

Independent Medical Evaluation Services

Request for Proposal

July 2024

Orange County Employees Retirement System (OCERS)
2223 E Wellington Avenue Suite 100
Santa Ana, CA 92701 USA
1-(714)-558-6200
<http://www.ocers.org>

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Section 1: Introduction

The Orange County Employees Retirement System ("OCERS") is requesting proposals from qualified firms interested in providing Independent Medical Evaluation services. OCERS intends to select one or more pre-qualified firms to utilize on an as-needed basis.

Questions about this RFP must be submitted in writing by **5:00 pm, PT, Friday August 16, 2024** to Jim Doezie, Contracts, Risk & Performance Administrator, by email at jdoezie@ocers.org.

Those who wish to be considered must submit their completed proposal by **5:00 p.m., PT, Friday, September 13, 2024**. Specific instructions for proposal submissions are contained in Section 7 of this RFP.

Intent to Respond

If your firm chooses to respond to this RFP, please submit the "Intent to Respond," attached as Exhibit "A", via email to Jim Doezie, by 5:00 p.m., PT, Friday August 16, 2024. Failure to submit your Intent to Respond may disqualify your firm from submitting a response to this RFP.

Section 2: Background

OCERS was established in 1945 under the County Employees Retirement Law of 1937, providing members with retirement, disability, death, and cost-of-living benefits. There are approximately 50,000 members served by OCERS, of which over 19,000 are retirees. OCERS is governed by a nine-member Board of Retirement ("Board"), which has plenary authority and fiduciary responsibility for the investment of moneys and administration of the retirement system. OCERS has over one hundred employees, and the Board appoints a Chief Executive Officer responsible for the agency's management. For additional information about OCERS, please refer to the OCERS website at ocers.org.

Section 3: Scope of Services

The detailed scope of services for this engagement is outlined in the attached Exhibit "B" ("Scope of Services"). The primary objective is to provide OCERS with professional third-party Independent Medical Evaluation Reports that meet the standards of the County Employee Retirement Law of 1937 (CERL) and constitute substantial medical evidence upon which the OCERS Board of Retirement can base its determination whether to grant or deny disability retirement benefits.

The firm selected for this engagement will be expected to meet requirements that include, but are not limited to, the following:

1. The firm must have all necessary permits and licenses to perform the requested services and must be bonded where applicable.
2. Minimum insurance coverage must include the following items, and proof of such insurance must be provided to OCERS prior to the commencement of work, on an annual basis, and upon request:
 - Commercial General Liability: \$2M per occurrence, \$2M aggregate
 - Automobile Liability: \$1M per occurrence.
 - Workers Compensation: \$1M per occurrence, \$1M aggregate
 - Professional Liability: \$2M per occurrence

- Fidelity Insurance: \$5M per occurrence
- *Cyber Security Insurance*: \$2M per occurrence, \$5M aggregate

OCERS must be listed as an additional insured on the above policies.

3. The firm shall provide all personnel, equipment, tools, materials, vehicles, supervision, and other items and services necessary to perform all services, tasks, and functions as requested in this RFP.
4. The initial term of the contract awarded pursuant to this RFP will be for a **one year** period, with OCERS retaining the option to renew the contract for additional yearly periods not to exceed a total of six years.
5. All work under the contract awarded shall be performed and all equipment furnished or installed in accordance with applicable safety codes, ordinances, and other regulations, including the regulations of the State of California, Division of Industrial Safety and the provisions of the California Labor Code.
6. Minimum Qualifications
All respondents are required to sign and return the "Minimum Qualifications Certification," attached as Exhibit "C."

Section 4: General Conditions

All terms, conditions, requirements, and procedures included in this RFP must be met for a proposal to be qualified. A proposal that fails to meet any material term, condition, requirement, or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit the cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of this RFP at any time.

OCERS may modify this RFP before the date fixed for submission of a proposal by posting, mailing, emailing, or faxing an addendum to the respondents known to be interested in submitting a proposal. However, failure of a respondent to receive or acknowledge receipt of any addendum shall not relieve the respondent of the responsibility for complying with the terms thereof.

A respondent's proposal shall constitute an irrevocable offer for the 120 days following the deadline for submission of proposals. Reference to a certain number of days in this RFP shall mean calendar days unless otherwise specified.

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Therefore, proposals will not be returned to respondents.

By submitting a proposal, the respondent acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements unless clearly and specifically noted in the proposal submitted.

Section 5: Point of Contact

A quiet period will be in effect from the date of issuance of this RFP until announcement of the candidate(s) selected. During the quiet period, respondents are not permitted to communicate with any OCERS staff member or Board Member regarding this RFP except through the Point of Contact named herein. Respondents violating this quiet period may be disqualified at OCERS' discretion. In addition, respondents having current business with OCERS must limit their communications to the subject of such business.

OCERS' regular business hours are from 08:00 to 17:00, Monday through Friday, except for federal and state holidays observed by the County of Orange.

The Point of Contact for all matters relating to this RFP is:

Name:	Jim Doezie
Title:	Contracts, Risk & Performance Administrator
Physical Address:	OCERS 2223 E Wellington Ave., Suite 100 Santa Ana, CA 92701
Mailing Address:	OCERS P.O. Box 1229 Santa Ana, CA 92702
Telephone:	(714) 569-4884
Email:	jdoezie@ocers.org
OCERS Website:	www.OCERS.org
Status:	See the OCERS website for status of the RFP and announcements. These items can also be found here: https://www.ocers.org/request-proposal

Section 6: Response to Request for Proposal

Proposals must be submitted to the Point of Contact identified in Section 5 and delivered by the due date and time stated below in the RFP Schedule.

OCERS will only accept electronic submissions. Proposals may be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in Section 5 or submitted to **Planet Bids** via this link: <https://vendors.planetbids.com/portal/56826/bo/bo-detail/120335>

RFP Schedule

The following timetable constitutes a tentative schedule for this RFP process. OCERS reserves the right to modify this schedule at any time.

