Hospital shall be qualified for the position to which said nurse is referred and meet the following qualifications.

A. Possess a current valid registered nurse, vocational nurse, nursing assistant, or operating room technician license issued by the State of California and current and valid CPR certificate issued by the American Heart Association. Each nurse shall carry the original of his or her license and CPR certificate and shall present them to Nursing Administration, upon request. License and CPR certificate must be current at all times. FAILURE TO PRESENT CURRENT LICENSE AND/OR CERTIFICATION (by "primary source-verification" method PRIOR to expiration date) AND/OR CPR CERTIFICATE UPON ASSIGNMENT MAY RESULT IN BREACH OF CONTRACT.

B. The following positions must have a minimum of one (1) year's full time experience within the past two (2) years in an acute general care hospital and long term care/skilled nursing facility and in their applicable specialty care areas, and the experience must be documented, on file at the Contractor and available for review upon request:

- Registered Nurses, Licensed Vocational Nurses, and Certified Nursing Assistants;
- Registered Nurses referred for medical surgical, trauma critical care, Level 1 Trauma emergency room, operating room, high risk labor and delivery, pediatric, intensive care nursery, skilled nursing, rehabilitation, and other specialty assignments, including administrative supervision.

C. All Registered Nurses, Licensed Vocational Nurses, and Certified Nursing Assistants shall have in the Contractor's files documentation of a Competency Skills Inventory Checklist that includes:

- Safe "needle devices"
- Infection control
- Patient safety
  - o Positive patient identification
  - o Time Out
  - o Clinical alarms
  - o Falls prevention
  - o Use of restraints
- Blood transfusion
- Isolation
- Patient Rights
- Advance Directive
- Patient abuse
- Child abduction
- Pain assessment and reassessment
- Nutritional assessment
- Functional assessment
- Pressure ulcer
- Patient/Family education
- Effective communication & documentation
- Safe patient handoff
- Emergency response
- Safe equipment handling and use
- Universal Body Substance precautions
- HIPAA & Information systems security
- Under Patient safety: add medication administration

The Contractor shall schedule the nurse to participate in a patient care documentation training wherein the nurse must pass the required skills validation test prior to the start of the first scheduled shift.

The Contractor shall not refer or schedule any nurses beyond their documented clinical skills and experience. The Contractor shall send (fax or mail) a copy of an updated skills checklist prior to the start of the first scheduled shift.

- D. All Registered Nurses, Licensed Vocational Nurses, and Certified Nursing Assistants shall be screened by the Contractor for competency that meets the patient requirements of the clinical area in which they are to be assigned as per scope of California Title 22 Standards Sections 70213(c), 70214(a1, a2) and 70217(1,m).
- E. All Registered Nurses, Licensed Vocational Nurses and Certified Nursing Assistants shall be screened by the Contractor for judicial/criminal records.
- F. All personnel scheduled, shall have serologic evidence of immunity to Mumps, Measles, Rubella and Varicella, annual Tuberculosis screening, and Hepatitis B immunization/declination. They shall be free of any communicable diseases and must have a record of immunity in the Contractor's file.
- G. To comply with OSHA regulations on Occupational Exposure to Blood Borne Pathogens (29 CFR Part 1910-1030), all Nursing Registries are to have the following policies and procedures in effect:
- i. Exposure Determination. Record of employees having or likely to have direct exposure to blood/other potentially infectious fluids
  - ii. Training and Education of Employees: Record of employees' participation in an education and training program upon orientation and annually thereafter and whenever modification of current task may affect the potential occupational exposure to bloodborne pathogens. The training program shall contain the following elements:
    - (1) Explanation of epidemiology, clinical presentation, modes of transmission of bloodborne pathogens.
    - (2) Information on HBV vaccine; efficacy, safety, and benefits.
    - (3) Explanation of use and limitations of methods that may prevent or reduce exposure including:
      - (a) Universal Precautions
      - (b) Personal Protective Equipment
      - (c) Safe Needle Devices
      - (d) Work Practices
      - (e) Infectious waste handling and disposal
      - (f) Explanation of Biohazard/Biological hazard symbol and color-coded systems for identification of biological hazard.
      - (g) Explanation of procedure to follow if an exposure incident occurs and available medical follow-up
      - (h) Mandatory safety and infection control education
  - iii. Hepatitis B Vaccine: Record of employee vaccination or declination of HBV vaccine.
  - iv. Exposure Tracking: Record of each employee's reported exposure incident. Record in OSHA 200 Log

of employee HBV/HIV illness related to injury or exposure incident.

- H. Registered Nurses must have successfully passed the Contractor's appropriate drug calculation and "medication pass" procedure.
- I. Nurse Practitioners and Certified Registered Nurse Anesthetists must go through a separate credentialing process through the University of California, San Francisco Dean's Office prior to assignment.

The Department of Public Health, City and County of San Francisco, shall maintain the exclusive right, through its agents, to approve or disapprove of any person or persons sent by the contract vendor in response to orders of services. This shall include such issues as quality assurance, patient and employee safety, clinical care issues, professional performance, professional appearance, attendance and personal behavior. Questions pertaining to personnel performance will be resolved by the Director of Nursing Operations (DIRECTOR) or his/her designee at Hospital. The DIRECTOR or his/her designee shall specify and supervise the kind, quality, and amount of the Contractor's services to be provided under contract.

- I. Orders for services will be communicated to Contractor by the DIRECTOR or his/her designee via e-mail, telephone and/or fax.
- II. Once having received the request for services, the Contractor must acknowledge the request for services, either positively or negatively, within five (5) working days from receipt of the request when the request is placed one month prior to the required commencement date of those services. The first vendor to respond positively with available staff will be awarded the order.
- III. All responses must be by e-mail to the person requesting the service.
- IV. Each traveling nurse assignment is for thirteen weeks (3 months) with the option to extend by mutual agreement for an additional thirteen weeks, or a reduced time assignment. Thirty-six (36) hours per week are guaranteed shifts for nurses.
- V. If a shift is changed from night to day, the nurse will be paid at day shift rates.
- VI. Prior to the confirmation of a traveling nurse assignment, Contractor will send (fax or e-mail) copy of license/certificate, driver's license/ CLEAR picture I.D., a cell phone number, updated competency skills list, resume, educational background, clinical experience/previous assignments and other credentials/documents relevant to the person's clinical specialty and competency.
- VII. Contractor is responsible for traveling nurse's housing, parking, transportation to ZSFG and thirty-two (32) hours of hospital orientation.
- VIII. The traveling nurse's seventy-two (72) hours per two (2) weeks schedule is based on a specific unit/area's staffing needs. Schedules are published every 28 days.
- IX. A traveling nurse unable to fulfill a shift due to illness may call in sick (no later than two hours before the start of the shift assigned), but shall provide a medical certificate upon return to work. Failure to provide a medical certificate will lead to a billable twelve (12) hour shift at the prevailing rate against the agency unless the Agency was able to provide another nurse to fill in the shift for the Traveler who called in sick or is was absent from work. No incidents of absence from work, other than illness or extreme family emergency verifiable in writing, are acceptable. The Traveling Nurse shall not request vacation or time off while under contract.

- X. Any scheduled shifts unfulfilled will extend the assignment by the equivalent number of shifts.
  - XI. If a nurse refuses an assignment in a clinical area in which he/she was contracted for, the Contractor will find a replacement and ZSFG will not release the nurse until the replacement becomes available. The nurse will be put on a "do not send" status and will not be acceptable to ZSFG for future assignment and employment.
- J. Operating Room Technician must possess a current valid license issued by the State of California and current and valid CPR certificate issued by the American Heart Association. Each personnel shall carry the original of his or her license and CPR certificate at all times and shall present them to ZSFG Nursing Administration, upon request.

#### **CANCELLATION OF SERVICE REQUEST**

If the Contractor cancels less than two (2) hours prior to reporting time or the nurse fails to report for work at specific time, the Hospital will be entitled to collect/credited for the entire shift at the prevailing rate. Credits will be reflected on Agency invoices. Contractor cancellation notices will also be reflected on the Hospital's time records to ensure Agency/the Hospital records are in agreement. If a replacement is sent within the first two (2) hours of the shift, the Hospital will pay for actual hours worked. Excessive cancellation by the Agency and excessive cancellation by a specific nurse may lead to termination of the contract for the Contractor and a "do not send" status for the nurse. Excessive cancellation is defined as two (2) times or more in a month.

#### **RIGHT TO DISMISS**

If, in the sole discretion of the DIRECTOR or designee, a nurse referred by the Contractor is deemed incompetent, negligent, or has engaged in misconduct, the Hospital will require the nurse to leave the Hospital's premises and the Hospital will inform the Agency of its decision/action immediately. The Hospital may furnish written justification for dismissal at least ten (10) working days after the incident.

If during the term of the contract, contract service is determined to be unacceptable for the Hospital, and such is documented by the Hospital, it is understood and agreed that the service will be canceled and removed from the contract without penalty to the City. The City's Sole obligation to the Contractor is payment of service made prior to any cancellation. The City will purchase the required service from any source and in a manner as determined by the Department.

- The Contractor will provide a replacement for the dismissed personnel, if the person has more than 33% of his/her assignment remaining.

The Hospital's obligation to compensate the Contractor for such nurse's services shall be limited to the hours actually worked by such nurse and the Hospital shall have no further obligation with respect to such nurse's assignment or reassignment to the hospital. Contractor agrees that the Hospital shall not be liable for any damage or cause of action arising out of the dismissal of Contractor personnel and hereby agrees to indemnify, defend and hold harmless the Hospital for any causes of action or damage brought by Contractor personnel against the Hospital, which arise out of such dismissal.

Nurses deemed unsatisfactory due to performance will be excluded from future Hospital assignments based on, but not limited to, failure to demonstrate satisfactory performance in the clinical area.

A Hospital Performance Evaluation Form or Formal Memorandum may be submitted to the Contractor upon completion of hospital assignment and will outline deficiencies used as a basis for the Hospital's



decision to deem nurse's performance to be unsatisfactory.

## **ORIENTATION**

While providing patient care services at the Hospital, nurses shall comply with all provisions of the licensing law under which they are licensed; with regulations promulgated there under; with patient documentation (manual and/or electronic) and with policies accepted by the Hospital to protect the health and welfare of patients. To ensure that nurses understand the Hospital policies, the hospital will provide thirty-two (32) hours of orientation to acquaint them with the clinical systems and with the Hospital's policies and documentation that are necessary to the performance of their temporary duties. The orientation is paid for by the contractor. The Hospital will also provide the Contractor within twenty (20) working days after notice of award with an Informational Binder for Contractor orientation of their personnel. The Contractor shall ensure that all registry personnel assigned to the Hospital are familiar with basic orientation information provided to the contractor by the Hospital before their first assigned shift to the Hospital. This includes, but is not limited, to information about timesheets, dress code, perfume, nail and hair codes, parking availability, etc.

## **MAINTENANCE OF RECORDS, LICENSES AND PERMITS**

Contractor must possess all licenses and/or permits necessary to provide the services specified and as required by the laws of the United States, the State of California, and the City and County of San Francisco.

The CITY may periodically inspect Contractor personnel files to validate compliance with all regulatory agencies. Visits to Contractor Agencies are unannounced and the following information must be maintained up-to-date and available for review upon request:

- a. Evidence of current California License/certification.
- b. Reference checks on file.
- c. Current Skills Inventory Checklist, which includes "safe needle devices".
- d. Current universal substance precautions and health and safety classes congruent with City and County policy (the Hospital's Health & Safety Policy), Joint Commission and California Title 22 standards.
- e. Evidence of appropriate education and experience requirements.
- f. Current and past performance evaluations.
- g. Serologic evidence of immunity to Mumps, Measles, Rubella and Varicella, annual Tuberculosis screening, and Hepatitis B immunization/declination on all nurses.
- h. Evidence of current CPR certification from the American Heart Association (other provider not acceptable).
- i. Documentation of satisfactory completion of drug calculation test, "medication pass" procedure and skill competency testing.
- j. For specialty care personnel, evidence of successfully passing specialty care competency testing and one year's recent experience in specialty area and other certifications required for said specialty per California Title 22 Competency Standards.

- k. Evidence of annual mandatory classes on Restraints, Pain Management, patient safety and infection control, disaster preparedness and other mandated competency skills educational requirements, as well as other permits, licenses, etc., as required by City/County, State, Joint Commission, or Federal regulations.
- l. California State Board's current list of nurses on probation or suspension must be kept on file by the Agency, and the Agency must check their nursing personnel against the current list to ensure nursing personnel referred to the Hospitals have current licenses. Personnel must not be referred to the Hospitals with expired license/certificate, or while on probation or suspension. Violation of this condition will be considered as a basis for contract termination. Evidence of current license or certificate (CNA) by "primary source verification" method obtained PRIOR to expiration date.
- m. Evidence of confirmation of no judicial/criminal record (DOJ and FBI).

If the City's inspection of Contractor personnel files should reveal Contractor to be in default of its obligations under the contract, it will be cause for cancellation of the contract by the City.

### **CHANGES**

Contractor must notify Hospital by certified mail, 30 days in advance of any changes in the services required in the contract.

### **PRICE**

Bid prices are to include all costs chargeable to the City. The Contractor will assume all costs including personnel salaries, transportation, parking, and any other expense for their employees. No charges to the City are to be made for special orientation or training. All costs to the City shall be included in the rates listed in Appendix B-1, Rate Schedule. No overtime will be paid unless same has been approved in advance by the using Department and the Nursing Supervisor signs the sign-in sheet.

### **PAYMENT / INVOICE**

- A. Services actually performed shall be determined from a weekly time sheet completed by each registry employee. The City week or pay period starts on Saturday and ends on Friday. The clock/stamper located in the Nursing Office must be used to record all in and out times. A system-generated time report along with the time sheets will be faxed to Contractor from the Hospital's Nursing Department. Contractor will format invoice to match the time report. Invoices submitted by the Contractor must be in a form acceptable to the Department and the Controller. All amounts paid by the City to the Contractor shall be subject to an audit by the City.
- B. In accordance with the prices quoted in the successful proposals and subject to any applicable discount provision contained in said proposals, the City agrees to pay for all services at said prices. Payment shall be made by the City to Contractor in arrears for services- actually performed throughout the term of the contract.
- C. Invoices: The City makes a good faith effort to pay all bills within thirty (30) days of receipt of order.

However, incorrect prices, or mix-mailed invoices often result in delayed payments.

### **RATE SHIFTS**

Eight (8) and twelve (12) hour shifts will be paid at the same twelve (12) hour rate. **San Francisco Network Medical Center:**

<u>SHIFTS</u>	<u>START TIME</u>	<u>END TIME</u>
8 hr day; weekday	7:00 AM	3:30 PM
8 hr evening; weekday	3:00 PM	11:30 PM
8 hr night; weekday	11:00 PM	7:30 AM
12 hr day; weekday	7:00 AM	7:30 PM
12 hr night; weekday	7:00 PM	7:30 AM
weekend	Saturday 7:00 AM	Monday 7:30 AM

### **OVERTIME**

Contractor will comply with all applicable provisions of Title 8, Chapter 5 of the California Code of Regulations regarding wages. Contractor may bill the Hospital for overtime to the extent such overtime has actually been pre-approved in writing by the Administrator On Duty (AOD) under said Regulations, for services performed at the Hospital. Such overtime charges may only be billed at a maximum of 1-1/2 times the regular billing rate for such hours. No overtime will be paid for attending meetings or missing meals.

If a shift is ordered and filled as a nine and one-half (9 1/2) hour shift, the hours above eight (8) hours are not considered overtime. If the employee worked at a non-DPH facility, ZSFG is not liable for overtime that results from said work regardless of how the Contractor pays the employee.

### **HOLIDAY PAY**

The holiday will start on the day of the holiday at 7:00 AM and will end the following day at 7:30 AM.

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Such holiday charges may only be billed at 1-1/2 times the regular billing rate for such hours.

### **INFECTION CONTROL POLICIES**

Contractor must agree to fully comply with the Community Health Network and/or San Francisco Health Network Infection Control standards as outlined in the ZSFG Infection Control Manual and Community Health Network policies and any future amendments thereto.

<http://in-sfghweb01/SFGHInfectionControl>

**Appendix B  
Calculation of Charges**

**1. Method of Payment**

A. Contractor shall submit monthly invoices by the fifteenth (15th) working day of each month, in the format attached in Appendix F, based upon the number of units of service that were delivered in the immediately preceding month. All deliverables associated with the Services listed in Section 2 of Appendix A, times the unit rate as shown in the Program Budgets listed in Section 2 of Appendix B shall be reported on the invoice(s) each month

**2. Program Budgets and Final Invoice**

A. Program Budgets are listed below and are attached hereto.

Appendix B-1

B. Contractor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, **\$1,054,285** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

The maximum dollar for each term and funding source shall be as follows:

	<b>Term</b>	<b>Funding Source</b>	<b>Amount</b>
Original Agreement	Year One	Laguna Honda Hospital	\$1,000,000
	Year One	Zuckerberg San Francisco General	\$3,392,857
	Year Two	Laguna Honda Hospital	\$1,000,000
	Year Two	Zuckerberg San Francisco General	\$3,392,858
		Contingency	\$1,054,285
		(This equals the total NTE)Total	<b>\$9,840,000</b>

C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Contractor agrees to comply fully with that policy/procedure.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City. City's final reimbursement to the Contractor at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

3. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**San Francisco Department of Public Health**

Use this form to detail the hourly rate that will be applied to the corresponding personnel. Use "OTHER" and specify each title and category(ies) to add travel personnel not listed. Do not fill in any rate in gray color cells.

**This Rate Sheet is For:**

**Category: Nurse Registry Service for ZSFG, LHH, and Medical Respite**

	12 Hour Shift Base Rate (per Hour)	Night Shift Base Rate (per Hour)	8 Hour Base Rate (per Hour)	Overtime Rate (per Hour)
Registered Nurse: Specialty 1 (Operating Room, Critical Care, Emergency Department, NICU, Labor & Delivery, Cath Lab, PeriOp, Acute HD, Radiology, Peds, Tele)	\$ 94.75	\$ 97.75		
Registered Nurse: Non Specialty	\$ 90.60	\$ 93.60		
Licensed Vocational Nurse	\$ 42.20	\$ 45.20		
Certified Operating Technician	\$ 53.50	\$ 56.50		
Certified Nursing Assistant (a.k.a. Patient Care Assistant)	\$ 26.75	\$ 27.75		
Social Worker	\$ 57.00	\$ 57.00	\$ 57.00	\$ 85.50
Sterile Processing Technician	\$ 48.00	\$ 48.00	\$ 48.00	\$ 72.00
Medical Exam Assistant	\$ 30.90	\$ 33.90	\$ 30.00	\$ 46.35
Registered Dietician	\$ 55.00	\$ 55.00	\$ 55.00	\$ 82.50
Coordinator			N/A for Category 1 per RFQ	N/A for Category 1 per RFQ
Screening Recruiter			N/A for Category 1 per RFQ	N/A for Category 1 per RFQ
Program Manager			N/A for Category 1 per RFQ	N/A for Category 1 per RFQ
OTHER: Telemetry Technician	\$ 38.00	\$ 38.00	\$ 38.00	\$ 57.00
OTHER: _____				
OTHER: _____				

**NOTE:**

All costs chargeable to the City shall be included in prices entered on this Rate Sheet. The Contract Agency will assume all costs including personnel salaries, transportation to clinics and hospital, parking, 32 hours of hospital/clinic orientation, and any other expense for their employees. No charges to the City are to be made for special orientation training.

**Appendix C**

**(Reserved)**

**Appendix D**

**(Reserved)**





San Francisco Department of Public Health  
Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity (“CE”), and Cross Country Staffing (“Contractor”), the Business Associate (“BA”), dated 7/1/2017 (CMS #7920) (“Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

**RECITALS**

A. CE, by and through the San Francisco Department of Public Health (“SFDPH”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Agreement, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

**1. Definitions.**

a. **Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person



San Francisco Department of Public Health  
Business Associate Agreement

to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

**b. Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.

**c. Business Associate** is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

**d. Covered Entity** means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**e. Data Aggregation** means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**f. Designated Record Set** means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**g. Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

**h. Electronic Health Record** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**i. Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.



**j. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**k. Protected Health Information or PHI** means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

**l. Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

**m. Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

**n. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**o. Unsecured PHI** means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## **2. Obligations of Business Associate.**

**a. Attestations.** Except when CE's chief integrity or compliance officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.



San Francisco Department of Public Health  
Business Associate Agreement

**b. User Training.** The BA shall provide, and shall ensure that BA subcontractors, provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

**c. Permitted Uses.** BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2), and 164.504(e)(4)(i)].

**d. Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].



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**e. Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

**f. Appropriate Safeguards.** BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314, 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

**g. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

**h. Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that



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BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

**i. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

**j. Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

**k. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

**l. Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R.



Section 164.514(d)]. BA understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

**m. Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

**n. Notification of Breach.** BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

**o. Breach Pattern or Practice by Business Associate’s Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination.



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Business Associate Agreement

**a. Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

**b. Judicial or Administrative Proceedings.** CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**c. Effect of Termination.** Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

**d. Civil and Criminal Penalties.** BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

**e. Disclaimer.** CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### 4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances





San Francisco Department of Public Health  
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consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

**5. Reimbursement for Fines or Penalties.**

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

Attachment 1 – SFDPH Privacy Attestation, version 10/29/2015

Attachment 2 – SFDPH Data Security Attestation, version 10/29/2015

Attachment 3 – SFDPH Compliance Attestation, Version 10/29/2015

Office of Compliance and Privacy Affairs  
San Francisco Department of Public Health  
101 Grove Street, Room 330, San Francisco, CA 94102  
Email: [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org)  
Hotline (Toll-Free): 1-855-729-6040

San Francisco Department of Public Health (SFDPH) Office of Compliance and Privacy Affairs (OCPA)

Organization Name:	Contractor City Vendor ID
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**SFDPH PRIVACY ATTESTATION**

This Attestation is to be completed by Contractors and Data Trading Partners that are required to abide by the SFDPH Business Associates Agreement (BAA) in compliance with the Health Information Portability and Accountability Act (HIPAA) and other patient confidentiality laws and regulations. **INSTRUCTIONS:** File and retain completed Attestations for a period of 7 years. Please be prepared to submit your completed Attestations, along with evidence of the following, when and if requested to do so.

Yes	No*	DOES YOUR ORGANIZATION...
<input type="checkbox"/>	<input type="checkbox"/>	Have formal Privacy Policies? (use of SFDPH Privacy Policies will suffice for "yes")
<input type="checkbox"/>	<input type="checkbox"/>	Have a designated Privacy Officer? The Privacy Officer is your organization's designated person who will authorize your employee's "Systems Access Request (SAR) Form". [Note: SARs will NOT be processed by SFDPH without this person's signature.]
<input type="checkbox"/>	<input type="checkbox"/>	If Privacy Officer Name: _____ Phone # _____ Email: _____
<input type="checkbox"/>	<input type="checkbox"/>	Require Privacy Training for all employees who have access to PHI upon hire and annually thereafter? (Use of SFDPH Privacy/Data Security Training will suffice for "yes"). [Beginning in FY1516, DPH will require document retention for 7 years.]
<input type="checkbox"/>	<input type="checkbox"/>	Have proof that employees upon hire, and annually thereafter, have signed the SFDPH "User Confidentiality, Security, and Electronic Signature Form"?
<input type="checkbox"/>	<input type="checkbox"/>	[Beginning in FY1516, DPH will require document retention for 7 years.]
<input type="checkbox"/>	<input type="checkbox"/>	Have evidence that SFDPH was notified to de-provision employees who have access to SFDPH PHI within 2 business days for regular terminations and within 24 hours for terminations due to cause?
<input type="checkbox"/>	<input type="checkbox"/>	Assure that staff who download, create, or transfer PHI offsite (via laptop, USB/thumb-drive, handheld), have prior supervisory authorization to do so AND that PHI is only transferred or created on devices that are encrypted?
<input type="checkbox"/>	<input type="checkbox"/>	Have (or will have if/when applicable) BAAs with subcontractors or vendors who create, receive, maintain or transmit SFDPH PHI.

Does your organization serve patients/clients for or on behalf of DPH? If YES, answer h-k. If NO, these questions are not applicable, please go directly to ATTEST.

Yes	No*	DOES YOUR ORGANIZATION...
<input type="checkbox"/>	<input type="checkbox"/>	Have evidence in each patient's/client's chart or electronic file that the Privacy Notice was provided in the patient's language (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms are available from SFDPH).
<input type="checkbox"/>	<input type="checkbox"/>	Have visibly posted the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?
<input type="checkbox"/>	<input type="checkbox"/>	Have documented each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations?
<input type="checkbox"/>	<input type="checkbox"/>	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Federal Privacy Rule) are obtained PRIOR to releasing a patient's/clients health information?

**ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct.**

ATTESTED by Privacy Officer	Name (print)	Signature	Date
ATTESTED by CEO / Exec Director	Name (print)	Signature	Date
ATTESTED by Chair, Board of Directors / Trustees	Name (print)	Signature	Date

\* **EXCEPTIONS:** If you have answered "NO" to any question in A-G or H-K (if applicable), please contact OCPA at [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) or call 1-855-729-6040 for a consultation. Any "No" answers will need to be reviewed and approved as exceptions by OCPA.

EXCEPTION(S) APPROVED by OCPA	Name (print)	Signature	Date
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San Francisco Department of Public Health (SFPDPH) Office of Compliance and Privacy Affairs (OCPA)

Organization Name:	Contractor City Vendor ID
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**SFPDPH DATA SECURITY ATTESTATION**

This Attestation is to be completed by Contractors and Data Trading Partners that are required to abide by the SFPDPH Business Associates Agreement in compliance with the Health Information Portability and Accountability Act (HIPAA, ADMINISTRATIVE 45 CFR 164.308(a)(8)), Health Information Technology for Economic and Clinical Health Act (HITECH), and the American Institute of Certified Public Accountants (AICPA) requirements. **INSTRUCTIONS:** File and retain completed Attestations for a period of 7 years. Please be prepared to submit your completed Attestations, along with evidence of the following, when and if requested to do so.

YES	NO*	DOES YOUR ORGANIZATION...
A		Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/ HITECH at least every two years? [Beginning in FY1516, DPH will require document retention for 7 years.]
B		Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans? Date of last Data Security Risk Assessment/Audit
C		Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report
D		Have a formal Data Security Awareness Program? Have a designated Security Officer? If yes: IT Security Officer Phone # Email:
E		Require Data Security training for all employees who have access to PHI upon hire and annually thereafter? (Use of SFPDPH Privacy/Data Security Training will suffice for "yes".) [Beginning in FY1516, DPH will require document retention for 7 years.]
F		Have policies and procedures to detect, contain, and correct security violations? (Use of SFPDPH Privacy Policies will suffice for "yes".)
G		Have (or will have if/when applicable) Business Associate Agreements with subcontractors or vendors who create, receive, maintain or transmit SFPDPH PHI.
H		Have (or will have if/when applicable) a diagram (of how SFPDPH data flows between your organization and this downstream or 3rd party entity (including named users, access methods, on-premise data hosts, processing systems, etc.)?)

**ATTES:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct.

ATTESTED by Data Security Officer	Name (print)	Signature	Date
ATTESTED by CEO / Exec Director	Name (print)	Signature	Date
ATTESTED by Chair, Board of Directors / Trustees	Name (print)	Signature	Date

\* **EXCEPTIONS:** If you have answered "NO" to any question, please contact OCPA at [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) or call 1-855-729-6040 for a consultation. Any "No" answers will need to be reviewed and approved as exceptions by OCPA.

EXCEPTION(S) APPROVED by OCPA	Name (print)	Signature	Date
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San Francisco Department of Public Health (SFPDPH) Office of Compliance and Privacy Affairs (OCPA)

Organization Name:	Contractor City Vendor ID
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**SFPDPH COMPLIANCE ATTESTATION**

This Attestation is to be completed by Contractors and Data Trading Partners that are required to abide by the SFPDPH Business Associates Agreement in compliance with Medicare Medicaid Conditions of Participation, False Claims Act and other ethics/compliance laws and regulations. **INSTRUCTIONS:** File and retain completed Attestations for a period of 7 years. Please be prepared to submit your completed Attestations, along with evidence of the following, when and if requested to do so.

YES	NO*	DOES YOUR ORGANIZATION...
A		Have a formal Compliance Program?
B		Have a designated Compliance Officer? If yes: Compliance Officer Name Phone # Email:
C		Require all employees who have access to SFPDPH Systems or PHI to take Compliance training upon hire and annually thereafter? (Use of SFPDPH compliance training will suffice for "yes".) [Beginning in FY1516, DPH will require you to retain these records for 7 years.]
D		Have proof that employees upon hire, and annually thereafter, have signed agreement to the SFPDPH "Code of Conduct"? [Beginning in FY1516, DPH will require document retention for 7 years.]
E		Have mechanisms in place to identify and promptly respond to compliance deficiencies and report to the SFPDPH all identified compliance deficiencies related to services that were billed by SFPDPH or that could jeopardize your organization's continued participation in government health care programs, including Medicare or Medi-Cal funded programs?
F		Publicize and promote the SFPDPH Compliance and Privacy Hotline number (1-855-729-6040) or the City's Whistleblower Program including posting a notice of whistleblower protections in staff areas where it can be seen?
G		Have a Code of Conduct or Ethics policy that includes a mechanism for staff to confidentially and anonymously report potential compliance concerns as well as a strict non-retaliation policy (Use of SFPDPH Compliance policies will suffice for "yes".)?
H		Have mechanisms in place to review the Office of the Inspector General (OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) exclusion lists upon initial hire and monthly thereafter to ensure that no employee, temporary employee, volunteer, consultant, or governing body member responsible for administering or delivering Federal Healthcare Program services is excluded from (may not work in) a federal health care program? [False Claims Act]
I		Require (or will require, if/when applicable) subcontractors/vendors to comply with all requirements in this Attestation?

**ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct.

ATTESTED by Compliance Officer	Name (print)	Signature	Date
ATTESTED by CEO / Exec Director	Name (print)	Signature	Date
ATTESTED by Chair, Board of Directors / Trustees	Name (print)	Signature	Date

\* **EXCEPTIONS:** If you have answered "NO" to any question, please contact OCPA at [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) or call 1-855-729-6040 for a consultation. Any "No" answers will need to be reviewed and approved as exceptions by OCPA.

EXCEPTION(S) APPROVED by OCPA	Name (print)	Signature	Date
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## **Appendix F**

**Invoices shall be in a form acceptable to the Contract Administrator and shall contain all required information as requested by the City.**



# CERTIFICATE OF LIABILITY INSURANCE

9/30/2017

DATE (MM/DD/YYYY)

7/14/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(les) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

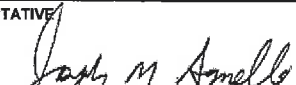
<b>PRODUCER</b> Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No. Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A : Evanston Insurance Company</b>		35378
<b>INSURER B : SELF INSURED</b>		
<b>INSURER C : Travelers Property Casualty Co of America</b>		25674
<b>INSURER D : The Travelers Indemnity Company</b>		25658
<b>INSURER E : The Medical Protective Company</b>		11843
<b>INSURER F :</b> _____		

**COVERAGES** CROCO01      **CERTIFICATE NUMBER:** 14829998      **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	Y	N	UM800528	10/1/2016	10/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Included MED EXP (Any one person) \$ Included PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	N	SELF INSURED	10/1/2016	10/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
C D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	TC2JUB131J612916 (AOS) TRKUB131J613016 (AZ,MA,WI)	9/30/2016 9/30/2016	9/30/2017 9/30/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	<b>MEDICAL PROFESSIONAL LIABILITY</b>	N	N	G00517	10/1/2016	10/1/2017	\$1,000,000 EACH OCCURRENCE \$3,000,000 AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 NON-OWNED AUTO COVERAGE IS PROVIDED BY CROSS COUNTRY HEALTHCARE, INC. THROUGH A \$1M SELF-INSURED. The City and County of San Francisco, its Officers, Agents and Employees are additional insureds on the GL & Auto policies on a primary basis as required by written contract. A waiver of subrogation is granted on WC as required by written contract.

<b>CERTIFICATE HOLDER</b> 14829998 City and County of San Francisco Contracts Department 101 Grove Street, Room 307 San Francisco CA 94102	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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August 24, 2017

City and County of San Francisco  
Department of Public Health – Contracts  
101 Grove Street, Room 307  
San Francisco, CA 94102

Re: Cross Country's Automobile Liability Policy

Dear Sir/Madam,

Please accept this letter for clarification of the Automobile Liability Insurance carried by Cross Country pursuant to your contract. Cross Country's Automobile insurance covers both Bodily Injury and Property Damage. There is no restriction of where to apply the \$1,000,000 coverage, hence it is listed under the "Combined Single Limit" section of the Certificate of Insurance rather than in the "Bodily Injury" and "Property Damage" sections.

This serves to emphasize that the coverage limits are not restricted to a certain set sum for either Bodily Injury or Property Damage, leaving us free to apply the policy limits to either or both categories without a separate cap on limits within each category.

Sincerely,

A handwritten signature in black ink, appearing to read "Larisa Maslic", with a stylized flourish at the end.

Larisa Maslic  
Vice President, Risk Management  
Cross Country Healthcare, Inc.  
5201 Congress Avenue, Suite 100B  
Boca Raton, FL 33487  
[lmasic@crosscountry.com](mailto:lmasic@crosscountry.com)  
800-513-5635

5201 Congress Avenue, Suite 100B, Boca Raton, FL 33487  
Tel: (800) 513-5635 Fax: (800) 551-7754 [www.crosscountry.com](http://www.crosscountry.com)



INTERLINE  
POLICY NUMBER: UM800528

## EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY:

### ENDORSEMENT #35: ADDITIONAL INSURED ENDORSEMENT – REQUIRED BY CONTRACT

This endorsement modifies insurance provided under the following:

HEALTH CARE UMBRELLA LIABILITY POLICY – EXCESS OF UNDERLYING LIMITS

1. Section **WHO IS AN INSURED B** is amended by the addition of the following:

Any person or organization designated by endorsement as an Additional insured.

2. "Additional insured" means, whenever used in this endorsement, the following:

Any organization to which you are required by valid written contract to provide indemnification or insurance as afforded by this policy to such person or organization during the policy period and executed prior to the Occurrence of the "Bodily Injury," "Property Damage," "Personal Injury," "Advertising Injury" and "Professional Services Injury."

3. Coverage provided to any "Additional insured" as defined herein shall apply solely to an 'Occurrence' or offense involving the products, goods, operations or premises, covered by this policy.
4. No coverage shall be afforded to any "Additional Insured" for "Bodily Injury," "Property Damage," "Personal Injury," "Advertising Injury," and "Professional Services Injury" to any "Employee" or to any obligation of any "Additional Insured" to indemnify another because of "Damages" arising out of such injury.
5. Where no coverage under this policy applies to you, no coverage or defense shall be afforded to the "Additional Insured."

All other terms and conditions remain unchanged.





**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY  
ENDORSEMENT WC 00 03 13 (00) -01**

POLICY NUMBER: (TC2JUB-131J612-9-16)

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER**

DATE OF ISSUE: 10-10-16

ST ASSIGN: