



ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

Los Angeles County
Board of Supervisors

23 March 20, 2012

March 20, 2012

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SACHI A. HAMAI
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Christina Ghaly, M.D.
Strategic Planning Deputy Director

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF ELECTRONIC EMERGENCY MEDICAL SERVICES DATA
CAPTURE SERVICES AGREEMENT
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval to enter into an Agreement with Long Beach Fire Department to pilot an electronic data capturing system designed to collect and store patient care record information.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to execute an electronic data capturing system Agreement with Long Beach Fire Department to pilot the Trauma and Emergency Medical Information System (TEMIS) designed to collect and store patient care record information, effective upon Board approval through December 31, 2012, with no net County cost.
2. Delegate authority to the Director, or his designee, to amend the Agreement to extend the term for up to two additional one-year periods, up to and including December 31, 2014.
3. Delegate authority to the Director, or his designee, to offer and execute electronic data capturing system Agreements, effective upon approval through December 31, 2014, with other interested fire departments upon review and approval by CEO and County Counsel.

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To ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommendation will allow the Director to execute an Agreement with Long Beach Fire Department, substantially similar to Exhibit I, in order to pilot the electronic data capturing system designed to collect and store patient care record information. The proposed pilot project is part of the Fire/Emergency Medical Services (EMS)/Healthcare Database Linkages System project and is designed to test the feasibility of automating the County's ability to gather and share potential health hazard data in real-time between the field EMS responders and receiving hospitals to a central database. The system will either convert paper or electronically capture patient care record data and transmit this information to the County's Department of Health Services (DHS), to facilitate targeted and timely health care assistance.

The United States Department of Homeland Security (USDHS) awarded Urban Area Security Initiative grant funds to DHS in Federal Fiscal Year 2008 to fund the Fire/ EMS/Healthcare Database Linkages System project. This System will ultimately link all three databases to provide a single record for each patient. These funds were used to purchase hardware and software designed to automate the County's gathering of potential health hazard data collected by TEMIS as approved by your Board on November 3, 2010.

The County of Los Angeles seeks the ability to gather real-time emergency medical services and healthcare data, thereby providing the capability to analyze health information for proactive bio-surveillance. This information will be shared between fire, EMS, and healthcare facilities during the management of a catastrophic disaster. The Los Angeles Joint Regional Intelligence Center's ability to obtain health information necessary for early detection and containment of potential health hazards is enhanced by this program. Although critical emergency medical services and health data exist, these data elements are captured in different databases and in various stages of completeness. Data collection is mostly paper-based and data abstraction can be a lengthy process. The current system only allows for retrospective review of incidents rather than timely assessment and information sharing of potential health hazards (e.g., bio-terrorism).

Approval of the second recommendation will allow the Director to extend the current Agreement in accordance with the Agreement's terms and conditions.

Approval of the third recommendation will allow the Director to offer and execute electronic data capturing system agreements with other interested fire departments, substantially similar to Exhibit I, at no cost to the County.

Implementation of Strategic Plan Goals

The recommended action supports Goal 4, Health and Mental Health, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

There is no net County cost. The proposed Agreement does not obligate any funding. The equipment which will be utilized by the fire department was previously purchased with funding provided by the USDHS.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

This provider is a government entity with its own independent legal and policy obligations; therefore, a majority of the County-mandated agreement provisions have been eliminated (listed in Attachment A).

County Counsel has approved Exhibit I as to use and form.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the Agreement will allow DHS to utilize the grant funds awarded by the USDHS to augment the County's emergency response capabilities by expanding its data collection and analysis capabilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is written in a cursive, flowing style.

Mitchell H. Katz, M.D.

Director

MHK:cc

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

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AGREEMENT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

FOR

**ELECTRONIC EMERGENCY MEDICAL SERVICES
DATA CAPTURE SERVICES**

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**AGREEMENT BETWEEN
COUNTY OF LOS ANGELES
AND**

**FOR
ELECTRONIC EMERGENCY MEDICAL SERVICES (EMS)
DATA CAPTURE SERVICES**

This Agreement and Exhibits made and entered into this ____ day of _____, 2012 by and between the County of Los Angeles, hereinafter referred to as County and _____, hereinafter referred to as Provider. _____ is located at _____.

RECITALS

WHEREAS, pursuant to the authority granted under the Emergency Medical Services and Prehospital Emergency Medical Care Act (California Health and Safety Code Division 2.5, Sections 1797, et seq.), (hereafter "Act") County has established and maintains an Advance Life Support (hereafter "ALS") system providing services utilizing Emergency Medical Technicians - Paramedics (hereafter "EMT-P"), or "paramedics") for the delivery of emergency medical care to the sick and injured at the scene of an emergency, during transport to a general acute care hospital, during interfacility transfer, while in the emergency department of a general hospital, until care responsibility is assumed by the regular staff of the hospital, and during training within the facilities of a participating general acute care hospital; and

WHEREAS, pursuant to the Act, County has designated its Department of Health Services as the local Emergency Medical Services Agency (hereafter "EMS Agency"), and

WHEREAS, the EMS Agency approves paramedic provider agencies, to render through licensed and accredited EMT-P personnel ALS level patient care in accordance with policies and procedures established by the EMS Agency and the State Emergency Medical Services Authority (EMSA); and

WHEREAS, under Title 22, California Code of Regulations, Section 100169 (a) (6), requires the EMS Agency and EMS Provider to have a written policies and procedures for the initiation, completion, review, evaluation, and retention of patient care records; and

WHEREAS, under Title 22, California Code of Regulations, Section 100170 (e) (f) requires the EMS Agency and EMS Provider to have written policies and procedures for the utilization of computer or other electronic means of collecting and storing information contained in the patient care record; and

WHEREAS, _____ Fire Department ("Provider") is an approved provider of prehospital emergency medical services within the City of _____, and operates an ALS system in accordance with medical control policies and procedures established by the EMS Agency; and

WHEREAS, for the purpose of implementing an electronic data capture pilot project, the respective roles of the parties in delivering EMS to the population of the City of _____ require significant detailed and cooperative efforts to ensure each party continues to fulfill its respective obligations; and

WHEREAS, the EMS Agency and Provider further agree to cooperate with each other for the purpose implementing an electronic data capture pilot project to assist in the identification and facilitation of the delivery, maintenance, and improvement of prehospital care within Los Angeles County in order to meet the needs of Los Angeles County 9-1-1 patients efficiently and appropriately; and

WHEREAS, this Agreement (hereafter referred to as "Agreement"), is authorized by California Health and Safety (H&S) Code Section 1797; and Title 22, California Code of Regulations (CCR), Sections 100167 (b) (4) and 100169 (a) (6), between the EMS Agency and the Provider, for the purpose of developing and maintaining a working relationship between the parties regarding the implementation of an electronic data capture pilot project.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibits A, B, C, D, E, F, G1, G1-IT, H, I, and J are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Agreement and then to the Exhibits according to the following priority.

Standard Exhibits:

- 1.1 EXHIBIT A - Statement of Work
- 1.2 EXHIBIT B - Pricing Schedule (Intentionally Omitted)
- 1.3 EXHIBIT C - Provider's Proposed Schedule (Intentionally Omitted)
- 1.4 EXHIBIT D - Provider's EEO Certification (Intentionally Omitted)
- 1.5 EXHIBIT E - County's Administration
- 1.6 EXHIBIT F - Provider's Administration
- 1.7 EXHIBIT G1- Provider Acknowledgement and Confidentiality Agreement
- 1.8 EXHIBIT G1-IT Provider Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- 1.9 EXHIBIT H - Jury Service Ordinance (Intentionally Omitted)
- 1.10 EXHIBIT I - Safely Surrendered Baby Law (Intentionally Omitted)

Health Insurance Portability AND Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) Agreement

- 1.11 EXHIBIT J - Provider's Obligations as a "Business Associate" Under the Health Insurance Portability AND Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)

This Agreement and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous Agreements, written and oral, and all communications between the parties relating to the implementation of a pilot project on electronic data capture. No change to this Agreement shall be valid unless prepared pursuant to sub-paragraph 8.1 - Amendments and signed by both parties.

2.0 DEFINITIONS

- 2.1 **Agreement:** Agreement executed between County and Provider. It sets forth the terms and conditions for the issuance and performance of the Statement of Work (SOW), Exhibit A.
- 2.2 **Provider:** The sole proprietor, partnership, or corporation that has entered into an agreement with the County to perform or execute the work covered by the SOW, Exhibit A.
- 2.3 **Provider Project Manager:** The individual designated by the Provider to administer the Agreement operations after the Agreement award.
- 2.4 **Director:** County's Director of Health Services, or his duly authorized designee.
- 2.5 **County Agreement Project Monitor:** Person with responsibility to oversee the day-to-day activities of this Agreement. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the Provider.
- 2.6 **County Project Director:** Person designated by County with authority for County on contractual or administrative matters relating to this Agreement that cannot be resolved by the County's Project Manager.
- 2.7 **County Project Manager:** Person designated by County's Project Director to manage the operations under this Agreement.
- 2.8 **Day(s):** Calendar day(s) unless otherwise specified.

- 2.9 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

3.0 WORK

- 3.1 Pursuant to the provisions of this Agreement, the Provider shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein SOW, Exhibit A.
- 3.2 If the Provider provides any tasks, deliverables, goods, services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of the Provider, and the Provider shall have no claim whatsoever against the County.

4.0 TERM OF AGREEMENT

- 4.1 The term of this Agreement shall commence effective upon approval by the County's Board of Supervisors, and shall continue in full force and effect during the term of the pilot programs (specified in SOW - Exhibit A, unless sooner terminated or extended, in whole or in part, as provided in this Agreement. Extension of the pilot programs will be contingent upon future grant awards specified to fund the continuation of the pilot programs.
- 4.2 The County shall have the sole option to extend this Agreement term for up to two (2) additional one-year periods, for a maximum total Agreement term of three (3) years. Each such option and extension shall be exercised at the sole discretion of the Director, or his designee, as authorized by the Board of Supervisors.

5.0 AGREEMENT SUM

Intentionally Omitted

6.0 ADMINISTRATION OF AGREEMENT - COUNTY

COUNTY ADMINISTRATION

A listing of all County Administration referenced in the following subparagraphs are designated in Exhibit E - County's Administration. The County shall notify the Provider in writing of any change in the names or addresses shown.

6.1 County's Project Director

Responsibilities of the County's Project Director include:

- ensuring that the objectives of this Agreement are met; and

- providing direction to the Provider in the areas relating to County policy, information requirements, and procedural requirements regarding the implementation of a pilot project on electronic data capture.

6.2 County's Project Manager

The responsibilities of the County's Project Manager include:

- meeting with the Provider's Project Manager on a regular basis; and
- inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Provider.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

6.3 County's Agreement Project Monitor

The County's Project Monitor is responsible for overseeing the day-to-day administration of this Agreement. The Project Monitor reports to the County's Project Manager.

7.0 ADMINISTRATION OF AGREEMENT - PROVIDER

7.1 Provider's Project Manager

7.1.1 The Provider's Project Manager is designated in Provider's Administration, Exhibit F - . The Provider shall notify the County in writing of any change in the name or address of the Provider's Project Manager.

7.1.2 The Provider's Project Manager shall be responsible for the Provider's day-to-day activities as related to this Agreement and shall coordinate with County's Project Manager and County's Agreement Project Monitor on a regular basis.

7.2 Confidentiality

7.2.1 Provider shall maintain the confidentiality of all records and information in accordance with all applicable federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies

concerning information technology security and the protection of confidential records and information.

7.2.2 Provider shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Agreement.

7.2.3 Provider shall sign and adhere to the provisions of the "Provider Acknowledgement and Confidentiality Agreement", Exhibit G-1, and the "Provider Acknowledgement, Confidentiality, and Copyright Assignment Agreement, Exhibit G1-IT."

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

8.1.1 For any change which affects the scope of work, term, Agreement Sum, payments, or any term or condition included under this Agreement, an Amendment shall be prepared and executed by the Provider and by the Director, or his designee.

8.1.1 The County's Board of Supervisors or Chief Executive Officer (CEO) or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or CEO. To implement such changes, an Amendment to the Agreement shall be prepared and executed by the Provider and by the Director or his designee.

8.2 ASSIGNMENT AND DELEGATION

Intentionally Omitted

8.3 AUTHORIZATION WARRANTY

Intentionally Omitted

8.4 BUDGET REDUCTIONS

Intentionally Omitted

8.5 COMPLAINTS

Intentionally Omitted

8.6 COMPLIANCE WITH APPLICABLE LAW

Intentionally Omitted

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

Intentionally Omitted

8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

Intentionally Omitted

8.9 CONFLICT OF INTEREST

Intentionally Omitted

8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Intentionally Omitted

8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

Intentionally Omitted

8.12 PROVIDER RESPONSIBILITY AND DEBARMENT

Intentionally Omitted

8.13 PROVIDER'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

Intentionally Omitted

8.14 PROVIDER'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Intentionally Omitted

8.15 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Provider's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Provider's compliance with all Agreement terms and conditions and performance standards. The report will include improvement/corrective action measures taken by the County and the Provider. If improvement does not occur

consistent with the corrective action measures, the County may terminate this Agreement as specified in this Agreement.

8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

Intentionally Omitted

8.17 EMPLOYMENT ELIGIBILITY VERIFICATION

Intentionally Omitted

8.18 FACSIMILE REPRESENTATIONS

The County and the Provider hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmissions of "original" version of such documents.

8.19 FAIR LABOR STANDARDS

Intentionally Omitted

8.20 FORCE MAJEURE

Intentionally Omitted

8.21 GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Provider agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.22 INDEPENDENT PROVIDER STATUS

8.22.1 This Agreement is by and between the County and the Provider and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Provider. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

- 8.22.2 The Provider shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Provider.
- 8.22.3 The Provider understands and agrees that all Provider employees performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Provider and not employees of the County. The Provider shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Provider pursuant to this Agreement.
- 8.22.4 The County and Provider shall adhere to the provisions stated in sub-paragraph 7.5 - Confidentiality.

8.23 INDEMNIFICATION

Each party (Indemnifying Party) shall indemnify, defend and hold harmless the other, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Provider's acts and/or omissions arising from and/or relating to this Agreement.

In the event of third-party loss caused by the negligence, wrongful act, or omission of both parties, each party hereto shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed between them or judicially determined.

8.24 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Provider's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Provider shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Provider pursuant to this Contract. The County in no way warrants that the Required

Insurance is sufficient to protect the Provider for liabilities which may arise from or relate to this Contract.

8.24.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Provider's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to County not less than 10 days prior to Provider's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Provider and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Provider identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Provider, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Department of Health Services
Contracts & Grants Division
313 North Figueroa Street, 6th Floor-East

Los Angeles, California 90012
Attention: Ruth/Renee?

Provider also shall promptly report to County any injury or property damage accident or incident, including any injury to a Provider employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Provider. Provider also shall promptly notify County of any third party claim or suit filed against Provider or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Provider and/or County.

8.24.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Provider's General Liability policy with respect to liability arising out of Provider's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Provider's acts or omissions, whether such liability is attributable to the Provider or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.24.3 Cancellation of or Changes in Insurance

Provider shall provide County with, or Provider's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the

County, upon which the County may suspend or terminate this Contract.

8.24.4 Failure to Maintain Insurance

Provider's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Provider, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Provider resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Provider, deduct the premium cost from sums due to Provider or pursue Provider reimbursement.

8.24.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.24.6 Provider's Insurance Shall Be Primary

Provider's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Provider. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Provider coverage.

8.24.7 Waivers of Subrogation

To the fullest extent permitted by law, the Provider hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Provider shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.24.8 Sub-Contractor Insurance Coverage Requirements

Provider shall include all Sub-Contractors as insureds under Provider's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Provider shall be responsible for verifying each Sub-Contractor complies with the Required Insurance

provisions herein, and shall require that each Sub-Contractor name the County and Provider as additional insureds on the Sub-Contractor's General Liability policy. Provider shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

8.24.9 Deductibles and Self-Insured Retentions (SIRs)

Provider's policies shall not obligate the County to pay any portion of any Provider deductible or SIR. The County retains the right to require Provider to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Provider's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Provider understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.24.11 Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Provider use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions.

The County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.24.14 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.25 **INSURANCE COVERAGE**

8.25.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

8.25.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Provider's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.25.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than One Million Dollars (\$1,000,000) million per accident. If Provider will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Provider's operations,

coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

8.25.4 Unique Insurance Coverage

- **Professional Liability/Errors and Omissions**

Insurance covering Provider's liability arising from or related to this Contract, with limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. Further, Provider understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

8.26 LIQUIDATED DAMAGES

Intentionally Omitted

8.27 MOST FAVORED PUBLIC ENTITY

Intentionally Omitted

8.28 NONDISCRIMINATION AND AFFIRMATIVE ACTION

Intentionally Omitted

8.29 NON EXCLUSIVITY

Intentionally Omitted

8.30 NOTICE OF DELAYS

Intentionally Omitted

8.31 NOTICE OF DISPUTES

Intentionally Omitted

8.32 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

Intentionally Omitted

8.33 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

Intentionally Omitted

8.34 NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in County's Administration, Exhibit E - and Exhibit F, Provider's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director or his designee, shall have the authority to issue all notices or demands required or permitted by the County under this Agreement.

8.35 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Intentionally Omitted

8.36 PUBLIC RECORDS ACT

Intentionally Omitted

8.37 PUBLICITY

Intentionally Omitted

8.38 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The County and Provider shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The County and Provider shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. The Provider agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Provider and shall be made available to the County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Provider at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Provider shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.38.1 In the event that an audit of the Provider is conducted specifically regarding this Agreement by any federal or State auditor, or by any auditor or accountant employed by the Provider or otherwise, then the Provider shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Provider's receipt thereof, unless otherwise provided by applicable federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.38.2 Failure on the part of the Provider to comply with any of the provisions of this sub-paragraph 8.38 shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement.

8.39 RECYCLED BOND PAPER

Intentionally Omitted

8.40 SUBCONTRACTING

Intentionally Omitted

8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Intentionally Omitted

8.42 TERMINATION FOR CONVENIENCE

8.42.1 This Agreement may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Provider specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Provider shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and

- Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Provider under this Agreement shall be maintained by the Provider in accordance with sub-paragraph 8.38, Record Retention and Inspection/Audit Settlement.

8.43 TERMINATION FOR DEFAULT

8.43.1 The County may, by written notice to the Provider, terminate the whole or any part of this Agreement, if, in the judgment of County's Project Director:

- Provider has materially breached this Agreement; or
- Provider fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Agreement; or
- Provider fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.43.2 In the event that the County terminates this Agreement in whole or in part as provided in sub-paragraph 8.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated.

8.43.3 If, after the County has given notice of termination under the provisions of this sub-paragraph 8.43, it is determined by the County that the Provider was not in default under the provisions of this sub-paragraph 8.43, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 8.42 - Termination for Convenience.

8.43.4 The rights and remedies of the County provided in this sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.44 TERMINATION FOR IMPROPER CONSIDERATION

Intentionally Omitted

8.45 TERMINATION FOR INSOLVENCY

8.45.1 The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- Insolvency of the Provider. The Provider shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Provider is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Provider under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Provider; or
- The execution by the Provider of a general assignment for the benefit of creditors.

8.45.2 The rights and remedies of the County provided in this subparagraph 8.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

Intentionally Omitted

8.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Intentionally Omitted

8.48 VALIDITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this

Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 WAIVER

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this subparagraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.50 WARRANTY AGAINST CONTINGENT FEES

Intentionally Omitted

8.51 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Intentionally Omitted

8.52 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Intentionally Omitted

9.0 UNIQUE TERMS AND CONDITIONS

9.1 PROVIDER'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)

The County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Agreement, the Provider provides services to the County and the Provider receives, has access to, and/or creates Protected Health Information as defined in Exhibit J in order to provide those services. The County and the Provider therefore agree to the terms of Exhibit J, Provider's Obligations As a "Business Associate" Under Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) (Business Associate Agreement).

9.2 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT

- 9.2.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tool (hereafter "materials" which are originated or created through the Provider's work pursuant to this Agreement. The Provider, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in the County all of the Provider's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to the Provider's work under this Agreement.
- 9.2.2 During the term of this Agreement and for five (5) years thereafter, the Provider shall maintain and provide security for all of the Provider's working papers prepared under the Agreement. County shall have the right to inspect, copy and use at any time during and subsequent to the term of this Agreement, any and all such working papers and all information contained herein.
- 9.2.3 Any and all materials, software and tools which are developed or were originally acquired by the Provider outside the scope of this Agreement, which the Provider desires to use hereunder, and which the Provider considers to be proprietary or confidential, must be specifically identified by Provider to the County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by the Provider as "Proprietary" or "Confidential" on each appropriate page of any document containing such material.
- 9.2.4 The County will use reasonable means to ensure that the Provider's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without prior written consent of the Provider.
- 9.2.5 Notwithstanding any other provision of this Agreement, the County will not be obligated to the Provider in any way under sub-paragraph 9.2.4 for any of the Provider's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by sub-paragraph 9.2.2 or for any disclosure which the County is required to make under any state or federal law or order of court.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be executed by its Director of Health Services and Provider has caused this Agreement to be executed in its behalf by its duly authorized officers, the day, month, and year first above written.

COUNTY OF LOS ANGELES

By _____
Mitchell H. Katz, Director

PROVIDER

By _____
Signature

Printed Name

City Manager

APPROVED AS TO FORM:

Andrea Sheridan Ordin
County Counsel

EXHIBIT A

STATEMENT OF WORK

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EXHIBIT A

STATEMENT OF WORK (SOW)

1.0 SCOPE OF WORK

The general scope of work to be performed under this Agreement includes, but is not limited to, providing the following:

- Implementing a scanning solution to convert paper patient care records into electronic data; or
- Implementing an electronic Patient Care Record (ePCR) pilot for Emergency Medical Services (EMS) provider agencies

These projects are part of the Fire/EMS/Healthcare Database Linkages System project.

The United States Department of Homeland Security awarded a grant to the County of Los Angeles to fund the County's Department of Health Services Fire/EMS/Healthcare Database Linkages System project.

2.0 ADDITION AND/OR DELETION OF FACILITIES AND/OR SPECIFIC TASKS

All changes must be made in accordance with sub-paragraph 8.1 Amendments of the Agreement.

3.0 QUALITY CONTROL

The Provider in collaboration with the County shall establish and utilize a comprehensive Quality Control Procedure to verify that data collected via the pilot project is verified for accuracy.

4.0 DEFINITIONS

4.1 Scanning Solution

As used herein, the term, scanning solution shall mean all Hardware, Software and Application Software Support Services designed to convert paper EMS Report Forms into electronic data.

4.3 Electronic Patient Care Record (ePCR)

As used herein, the term ePCR shall mean all Hardware, Software and Application Software Support Services designed to capture EMS data using electronic mobile devices.

5.0 RESPONSIBILITIES

The County's and the Provider's responsibilities are as follows:

COUNTY

5.1 Personnel

The County will administer the Agreement according to the Agreement, Paragraph 6.0, Administration of Agreement - County. Specific duties will include:

- 5.1.1 Monitoring the Provider's performance in the daily operation of this Agreement.
- 5.1.2 Providing direction to the Provider in areas relating to policy, information and procedural requirements.
- 5.1.3 Preparing Amendments in accordance with the Agreement, Paragraph 8.0, Standard Terms and Conditions, Sub-paragraph 8.1 Amendments.

5.2 Furnished Items

The County will furnish all Hardware, Software and Application Software Support Services necessary to implement either the scanning solution or ePCR pilot. All furnished items by County to Provider under this Agreement shall be returned to County upon conclusion of the pilot project.

In the event Provider chooses to continue or adopt the Scanning Solution or the ePCR pilot, Provider may continue to use hardware furnished for the pilot project until such time said hardware is obsolete or non operational. Provider shall then return hardware to County. Provider shall be responsible for replacing and maintaining replacement hardware, as well as the application software support services, beyond the term of the pilot project.

PROVIDER

5.3 Project Manager

5.3.1 Provider shall provide a full-time Project Manager or designated alternate. County must have access to a point of contact during all hours, 365 days per year. Provider shall provide a telephone number where the point of contact may be reached on a 24 hour per day basis.

5.3.2 Project Manager shall act as a central point of contact with the County.

5.3.3 Project Manager/alternate shall have full authority to act for Provider on all matters relating to the daily operation of the Agreement. Project Manager/alternate shall be able to effectively communicate, in English, both orally and in writing.

5.4 Personnel

Provider shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for Provider in every detail and must speak and understand English.

5.5 Materials and Equipment

Provider will identify and provide space for the hardware required to implement either the scanning solution or ePCR pilot.

5.6 Training

County and Provider shall coordinate training required to implement either the scanning solution or ePCR pilot.

6.0 SPECIFIC WORK REQUIREMENTS

6.1 Responsibilities of County

6.1.1 Purchase equipment that is necessary to implement either the scanning solution or ePCR pilot.

6.1.2 Provide technical support for the operation and maintenance of equipment purchased to conduct the pilot project.

6.1.3 Install scanning solution or ePCR software on field site server and field site electronic data capture devices.

- 6.1.4 Develop an EMS Report Form that is compatible with scanning software.
- 6.1.5 Provide training to Provider's personnel on the use and maintenance of hardware and software.
- 6.1.6 Maintain an inventory of all hardware equipment and software applications provided to the Provider.
- 6.1.7 Ensure that software has the capability to abstract data necessary for billing.
- 6.1.8 Ensure that software has interface capability with Provider's dispatch information.

6.2 Responsibilities of Provider

- 6.2.1 Adhere to all policies and procedures of the EMS Agency relating to the implementation of the pilot project on electronic data capture.
- 6.2.2 Collaborate with the EMS Agency in implementing and maintaining a quality assurance program referencing the collection of pre-hospital care data.
- 6.2.3 Implement in collaboration with the County either the scanning solution or ePCR pilot.
- 6.2.4 Provide central server site and field site locations for either the scanning solution or ePCR pilot.
- 6.2.5 Provide network access via VPN (Virtual Private Network).
- 6.2.6 Utilize the hardware and software only for the purpose of implementing either the scanning solution or ePCR pilot.
- 6.2.7 Coordinate and arrange for the initial training of paramedic and EMT personnel in the use of either the scanning solution or ePCR pilot hardware and software.
- 6.2.8 Ensure that electronic field data capture devices and additional equipment (to include portable electronic field data capture devices, servers, workstation computers) provided by County are adequately secured to prevent theft and unauthorized use.

- 6.2.9 Ensure that all Patient Care Records are scanned, validated and submitted to the EMS Agency via County's FTP site within time agreed time frame, if utilizing the scanning solution.
- 6.2.10 Ensure that data captured via the ePCR pilot are submitted to the EMS Agency via County's FTP site within agreed time frame, if utilizing the ePCR pilot.
- 6.2.11 Assign staff as a point of contact to interface and resolve technical issues with County.

7.0 GREEN INITIATIVES

- 7.1 Provider shall use reasonable efforts to initiate "green" practices for environmental and energy conservation benefits.
- 7.2 Provider shall notify County's Project Manager of Provider's new green initiatives prior to the Agreement commencement.

COUNTY'S ADMINISTRATION

AGREEMENT NO: _____

COUNTY PROJECT DIRECTOR:

Name: Richard Tadeo
Title: Assistant Director
Address: 10100 Pioneer Blvd., Suite 200
Santa Fe Springs, CA 90670
Telephone: (562) 347-1610
Facsimile: (562) 941-5835
E-Mail Address: rtadeo@dhs.lacounty.gov

COUNTY PROJECT MANAGER:

Name: Richard Tadeo
Title: Assistant Director
Address: 10100 Pioneer Blvd., Suite 200
Santa Fe Springs, CA 90670
Telephone: (562) 347-1610
Facsimile: (562) 941-5835
E-Mail Address: rtadeo@dhs.lacounty.gov

COUNTY CONTRACT PROJECT MONITOR:

Name: Chris Clare
Title: EMS Data System Manager
Address: 10100 Pioneer Blvd., Suite 200
Santa Fe Springs, CA 90670
Telephone: (562) 347-1674
Facsimile: (562) 941-5835
E-Mail Address: cclare@dhs.lacounty.gov

PROVIDER'S ADMINISTRATION

PROVIDER'S NAME: _____

AGREEMENT NO: _____

PROVIDER'S PROJECT MANAGER:

Name: _____

Title: _____

Address:

Telephone: _____

Facsimile: _____

E-Mail Address: _____

PROVIDER'S AUTHORIZED OFFICIAL(S)

Name: _____

Title: _____

Address:

Telephone: _____

Facsimile: _____

E-Mail Address: _____

Name: _____

Title: _____

Address:

Telephone: _____

Facsimile: _____

E-Mail Address: _____

Notices to Provider shall be sent to the following:

Name: _____

Title: _____

Address:

Telephone: _____

Facsimile: _____

E-Mail Address: _____

PROVIDER ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

CONTRACTOR NAME _____ Contract No. _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____ DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

CONTRACTOR NAME _____ Contract No. _____

PROVIDER ACKNOWLEDGEMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT AGREEMENT

Page 1 of 3

CONTRACTOR NAME _____ Contract No. _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

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Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____ DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

(Note: This certification is to be executed and returned to County with Contractor's executed Contract. Work cannot begin on the Contract until County receives this executed document.)

PROVIDER ACKNOWLEDGEMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT AGREEMENT

CONTRACTOR NAME _____ Contract No. _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

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PROVIDER ACKNOWLEDGEMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT AGREEMENT

provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

COPYRIGHT ASSIGNMENT AGREEMENT

Contractor and Contractor's Staff agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, and other information and/or tools of all types, developed or acquired by Contractor and Contractor's Staff in whole or in part pursuant to the above referenced contract, and all works based thereon, incorporated therein, or derived therefrom shall be the sole property of the County. In this connection, Contractor and Contractor's Staff hereby assign and transfer to the County in perpetuity for all purposes all my right, title, and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof. Whenever requested by the County, Contractor and Contractor's Staff agree to promptly execute and deliver to County all papers, instruments, and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this agreement, including, but not limited to, executing an assignment and transfer of copyright in a form substantially similar to Exhibit M1, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject them to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____

DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

**AGREEMENT
PROVIDER'S OBLIGATIONS AS A
"BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT OF 1996
AND THE HEALTH CARE INFORMATION TECHNOLOGY
FOR ECONOMIC AND CLINICAL HEALTH ACT
(BUSINESS ASSOCIATE AGREEMENT)**

Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate ("Business Associate Agreement") in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, *title XIII and title IV of Division B*, ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

DEFINITIONS

- 1.1 "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.

- 1.2 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.
- 1.3 "Electronic Health Record" has the same meaning as the term "electronic health record" in the HITECH Act, 42 U.S.C. section 17921. 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.
- 1.4 "Electronic Media" has the same meaning as the term "electronic media" in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term "Electronic Media" draws no distinction between internal and external data, at rest (that is, in storage) as well as during transmission.
- 1.5 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.6 "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.7 "Minimum Necessary" refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.
- 1.8 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.

- 1.9 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or 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; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.
- 1.10 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.11 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.12 "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.
- 1.13 "Services" has the same meaning as in the body of this Agreement.
- 1.14 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

- 1.15 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.
- 1.16 Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Agreement;
- (b) shall Disclose Protected Health Information to Covered Entity upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
- (i) Use Protected Health Information; and
 - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

2.2 Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.
- (b) shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.

- (c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not affect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

- (a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.
- (b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate

- (a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, Agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise required by law.
- (b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.
- (c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if

the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

2.4.1 Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information by telephone call to (562) 940-3335.

2.4.2 Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple Street
Suite 525
Los Angeles, California 90012
HIPAA@auditor.lacounty.gov
(213) 974-2166

- (a) The notification required by section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and
- (b) The notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:
 - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved in the

Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iii) Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;

(iv) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the breach;

(v) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and

(vi) The name and contact information for the person most knowledgeable regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in section 2.3.2 (a) or (b) at the time of the notification required by section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

2.4.3 Request for Delay by Law Enforcement. Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

2.5 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

2.6 Breach Notification. Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information, provide Breach notification for each and every Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or subcontractors, in a manner that permits Covered Entity to comply with its obligations under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Privacy and Security Regulations, including:

- (a) Notifying each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of such Breach;
- (b) The notification required by paragraph (a) of this Section 2.6 shall include, to the extent possible:
 - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (iii) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;
 - (iv) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 - (v) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
 - (vi) The notification required by paragraph (a) of this section shall be written in plain language

Covered Entity, in its sole discretion, may elect to provide the notification required by this Section 2.6, and Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, including costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information.

- 2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.
- 2.8 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- 2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.
- 2.10 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations.

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions and/or activities, whether formal or informal, of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

3.0 OBLIGATION OF COVERED ENTITY

- 3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

4.0 TERM AND TERMINATION

- 4.1 Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall:

- (a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
- (b) Immediately terminate this Agreement if a party has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make it infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

5.0 MISCELLANEOUS

5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Business Associate Agreement.
- 5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.
- 5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.
- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information..