Deliverable	Date	Time
Release of RFP	Monday, July 29 2024	
Intent to Respond Deadline RFP Questions Deadline	Friday, August 16, 2024	5:00 p.m. PT
RFP Answers Posted	Friday, August 23	5:00 p.m. PT
RFP Submission Deadline	Friday, September 13	5:00 p.m. PT
OCERS Review of RFP Submissions	Sept 13 to October 10, 2024	
Selection of Finalists	October 11, 2024	
Interviews of Finalists	To be determined	
Service Award	To be determined	

Section 7: Proposal Requirements

Proposals must include the following information:

1. The "Minimum Qualifications Certification," attached as Exhibit "C."
2. The "Proposal Cover Page and Check List," attached as Exhibit "D."
3. An executive summary that provides the respondent's background, experience, and other qualifications to provide the services included in the Scope of Services.
4. A description of the respondent including:
 - a. Brief history, including year the respondent firm was formed.
 - b. Ownership structure.
 - c. Organization chart & number of employees
 - d. Scope of services offered.
 - e. Respondent's specialties, strengths, and limitations.
 - f. Are the respondent's financial reports independently audited? If so, what is the name of the audit firm?

- g. Please explain how medical, confidential, and other personal identifying information (PII) is transmitted to your external partners including the Physicians with which you are contracted.
- 5. At least three (3) references for which the respondent has provided services similar to those included in the Scope of Services. Please include for each reference the individual point of contact, a summary of the work performed, and the length of time the respondent provided each service. Please provide their name, organization, title, email address, and telephone number.
- 6. Copies of any pertinent licenses required to deliver respondent's product or service (e.g., business license).
- 7. An explanation of the pricing proposal for the scope of work, including pricing of fees and costs, billing practices, and payment terms that would apply. Describe in detail all pricing scenarios. When and how will OCERS be charged in all billing circumstances. In addition, please specify;
 - a. Whether pricing per report is based on physician specialty? If so, explain the pricing scheme and indicate the base price for each specialty.
 - b. Specify the pricing scheme for supplemental reports.
 - c. Whether pricing is based on pages reviewed by the physician. If so, explain the pricing scheme, including any base price and additional page specifications.
- 8. An explanation of all actual or potential conflicts of interest that the respondent may have in contracting with OCERS.
- 9. A description of all past, pending, or threatened litigation, including malpractice claims, administrative, state ethics, disciplinary proceedings, and other claims against respondent and/or any of the individuals proposed to provide services to OCERS.
- 10. What is your report turn-around time?
- 11. How many physicians you are contracted with that will potentially be preparing reports on OCERS behalf? Please break this down by specialty.
- 12. Any other information that the respondent deems relevant to OCERS' selection process.

Section 8: Evaluation Criteria

Responses will be evaluated based upon the following:

- 1. Experience and reputation of the respondent.
- 2. Quality of the team proposed to provide services to OCERS, including staffing depth, experience.
- 3. Pricing and value.
- 4. Report turn-around time.
- 5. Compliance with technical standards contained in this RFP.
- 6. The organization, completeness, and quality of the proposal.
- 7. Information provided by references.
- 8. Other factors OCERS determines to be relevant.

The factors will be considered as a whole, without a specific weighting.

OCERS may require one or more interviews with, or personal presentations, by finalists to be conducted with staff or members of the Board of Retirement.

If the proposal's information is deemed to be insufficient for evaluation, OCERS may request additional information or reject the proposal outright at OCERS' sole discretion. In addition, false, incomplete, or unresponsive statements in connection with a proposal may result in rejection of the proposal.

Section 9: Non-Discrimination Requirement

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment based on race, religion, color, national origin, ethnic group identification, mental disability, physical disability, medical condition, genetic information, marital status, ancestry, sex, gender, sexual orientation, gender identity, gender expression, age, or military and veteran status.

Section 10: Notice Regarding the California Public Records Act

The information submitted in response to this RFP will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Section 6250, et. seq., the "Act"). The Act provides that all records relating to a public agency's business are open to public inspection and copying unless exempted explicitly under one of several exemptions set forth in the Act. If a respondent believes any portion of its proposal is exempt from public disclosure under the Act, the respondent must provide a full explanation and mark such portion "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," and make it readily separable from the balance of the response. Proposals marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" in their entirety will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked.

By submitting a proposal with material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," a respondent represents it has a good faith belief that the material is exempt from disclosure under the Act; however, such designations will not necessarily be conclusive, and a respondent may be required to justify in writing why OCERS should not disclose such material under the Act. Fee and pricing proposals are not considered "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY."

If OCERS receives a request pursuant to the Act for materials that a respondent has marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY," and if OCERS agrees that the material requested is not subject to disclosure under the Act, OCERS will either notify the respondent so that it can seek a protective order at its own cost and expense, or OCERS will deny disclosure of those materials. OCERS will not be held liable for inadvertent disclosure of such materials, data, and information or for disclosure of such materials if deemed appropriate in OCERS' sole discretion. OCERS retains the right to disclose all information provided by a respondent.

If OCERS denies public disclosure of any materials designated as “TRADE SECRETS,” “CONFIDENTIAL,” or “PROPRIETARY,” the respondent agrees to reimburse OCERS for, and to indemnify, defend, and hold harmless OCERS, its Boards, officers, fiduciaries, employees, and agents from and against:

1. Any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including, without limitation, attorneys’ fees, expenses, and court costs of any nature whatsoever (collectively, “Claims”) arising from or relating to OCERS’ non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to OCERS’ public disclosure of any such designated portions of a proposal if OCERS determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.

Section 11: Contract Negotiations

OCERS will propose a contract to the successful respondent, which will contain such terms as OCERS, in its sole discretion, may require. In addition, the selected firm will agree that this RFP and the firm’s proposal will be incorporated into any resulting contract.

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent nor does it limit OCERS’ right to negotiate the terms of a contract in OCERS’ best interest, including the addition of terms not mentioned in this RFP. The final contract must, among other terms and conditions required by OCERS, allow OCERS to terminate the contract a) for OCERS’ convenience, b) if funds are not appropriated for the services, or c) for default.

The general form of the contract OCERS intends to use is included as Exhibit “E” (“OCERS Services Agreement”). OCERS reserves the right to make changes to the contract prior to execution, including material changes. The final Scope of Services to be included in the contract will be determined at the conclusion of the RFP process.

By submitting a proposal without comment on the OCERS Services Agreement, respondent will be deemed to have agreed to each term in the OCERS Services Agreement, and to not seek any modifications to it. If respondent objects to any term in the OCERS Services Agreement or wishes to modify or add terms to the OCERS Services Agreement, the proposal must identify each objection and propose language for each modification and additional term sought. A rationale should be included for each objection, modification, or addition.

Section 12: Reservations by OCERS

In addition to the other provisions of this RFP, OCERS reserves the right to:

1. Cancel or modify this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent’s ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.

3. Reject the proposal of any respondent who is not currently in a position to perform the services, or who has previously failed to perform similar services properly, or in a timely manner, or for any other reason in OCERS' sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
5. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of OCERS in OCERS' sole discretion, which may not be the proposal offering the lowest fees.
6. Request additional documentation or information from respondents, which may vary by respondent. OCERS may ask questions of any respondent to seek clarification of a proposal or to ensure the respondent understands the scope of the work or other terms of the RFP.
7. Reject any or all proposals submitted in response to this RFP.
8. Choose to not enter into an agreement with any of the respondents to this RFP or negotiate for the services described in this RFP with a party that did not submit a proposal.
9. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.
10. Defer selection of a bidder to a time of OCERS' choosing.
11. Consider information about a respondent other than, and in addition to, that submitted by the respondent.

Exhibit A
Intent to Respond

If you choose to submit a proposal in response to this RFP please submit this Intent to Respond to Jim Doezie via email no later than 5:00 p.m., PT, Friday, August 16, 2024. Failure to submit your Intent to Respond may disqualify your firm from submitting a proposal.

OCERS' responses to written requests for clarification or additional information will be provided to all firms that have submitted an Intent to Respond.

Intent to Respond

To: Jim Doezie	From:
Co.: OCERS	Title:
	Co.:
Phone: (714) 569-4884	Phone:
Email: jdoezie@ocers.org	Email:
Re: Intent to Respond	Date:

Our firm intends to submit a response for OCERS' RFP.

Please forward inquiries to the following contact:

Name:

Title:

Company:

Mailing Address:

Telephone:

Facsimile:

Email Address:

Exhibit B

Scope of Services

Independent medical evaluation service provider (IME Service Provider), under the supervision of the director of disability, will be expected to provide the following range of independent medical evaluation services:

- Review the medical, employment, and relevant records of a disability retirement applicant (Applicant) by IME Service Provider's panel physician working on OCERS matters (Panel Physician).
 - All Panel Physicians providing Services hereunder must meet the following qualifications:
 - Currently licensed to practice medicine in the State of California;
 - In good standing with the Medical Board of California; and
 - Is board certified by the American Medical Association, the Medical Board of California, Osteopathic Medical Board of California, or the California Board of Psychology in the field of Neurology.
- Perform a comprehensive medical examination of Applicant by a Panel Physician.
- Within 30 days of completing the comprehensive medical examination of Applicant, provide a written forensic medical evaluation report (IME Report) prepared by a Panel Physician that addresses all medical and legal questions posed by OCERS relating to the evaluation of Applicant's disability retirement application.
 - If OCERS receives an IME Report from a Panel Physician that is unclear, does not justify the conclusions, does not address all medical and legal questions posed by OCERS, or does not follow the guidelines provided herein governing the Scope of Services, a supplemental report (Supplemental IME Report) may be requested by OCERS.
 - Any Supplemental IME Report will be prepared at the sole expense of IME Service Provider
 - IME Service Provider shall use best efforts to cause Panel Physician to promptly deliver all Supplemental IME Reports promptly and in no event exceeding 30 days from the request of such Supplemental IME Report.
- Attend any administrative hearing or board meeting upon written request by OCERS and answer all questions posed at such hearing or meeting relating to the IME Report prepared by a Panel Physician hereunder.
- Promptly notify OCERS in writing of any investigation, examination, or other proceeding relating to any Panel Physician's ability and license to practice medicine in California or any other state, any Panel Physician's clinical privileges at any hospital or other health care facility, or any professional services provided by any Panel Physician.
- Ensure the following guidelines are followed by IME Service Provider and all Panel Physicians:

ROLES IN EVALUATING APPLICANTS

Board of Retirement's Role

The OCERS Board of Retirement is a body created pursuant to the County Employees Retirement Law of 1937 (Government Code Section 31450, et seq.). Among the Board's statutory duties is determining when members of OCERS are eligible for disability retirement under the standards set forth in the retirement law. In making those determinations, the Board is bound to act consistently with its fiduciary nature — that is, in a way worthy of the trust and confidence reposed in the Board by the members of OCERS. The Board's fiduciary duties extend both to the individual members of OCERS and to the membership of OCERS as a whole. The duty to individual members includes the obligation to grant a disability retirement when the applicant has met all of the conditions specified in the retirement law. The duty to the association as a whole includes the obligation to safeguard the association's assets by denying a disability retirement when the applicant has not met all of the legal requisites.

Panel Physician's Role

The determination of whether the applicant is entitled to disability retirement benefits is ultimately made by the Board of Retirement. To determine entitlement, the Board considers a variety of pertinent information, including Panel Physician's expert opinion on the medical and legal aspects of this matter.

The Board of Retirement's decision must be based upon substantial evidence. In determining whether a medical opinion is substantial evidence, the courts have explained that the value of a medical opinion is not found simply in the physician's conclusion, but also the facts on which the opinion is based and the reasoning by which the physician progresses from the facts to the conclusion. We therefore request that Panel Physician explain how the medical records and facts support the Panel Physician's conclusion. Panel Physician's opinions must be based on reasonable medical probability.

OCERS is equally well served by a grant or a denial of benefits when the decision to do so is based on sound medical and legal conclusions. In that respect, Panel Physician have not been retained for the purpose of reaching any particular conclusion, and Panel Physician are expected to exercise neutral and independent judgment in evaluating the applicant's medical condition. With that standard of independence in mind, Panel Physician is asked to prepare a written report that may be reviewed by staff members, Board members, and judicial officers who do not share Panel Physician's background as a medical professional. If possible, Panel Physician shall state opinions in lay terms with an explanation of the facts and reasoning supporting Panel Physician's conclusion.

DISABILITY RETIREMENT LEGAL STANDARDS

To assist Panel Physician in answering the specific questions posed at the end of this guide, the following is a brief description of the key legal concepts applicable to disability retirement proceedings.

Standard for Incapacity

Under disability retirement law, an applicant is incapacitated, physically or mentally, if the applicant is unable to substantially perform his or her usual job duties. Usual job duties are duties required by the employer and actually performed by the applicant. However, they do not include duties performed only rarely. An applicant's usual duties may or may not include each and every duty listed in the job classification. In determining what are the usual duties, it is important to consider the relevant evidence, including but not limited to job descriptions and statements by both the employer and applicant.

Pain may be a relevant consideration in determining whether the applicant is incapacitated. Subjective presentations of pain should be consistent with and supported by the objective medical evidence. Pain may not be incapacitating if an applicant is actually performing the usual duties of the job. On the other hand, the pain may be of a severity such that the applicant is incapable of performing the usual duties. In addition to the medical evidence, it is important to consider applicant's work history and explain whether it supports Panel Physician's opinion.

Standard for Permanency

An incapacity is permanent when further change in an applicant's medical condition is not medically probable, whether with or without additional treatment

An incapacity is not permanent when an applicant refuses to accept reasonable medical treatment that is likely to improve his or her condition and allow applicant to resume performance of the usual job duties. However, an applicant may reasonably refuse treatment when it presents an unreasonable degree of risk, it is not likely to improve the condition, the refusal is based on a bona fide religious belief, or applicant has no access to the prescribed treatment.

Standard for Service Connection (Industrial Causation)

Panel Physician is also asked to express an opinion as to whether the applicant's medical condition is service connected (industrial). By statute, service-connection means the applicant's incapacity "is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity." (Gov. Code, § 31720.) The following principles should guide Panel Physician's application of this standard:

County employment must contribute substantially to the incapacity. This means there must be a "real and measurable connection" between the employment and applicant's incapacity. Employment does not need to be the sole cause of the incapacity, but there must be substantial evidence showing it is one of the contributing causes. An infinitesimal or inconsequential connection between employment and disability is not real and measurable.

Service connection is established when the employment permanently aggravates or accelerates the underlying pathology of a pre-existing or nonindustrial condition causing an applicant to be disabled at an earlier time than if they had not worked for the County.

Service connection is not found when the County employment merely causes a temporary aggravation and/or exacerbation of symptoms.

Service connection is not found when the County employment has not played an active role in the development of the incapacity; that is, the County employment has merely been a passive stage for the natural progression or manifestation of a nonindustrial condition.

Service connection is not found if there is no identifiable mechanism of injury to establish a real and measurable connection between the employment and the incapacity.

Comparison of Retirement Law and Workers' Compensation

In evaluating the applicant, please be aware of the fact that establishing "permanent incapacity" under the retirement law is not the same as establishing "permanent disability" under the workers' compensation law. "Permanent disability" under workers' compensation law is a permanent injury that impairs a worker's earning capacity or a worker's bodily function, or that creates a competitive handicap for the worker in the open labor market.

Under disability retirement law, "permanent incapacity" for the performance of duty is the inability of an applicant to substantially perform their usual duties. An applicant may have a permanent disability under the workers' compensation law and not be incapacitated from duty under the disability retirement law. Similarly, a worker may be incapacitated from performing the particular duties of the applicant's position in County service even though the applicant is able to perform other jobs in the open labor market.

PANEL PHYSICIAN'S WRITTEN REPORT

Basis of the Evaluation

Panel Physician's evaluation must be based on the following:

- Panel Physician's examination of the applicant;
- Panel Physician's review of the job description and/or Class Specification/Job Analysis, if available; and
- Panel Physician's review of the medical records and relevant records provided

Items of Discussion

Panel Physician's written IME Report should contain discussion of the items listed below, as well as a discussion of the specific medical and legal questions set forth at the end of this guide. Please note that the opinion Panel Physician provides to OCERS is restricted to matters within Panel Physician's specialty. However, Panel Physician may identify medical conditions outside Panel Physician's specialty that Panel Physician believes may need medical attention.

Item of Discussion

Explanation

Job Description

Panel Physician shall include description of Applicant's usual job duties and its requirements. Panel Physician shall consider statements by the Applicant and the employer and reference the description provided by OCERS staff.

History of Injury/Illness	Include a summary of the Applicant's medical history pertaining to the subject injury or illness and the source(s) of that information.
Applicant's Complaints	Based on Panel Physician's interview of the Applicant, provide a discussion of the Applicant's current complaints relevant to the conditions for which the applicant applied for disability retirement.
Description of Examination	Examination protocol requires an explanation of tests conducted, if any, and a statement of findings, including a discussion of Panel Physician's objective findings upon examination. Findings should explain how the medical evidence supports Panel Physician's conclusions. Please include the Applicant's height and weight in the report.
Medical History	Please provide a review of the Applicant's medical history and prior injuries/illnesses.
Review of Records	Report should include a comprehensive summary of all the pertinent records provided by OCERS.
Diagnostic Impression	Please provide a discussion of Panel Physician's impression/diagnosis.
Contrary Opinions	If applicable, include a statement of why Panel Physician does not accept the contrary opinions of other physicians.

Finally, IME Report shall answer all medical and legal questions posed below. The IME Report should first restate each question and then provide a response.

Medical and Legal Questions

1. Is the applicant incapacitated from performing his or her usual job duties? Please explain your opinion.
2. Is the applicant capable of performing each of the duties described in the class specification for the applicant's occupation? Describe which duties the applicant can and cannot perform. Please explain your opinion.
3. Is the applicant's incapacity permanent? (Refer to the Legal Standards, above, for the meaning of "permanent.") Please explain your opinion.
4. Has the applicant received appropriate treatment for the stated injury/disease?
5. In your opinion does the applicant require additional medical treatment? If so, describe the treatment, the timeframe, and the anticipated results.

6. Was the applicant continuously incapacitated from the date that they last worked to the date that the disability retirement application was filed? If, in your opinion, the applicant became incapacitated after they last worked, please state when the incapacity began. Please explain how the medical records support your conclusion.
7. Based on your evaluation and medical history, please state what *permanent work restrictions*, if any, you would recommend for the applicant. Please specify what injury/body part requires the work restrictions. Please explain your opinion. Please provide the applicant's weight limitations in pounds/ounces and time limits in terms of consecutive hours/minutes, as well as total hours/minutes in a defined workday. Also, please include the length of any required breaks.
8. Is the applicant able to perform other job duties within the restrictions you have indicated? Identify which duties the applicant is still able to perform.
9. Is the applicant's incapacity service-connected – i.e., did employment contribute substantially to the applicant's incapacity? Identify and explain in detail the "real and measurable connection" between the employment and applicant's incapacity.
10. If it is your opinion that the applicant is permanently incapacitated for nonservice- connected reasons, please identify and explain all factors that caused or contributed to the applicant's incapacity.
11. Is applicant's incapacity the result of a permanent aggravation or acceleration of a pre-existing or nonindustrial medical condition? If so, did employment contribute substantially to this permanent aggravation or acceleration? Please explain your opinion.
12. Even if you do not find applicant to be permanently incapacitated, please provide your opinion regarding the cause of applicant's alleged injuries or illnesses. Are those injuries/illnesses service-connected – i.e., did employment contribute substantially to those injuries/illnesses? Please explain.

Exhibit C

MINIMUM QUALIFICATIONS CERTIFICATION

All firms submitting a proposal in response to this RFP are required to sign and return this attachment, along with written evidence of how the respondent meets each qualification.

The undersigned hereby certifies that it fulfills the minimum qualifications outlined below, as well as the requirements contained in the RFP.

Minimum Qualifications include:

1. At a minimum, the firm should have at least five (5) years prior experience in providing independent medical evaluation services to public pension funds.

The undersigned hereby certifies that they are an individual authorized to bind the Firm contractually, and said signature authorizes verification of this information.

Authorized Signature

Date

Name and Title (please print)

Name of Firm

Exhibit D

PROPOSAL COVER PAGE AND CHECK LIST (TO BE SUBMITTED IN FIRM'S LETTERHEAD)

Respondent Name:

Respondent Address:

By submitting this response, the undersigned hereby affirms and represents that they have reviewed the proposal requirements and have submitted a complete and accurate response to the best of their knowledge. By signing below, I hereby affirm that the respondent has reviewed the entire RFP and intends to comply with all requirements.

Respondent specifically acknowledges the following:

1. Respondent possesses the required technical expertise and has sufficient capacity to provide the services outlined in the RFP.
2. Respondent has no unresolved questions regarding the RFP and believes that there are no ambiguities in the scope of services.
3. The fee schedule submitted in response to the RFP is for the entire scope of services and no extra charges or expenses will be paid by OCERS.
4. Respondent has completely disclosed to OCERS all facts bearing upon any possible interests, direct or indirect, that Respondent believes any member of OCERS, or other officer, agent, or employee of OCERS presently has, or will have, in this contract, or in the performance thereof, or in any portion of the profits thereunder.
5. Materials contained in the proposal and all correspondence and written questions submitted during the RFP process are subject to disclosure pursuant to the California Public Records Act.
6. Respondent is not currently under investigation by any state or federal regulatory agency for any reason.
7. Except as specifically noted in the proposal, respondent agrees to all of the terms and conditions included in OCERS Services Agreement.
8. The signatory below is authorized to bind the respondent contractually.

Exhibit E
SERVICES AGREEMENT TEMPLATE

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is entered into this [REDACTED] day of [REDACTED], 20[REDACTED] (the "Effective Date") by and between the Orange County Employees Retirement System, ("OCERS") and [REDACTED] ("Contractor"). OCERS and Contractor are sometimes individually referred to as "Party" and collectively as "Parties." The Parties hereby agree as follows:

ARTICLE 1
PURPOSE

- 1.1 **Project.** Contractor desires to perform and assume responsibility for the provision of, and OCERS desires to engage Contractor to render, services for **independent medical evaluation services** on the terms and conditions set forth in this Agreement and its attached exhibits.

ARTICLE 2
TERMS

- 2.1 **Scope of Services.** Contractor promises and agrees to furnish to OCERS all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform all services contemplated by this Agreement ("Services"), as more particularly described in the attached **Exhibit "A"** ("Scope of Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. Contractor represents and warrants to OCERS that Contractor will perform the Services in a professional and workmanlike manner, in accordance with best industry standards and practices used in well-managed operations performing services similar to the Services. To the extent necessary to facilitate performance of the Services, OCERS may, in its discretion, make certain of its facilities, assets, and resources available on an "as is, where is" basis to Contractor at Contractor's request. While on OCERS' premises, Contractor agrees to comply with OCERS' access rules and procedures, including those related to safety, security, and confidentiality.
- 2.2 **Term.** The term of this Agreement will commence upon the Effective Date and will continue for twelve (12) months from the Effective Date ("Term"), unless earlier terminated as provided herein. The Parties may, by mutual written agreement, extend

the Term for up to five (5) additional twelve (12) month periods. In no event shall the total term of the Agreement exceed seventy-two (72) months.

2.3 Consideration.

- 2.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement as set forth in Exhibit "B" ("Fee Schedule").
- 2.3.2 Invoices and Payment. Contractor shall submit to OCERS monthly itemized invoices as required by the Fee Schedule. OCERS shall pay all undisputed charges within net thirty (30) days of receiving such invoice.
- 2.3.3 Extra Work. At any time during the term of this Agreement, OCERS may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by OCERS to be necessary for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary as of the Effective Date. Contractor shall not perform, nor be compensated for, Extra Work without written authorization by OCERS. Extra Work, if authorized by OCERS, will be compensated at the rates and manner set forth in this Agreement.

2.4 Responsibilities of Contractor.

- 2.4.1 Independent Contractor. Contractor's relationship with OCERS is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture, or employment relationship between OCERS and any of Contractor's employees or agents. Contractor is not authorized to make any representation, contract, or commitment on behalf of OCERS. Except as OCERS may agree in writing, Contractor shall have no authority, expressed or implied, to act on behalf of OCERS in any capacity whatsoever as an agent of OCERS. The Services shall be performed by Contractor or by Contractor's employees under Contractor's supervision. Contractor will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Contractor is an independent contractor and not an employee of OCERS. Any additional personnel performing the Services under this Agreement on behalf of Contractor will also not be employees of OCERS and will at all times be under Contractor's exclusive direction and control.
- 2.4.2 No Benefits and Payment of Subordinates. Contractor (if Contractor is an individual) and Contractor's personnel will not be entitled to any of the benefits that OCERS may make available to its employees, including, but not limited to, group health insurance, life insurance, or retirement benefits. Contractor will pay all wages, salaries, and other amounts due its personnel in connection with their performance of Services under this Agreement and as required by law. Contractor

shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Contractor will bear the sole responsibility and liability for furnishing Workers' Compensation benefits to all such personnel for injuries arising from or connected with the Services.

- 2.4.3 Tax. Because Contractor is an independent contractor, OCERS will not withhold or make payments for social security, make unemployment insurance, or disability insurance contributions, or obtain workers' compensation insurance on behalf of Contractor. Contractor is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state, or local tax authority with respect to the performance of Services and receipt of fees under this Agreement. Contractor is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing Services under this Agreement. No part of Contractor's compensation will be subject to withholding by OCERS for the payment of any social security, federal, state or any other employee payroll taxes.
- 2.4.4 Licensing. Contractor represents that it, its employees, and subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.
- 2.4.5 Conformance to Applicable Requirements. All Services performed by Contractor shall be subject to the approval of OCERS.
- 2.4.6 Substitution of Key Personnel. Contractor has represented to OCERS that certain key personnel, listed in the attached **Exhibit "C"** ("Key Personnel"), will perform and coordinate the Services under this Agreement. Key Personnel will be available to perform Services under the terms and conditions of this Agreement immediately upon commencement of the term of this Agreement. If one or more of such Key Personnel becomes unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of OCERS. Contractor shall provide OCERS written notification detailing the circumstances of the unavailability of the Key Personnel and designating replacement personnel prior to the effective date of the unavailability of such Key Personnel, to the maximum extent feasible, but no later than five (5) business days after the date of the Key Personnel's unavailability. OCERS will have the right to approve or disapprove the reassignment or substitution of Key Personnel for any reason at OCERS' sole discretion. In the event that OCERS and Contractor cannot agree as to the substitution of Key Personnel, OCERS will be entitled to terminate this Agreement for cause.

- 2.4.7 Removal of Key Personnel. Contractor agrees to remove any Key Personnel from performing Services under this Agreement within twenty-four (24) hours or as soon thereafter as is practicable if reasonably requested to do so by the OCERS.
- 2.4.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules, and regulations, Contractor shall be solely responsible for all costs arising therefrom.
- 2.4.9 Labor Code Provisions.
- A. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall comply with all prevailing wage requirements under the California Labor Code and Contractor shall forfeit as penalty to OCERS a sum of not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates. This penalty shall be in addition to any shortfall in wages paid. OCERS has obtained the general prevailing rate of wages, as determined by the Director of the Department of Industrial Relations (“DIR”), a copy of which is on file in OCERS’s office and shall be made available for viewing to any interested party upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Contractor’s principal place of business and at the site where Services are performed.
- B. Registration and Labor Compliance. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, Contractor and all subcontractors must be registered with the DIR. Contractor shall maintain registration for the duration of this Agreement and require the same of any subcontractors. The Services may also be subject to compliance monitoring and enforcement by the

DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

- C. Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

2.4.10 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of OCERS during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement. Pursuant to California Government Code Section 8546.7, the parties acknowledge that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the California State Auditor.

2.4.11 Business Continuity Plan. Contractor warrants that it has and will maintain throughout the term of this Agreement a written business continuity plan ("BCP") to enable it to recover and resume the Services provided by it to OCERS within one (1) Business Day in the event of any disruptive event. Contractor further represents and warrants that it has tested its BCP and will continue to conduct sufficient ongoing verification testing for the recovery and resumption of services provided to OCERS and will update its BCP at least annually. Contractor will notify OCERS within thirty (30) days of any material alterations to its BCP that would impair its ability to recover and resume any interrupted Services it provides to OCERS. Upon request by OCERS, Contractor will provide to OCERS a description of its BCP procedures as they relate to the recovery and resumption of the Services accompanied by a written certification that the BCP has undergone review and testing to account for any changes to such Services. Contractor shall promptly notify OCERS of any actual, threatened, or anticipated event that does or may disrupt or impact the Services provided by Contractor and will cooperate fully with OCERS to minimize any such disruption and promptly restore and recover the Services.

2.4.12 Inducement. Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of OCERS with a view

toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

- 2.4.13 No Conflict. Contractor will refrain from any activity, and will not enter into any agreement or make any commitment, that is inconsistent or incompatible with Contractor's obligations under this Agreement, including Contractor's ability to perform the Services. Contractor represents and warrants that Contractor is not subject to any contract or duty that would be breached by Contractor's entering or performing Contractor's obligations under this Agreement or that is otherwise inconsistent with this Agreement.

2.5 Representatives of the Parties.

- 2.5.1 OCERS' Representative. OCERS hereby designates Nicole McIntosh, director of disability, to act as its representative for the performance of this Agreement ("OCERS' Representative"). Contractor shall not accept direction or orders from any person other than the OCERS' Representative.
- 2.5.2 Contractor's Representative. Contractor hereby designates [name or title], or their designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct performance of the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.6 Indemnification.

- 2.6.1 Indemnity by Contractor. To the fullest extent permitted by law, Contractor shall indemnify, immediately defend, and hold OCERS, the members of the OCERS Board of Retirement, and OCERS' officials, officers, employees, volunteers, and agents (collectively, "OCERS Indemnitees") free and harmless from and against all Losses (as defined in Section 2.6.4 below) that any OCERS Indemnitee shall suffer, sustain or become subject to in any manner arising out of, pertaining to, or incident to any (i) negligent act, error or omission, or intentional misconduct by Contractor, its officials, officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services or (ii) breach or alleged breach of this Agreement by Contractor. Contractor's duty to indemnify does not extend to the Indemnity Claims caused by OCERS' sole negligence or willful misconduct.
- 2.6.2 Third-Party Claims. Contractor shall immediately defend, with legal counsel reasonably agreed to by OCERS and at Contractor's own cost, expense, and risk, any Indemnity Claims; excluding, however, such claims arising from OCERS' sole negligence or willful misconduct. Contractor shall control the defense or settlement

of any such action, except that Contractor will not have the right to settle or compromise the claim without the consent of OCERS. Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against any OCERS Indemnitee as part of any Indemnity Claim(s). Contractor shall also reimburse OCERS for the cost of any settlement paid by any OCERS Indemnitee as part of any Indemnity Claim. Such reimbursement shall include payment for OCERS' attorneys' fees and costs, including expert witness fees.

2.6.3 Civil Code Section 2782.8. Notwithstanding the foregoing, to the extent the Services are subject to Civil Code Section 2782.8, the above indemnity and duty to defend shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

2.6.4 Definition of Losses. As used in this Agreement, "Losses" mean all damages, dues, penalties, fines, amounts paid in settlement, taxes, costs, obligations, losses, expenses, and fees (including court costs and reasonable attorneys' and expert witness fees and expenses), including, as the context may require, any of the foregoing that arise out of or in connection with any actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, or rulings.

2.7 Insurance.

2.7.1 Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to OCERS that it has secured all insurance required under this Section 2.7. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has provided evidence satisfactory to OCERS that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the OCERS to terminate this Agreement for cause.

2.7.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall also require all its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet the following requirements:

- A. Commercial General Liability. Commercial general liability insurance, including bodily injury, personal injury, property damage and productions/completed operations coverage, in the amount not less than two million dollars (\$2,000,000) per occurrence.

- B. Automobile Liability. Business automobile liability insurance insuring all owned, non-owned, and hired automobiles, in the amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- C. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury or disease. The insurer shall agree to waive all rights of subrogation against the OCERS Indemnites for losses paid under the terms of the insurance policy which arise from work performed by Contractor.
- D. Professional Liability. Errors and omissions liability insurance appropriate to their profession covering Contractor's wrongful acts, negligent actions, errors, or omissions in the amount not less than two million dollars (\$2,000,000) per claim and covering the period from the effective date of this Agreement until five (5) years following the termination or expiration of this Agreement.
- E. Fidelity Insurance. Comprehensive fidelity insurance policy with employee dishonesty coverage in an amount not less than five million dollars (\$5,000,000) per occurrence.
- F. Cyber Security Insurance. Cyber security liability insurance covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional or unintentional release of private information, alteration of electronic information, extortion and network security, and network and business interruption with limits of not less than two million dollars (\$2,000,000) for each occurrence and an annual aggregate of five million dollars (\$5,000,000).
- G. Excess Liability. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the OCERS Indemnites (if agreed to in a written contract or agreement) before any OCERS Indemnitee's own primary or self-insurance shall be called upon to protect it as a named insured. The policy shall be endorsed to state that the OCERS Indemnites shall be covered as additional insured. The coverage shall contain no special limitations on the scope of protection afforded to the OCERS Indemnites.

2.7.3 All Coverages; No Contribution. All insurance which Contractor is obligated to procure and maintain shall include or be endorsed to state that: (1) the OCERS Indemnitees shall be covered as additional insured with respect to work by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance with respect to the OCERS Indemnitees, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by any OCERS Indemnitee shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

- A. The insurance policies required by Section 2.7.2 above shall contain or be endorsed to contain the following specific provisions:
 - I. The policies shall contain a waiver of transfer rights of recovery ("waiver of subrogation") against the OCERS Indemnitees, for any claims arising out of the work of Contractor.
 - II. Policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the OCERS Indemnitees under such policies. Contractor shall be solely responsible for deductible and/or self-insured retention and OCERS, at its sole discretion, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of OCERS.
 - III. Prior to start of work under this Agreement, Contractor shall file with OCERS certificate(s) of insurance signed by an authorized representative of the insurer(s) evidencing and certifying to the insurance coverage required by Section 2.7.2.
 - IV. Each insurance policy required by Section 2.7.2 shall contain a cancellation clause that provides such policy shall not be cancelled or otherwise terminated by the insurer or Contractor or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCERS, Attention: Jim Doezie.
 - V. Insurance required by Section 2.7.2 shall be placed with insurers licensed by the State of California to transact insurance business of the types required herein. Each insurer shall have a current Best

Insurance Guide rating of not less than A: VII unless prior approval is secured from OCERS as to the use of such insurer.

- VI. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

2.7.4 Reporting of Claims. Contractor shall report to OCERS, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

2.8 Termination of Agreement.

2.8.1 Termination. OCERS may, by written notice to Contractor, terminate the whole or any part of this Agreement without liability to OCERS if Contractor fails to perform or breaches any of the terms contained herein. In addition, either Party may terminate this Agreement for any reason or for no reason on thirty (30) days' written notice to the other Party. Upon termination, Contractor shall be compensated only for those Services that have been performed and delivered to OCERS' satisfaction, and Contractor shall be entitled to no further compensation.

2.8.2 Survival. The rights and obligations contained in Section 2.4 (Responsibilities of Contractor), Section 2.6 (Indemnification), and Section 2.9 (Ownership of Work Product and Confidentiality) will survive any termination or expiration of this Agreement.

2.9 Ownership of Work Product and Confidentiality.

2.9.1 Ownership of Work Product; Licensing of Intellectual Property. Contractor hereby irrevocably assigns to OCERS all right, title and interest worldwide in and to any and all discoveries, developments, formulae, information, materials, improvements, designs, artwork, content, software programs, other works of authorship, and any other work product created, conceived, or developed by Contractor (whether alone or jointly with others) for OCERS during or before the term of this Agreement, including all copyrights, patents, trademarks, trade secrets, and other intellectual property rights therein (including all rights to priority and rights to file patent applications and/or registered designs) ("Work Product"). Contractor retains no rights to use the Work Product and agrees not to challenge the validity of OCERS' ownership of, or intellectual property rights in, the Work Product. Contractor agrees to execute, at OCERS' request and expense, all documents and other instruments necessary or desirable to confirm such assignment, including without limitation, any copyright assignment or patent assignment provided by OCERS. Contractor hereby irrevocably appoints OCERS as Contractor's attorney-in-fact for the purpose of executing such documents on Contractor's behalf, which

appointment is coupled with an interest. At OCERS' request, Contractor will promptly record any such patent assignment with the United States Patent and Trademark Office. OCERS will reimburse Contractor for any reasonable out-of-pocket expenses actually incurred by Contractor in fulfilling its obligations under this section. Contractor will deliver each item of Work Product specified in **Exhibit "A"** and disclose promptly in writing to OCERS all other Work Product.

- 2.9.2 Other Rights. If Contractor has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product that cannot be assigned, Contractor hereby unconditionally and irrevocably grants to OCERS an exclusive (even as to Contractor), worldwide, fully paid and royalty-free, irrevocable, perpetual license, with rights to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, create derivative works of, publicly perform and publicly display the Work Product in any medium or format, whether now known or later developed. In the event that Contractor has any rights in the Work Product that cannot be assigned or licensed, Contractor unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against OCERS and its affiliates.
- 2.9.3 License to Preexisting IP. Contractor agrees not to use or incorporate into Work Product any intellectual property developed by any third party or by Contractor other than in the course of performing Services for OCERS ("Preexisting IP") unless the Preexisting IP has been specifically identified and described in **Exhibit "A"**. In the event Contractor uses or incorporates Preexisting IP into Work Product, Contractor hereby grants to OCERS a non-exclusive, worldwide, fully-paid and royalty-free, irrevocable, perpetual license, with the right to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, digitally transmit, create derivative works of, publicly perform, and publicly display in any medium or format, whether now known or later developed, such Preexisting IP incorporated or used in Work Product.
- 2.9.4 Confidential Information. Any financial, statistical, personal, technical, and other data and information relating to a Party's operations which are made available to the other Party in order to carry out this Agreement shall be reasonably protected by such other Party from unauthorized use, except to the extent that disclosure thereof is required to comply with applicable law, including the California Public Records Act. Confidentiality does not apply to information which is known to a receiving Party from other sources, which is otherwise publicly available, or which is required to be disclosed pursuant to an order or requirements of a regulatory body or a court.
- 2.9.5 Customer Data. Contractor acknowledges that it may receive confidential information from OCERS or otherwise in connection with this Agreement or the performance of the Services, including personally identifiable information of

OCERS' customers and members ("Customer Data"). Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of OCERS or through the fault of OCERS, Contractor agrees:

- A. To maintain Customer Data in confidence;
- B. Not to use Customer Data other than in the course of this Agreement;
- C. Not to disclose or release Customer Data except on a need-to-know only basis;
- D. Not to disclose or release Customer Data to any third person without the prior written consent of OCERS, except for authorized employees or agents of Contractor;
- E. To promptly notify OCERS in writing of any unauthorized release of confidential information, including Customer Data;
- F. To take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Contractor, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any confidential information, including Customer Data, without first obtaining the written consent of OCERS; and
- G. Upon request by OCERS and upon the termination or expiration of this Agreement for any reason, Contractor shall promptly return to OCERS all copies, whether in written, electronic, or other form or media, of Customer Data in its possession or in the possession of its employees or agents, or securely dispose of all such copies, and certify in writing to OCERS that such Customer Data has been returned to OCERS or disposed of securely.

2.9.6 Disclosure. Except as may be required by applicable law, neither Party shall make any disclosure of any designated confidential information related to this Agreement without the specific prior written approval from the other of the content to be disclosed and the form in which it is disclosed, except for such disclosures to the Parties' financing sources, other secured parties, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants, and exchange facilitators as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws or rules of any exchange upon which a Party's shares may be traded. Notwithstanding the foregoing, nothing contained herein shall be deemed to restrict or prohibit OCERS from complying with applicable law regarding disclosure of information, including

the California Public Records Act and Contractor hereby agrees to release OCERS from any and all Losses related to any such disclosure.

2.9.7 Publicity. Contractor shall not use OCERS' name or insignia, photographs of OCERS property, or any publicity pertaining to the Services in any advertisement, magazine, trade paper, newspaper, television, or radio production, or other similar medium without the prior written consent of OCERS.

2.9.8 Non-Infringement. Contractor represents, warrants, and covenants that it will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret, or other proprietary rights of any third-party.

2.10 Subcontracting/Subconsulting.

2.10.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of OCERS. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Contractor will be solely responsible for the payment of all subcontractors and other third parties engaged by or through Contractor to provide, perform, or assist in the provision and delivery of the Services.

ARTICLE 3
GENERAL PROVISIONS

3.1 Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

OCERS:

CONTRACTOR:

Orange County Employees Retirement System

2223 E. Wellington Avenue

Santa Ana, CA 92701

Attention: Jim Doezie

e-mail: jdoezie@ocers.org

Such notice shall be deemed made when personally delivered or when mailed, upon deposit in the U.S. Mail, first class postage prepaid and registered or certified addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- 3.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, ethnic group identification, mental disability, physical disability, medical condition, genetic information, marital status, ancestry, sex, gender, sexual orientation, gender identity, gender expression, age, or military and veteran status. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.
- 3.3 Time of Essence. Time is of the essence for each and every provision of this Agreement. The acceptance of late performance shall not waive the right to claim damages for such breach nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.
- 3.4 OCERS' Right to Employ Other Contractors. OCERS reserves the right to employ other contractors in connection with the Services.
- 3.5 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- 3.6 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or indirectly (including by operation of law), this Agreement or any interest herein without the prior written consent of OCERS.
- 3.7 Amendment. This Agreement may not be altered or amended except in a writing signed by both Parties.
- 3.8 Waiver. All waivers under this Agreement must be in writing to be effective. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition.
- 3.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.
- 3.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

- 3.11 Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. The exclusive venue for any dispute arising out of or relating to this Agreement shall be in Orange County, California.
- 3.12 Injunctive Relief for Breach. Contractor's obligations under this Agreement are of a unique character that gives them particular value; breach of any of such obligations will result in irreparable and continuing damage to OCERS for which there will be no adequate remedy at law; and, in the event of such breach, OCERS will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).
- 3.13 Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.
- 3.14 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
- 3.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.16 Integration. This Agreement represents the entire understanding of OCERS and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. Neither Party shall be deemed to be the drafter of this Agreement and no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.
- 3.17 Interpretation. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters dealt with in this Agreement. Each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, without limitation, California's Civil Code Section 1654) or legal decisions that would require interpretation of any ambiguities in this Agreement against the party that has drafted it shall not be applicable and are hereby waived. The provisions of the Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.
- 3.18 Headings. Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.
- 3.19 Precedence. In the event of any conflict, inconsistency, or ambiguity between the terms and conditions in the main body of this Agreement and the terms and conditions in any

exhibit, the main body of this Agreement shall control. This Agreement and all attached exhibits will be construed to be consistent, insofar as reasonably possible. When interpreting this Agreement, precedence shall be given to its respective parts and amendments in the following descending order:

- A. Amendments to this Agreement entered into pursuant to Section 3.7 herein.
- B. This Agreement.
- C. Exhibit A: Scope of Services, Exhibit B: Fee Schedule, and Exhibit C: Key Personnel.
- D. OCERS Request for Proposal dated July, 2024, attached as Exhibit "D".
- E. Contractor's Response to OCERS Request for Proposal, attached as Exhibit "E".

IN WITNESS WHEREOF, the Parties hereby have caused this Agreement to be executed on the Effective Date:

APPROVED:

OCERS

By:
Name:
Title:

By:
Name:
Title:

APPROVED:

[CONTRACTOR]

By:
Name:
Title: