

# AGREEMENT

## FOR SERVICES OF INDEPENDENT CONTRACTOR

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**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and Echo Consulting Services of California, Inc., with an address at 1814 Franklin Street, Suite 1000, Oakland, CA (hereafter Contractor), wherein Contractor agrees to provide and County agrees to accept the services specified herein.

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to continue to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**WHEREAS**, Contractor and County entered into a System Agreement BC 06-129 effective June 10, 2006, wherein County purchased Software products from Contractor to upgrade the County's Alcohol, Drug, and Mental Health data and billing system;

**WHEREAS**, Contractor and County entered into an Addendum to System Agreement BC 06-129 effective July 1, 2007 wherein Contractor granted County a license to use the ShareCare Software on a County computer system under the terms of a Perpetual Use License Agreement and set forth the terms by which Contractor provided Support and Maintenance Services to County;

**WHEREAS**, effective August 18, 2009 Contractor and County entered a Support and Maintenance Agreement BC 10-063;

**WHEREAS**, effective July 1, 2012, Contractor and County entered into a First Amendment to the Support and Maintenance Agreement BC 10-063, extending the term through June 30, 2015;

**WHEREAS**, for ease of reference and context, this Agreement restates particular sections of the System Agreement BC 06-129 that survived the term of such Agreement pursuant to Section 21.30, Survival;

**WHEREAS**, this Agreement incorporates the terms of the prior Support and Maintenance Agreement BC 10-063 and the subsequent First Amendment for the purposes of continued Support and Maintenance for the ShareCare Software product;

**WHEREAS**, this Agreement reaffirms the relationship between County and Contractor continuing to grant a license to use the ShareCare Software and sets forth the terms by which Contractor will continue to provide Support and Maintenance Services to County;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

# AGREEMENT

## 1. DESIGNATED REPRESENTATIVE

Medical Director at phone number 805-681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Tracy Orlando at phone number 6034478600 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

## 2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County:                    Director  
                                      Santa Barbara County  
                                      Alcohol, Drug, and Mental Health Services  
                                      300 N. San Antonio Road  
                                      Santa Barbara, CA 93110  
                                      FAX: 805-681-5262

To Contractor:            Tracy E. Orlando, Director of Contracting  
                                      Echo Consulting Services of California, Inc.  
                                      1814 Franklin Street, Suite 1000  
                                      Oakland, CA 94612  
                                      FAX: 603-447-8680

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

## 3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

## 4. TERM

Contractor shall commence performance on 7/1/2015 and end performance upon completion, but no later than 6/30/2018 unless otherwise directed by County or unless earlier terminated.

## 5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference.

# AGREEMENT

## 6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

## 7. STANDARD OF PERFORMANCE

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

## 8. DEBARMENT AND SUSPENSION

Contractor certifies to County that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

## 9. TAXES

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

# AGREEMENT

## **10. CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. County retains the right to waive a conflict of interest disclosed by Contractor if County determines it to be immaterial, and such waiver is only effective if provided by County to Contractor in writing.

## **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.**

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, and any materials necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion.

## **12. LICENSES.**

- A. **County License.** As provided in the System Agreement BC 06-129, and renewed through subsequent agreements and amendments, Contractor granted to County a nonexclusive, non-transferable, perpetual, non-terminable, and irrevocable license to use, demonstrate, modify, prepare derivative works based on, and reproduce the contractor technology, which Contractor provided to County or made available to County on Contractor's Equipment in executable format, and the Specifications for County's internal purposes and for Processing data for other County agencies and other County tax-supported entities. As provided in the System Agreement BC 06-129, Contractor also granted to County a nonexclusive, non-transferable, perpetual, license to use, demonstrate, modify, prepare derivative works based on, and reproduce the Third-Party Software, which Contractor provided to County or made available to County on Contractor's Equipment in Object Code format, for County's internal purposes, and for Processing data for other County agencies and other County tax-supported entities under the terms of the Third-Party Software agreement.
- B. **Term.** County and Contractor agreed that such licenses would continue until such time that County returned the contractor technology and Third-Party Software and copies thereof to Contractor, erased such contractor technology and Third-Party Software from its Equipment's storage media or decided to cease accessing the Software on Contractor's Equipment, as applicable. These rights shall continue until such time that County takes the steps specified above to terminate the licenses.
- C. **Title.** Contractor and its suppliers hold all right, title and interest in the contractor technology and Third-Party Software.
- D. **Documentation.** Contractor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Office or PDF format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for

## **AGREEMENT**

easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this Section by providing County access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. Contractor grants County a nonexclusive, perpetual, non-terminable, irrevocable right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge.

- E. **Copies.** County will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Application Software and its Documentation solely for its own use. County will maintain records of all copies it makes of the Proprietary Software.

F. **Restrictions**

Except as otherwise permitted in this Agreement, County agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Software or Documentation or any copy of it which is provided in Object Code or Source Code format.

### **13. NO PUBLICITY OR ENDORSEMENT**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

### **14. COUNTY PROPERTY AND INFORMATION**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

### **15. RECORDS, AUDIT, AND REVIEW**

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain all records until such time that the State Department of Health Care Services completes all actions associated with the final audit, including appeals, for the fiscal year(s) covered by this Agreement, or not less than four (4) years following the termination of this Agreement, whichever is later. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the County or as part of

## **AGREEMENT**

any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification. The provisions of the Records, Audit, and Review Section shall survive any expiration or termination of this Agreement.

### **16. INDEMNIFICATION AND INSURANCE**

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

### **17. NONDISCRIMINATION**

County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.

### **18. NONEXCLUSIVE AGREEMENT**

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

### **19. NON-ASSIGNMENT**

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

### **20. TERMINATION**

- A. **By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.

1. **Termination for Material Breach.** If Contractor fails to cure any material breaches of this Agreement which are described in a written Notice from County

## AGREEMENT

within 30 days of receipt of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from County.

2. If it is determined that Contractor's failure to perform is not within Contractor's control or not due to Contractor's fault, or negligence, the termination by County shall be deemed to be a termination for convenience.
  3. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
  4. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Contractor of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term.
  5. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. **By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County

## **AGREEMENT**

shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

### **21. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

### **22. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

### **23. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

### **24. TIME IS OF THE ESSENCE**

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

### **25. NO WAIVER OF DEFAULT**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

### **26. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement and those provisions of the System Agreement BC 06-129 that survived expiration, as set forth in Section 21.30 of the System Agreement, contains the entire understanding and agreement of the parties. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.



# AGREEMENT

## **27. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **28. COMPLIANCE WITH LAW**

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

## **29. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

## **30. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

## **31. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

## **32. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

## **33. CONFIDENTIAL INFORMATION.**

### **A. Protection Obligations.**

1. **Access and Protection.** During the term of the Agreement, Contractor and County will have access to and become acquainted with each party's Confidential Information. Except for disclosure pursuant to this section, County and Contractor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this section, maintain all Confidential Information of the other party in confidence and at least to the extent as it protects the

## AGREEMENT

confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this section, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable Federal, State and County law, regulation, codes, and this section, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Except for disclosures pursuant to this section, each party agrees that prior to disclosing any Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this section with respect to the Confidential Information. In addition to the requirements expressly stated elsewhere in this section, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of County, the State and the Federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of County's Services, Contractor's operations, or the Services performed by Contractor under this Agreement, including without limitation the terms of Exhibit BAA which is incorporated herein by this reference.

2. **Public Records.** Notwithstanding the above, Contractor acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent with State law, County will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, County will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, County will release the identified requested information on the date specified.
3. **Security Requirements.** Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of County and which the other party may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Confidential Information.
4. **Compliance with HIPAA.** Contractor is expected to adhere to Health Insurance Portability and Accountability Act (HIPAA) regulations and to develop and maintain comprehensive patient confidentiality policies and procedures, provide annual training of all staff regarding those policies and procedures, and demonstrate reasonable effort to secure written and/or electronic data. Contractor is considered a Business Associate per the HIPAA regulations and shall adhere to the County Business Associate Agreement, which is attached and included by reference and marked as Exhibit BAA. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.

## AGREEMENT

- B. Audit.** County reserves the right to monitor, audit or investigate Contractor's use of County Confidential Information collected, used, or acquired by Contractor under this Agreement.
- C. Return/Destruction.** Subject to record retention laws and to County's rights under Section County License, each party shall promptly return to the disclosing party or if mutually agreed upon in writing, destroy, on termination or expiration of this Agreement, all of the disclosing party's Confidential Information, including copies thereof.
- D. Injunctive Relief and Indemnity.**
1. Contractor shall immediately report to County any and all unauthorized disclosures or uses of County's Confidential Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of County's Confidential Information to others may cause immediate and irreparable harm to County. If Contractor should publish or disclose such Confidential Information to others without authorization, County shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless County from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's failure to protect County's Confidential Information. As a condition to the foregoing indemnity obligations, County will provide Contractor with prompt notice of any claim of which County is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with Contractor in connection with any such claim.
  2. County will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information of which County is aware or has knowledge. County acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If County should publish or disclose such Confidential Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. County shall indemnify, defend, and hold harmless Contractor from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from County's failure to protect Contractor's Confidential Information. As a condition to the foregoing indemnity obligations, Contractor will provide County with prompt notice of any claim of which Contractor is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with County in connection with any such claim.
- E. Nondisclosure of Other County Information.** The use or disclosure by Contractor of any County information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of County.
- F. Exceptions.** The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now

## **AGREEMENT**

is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

- G. **Survival.** The provisions of this Section shall remain in effect following the termination or expiration of this Agreement.

### **34. NON-EXCLUSIVE AGREEMENT.**

- A. Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.
- B. County may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall cooperate with such subcontractors and County in all such cases. If County requires Contractor to perform work outside of the scope of this Agreement, Contractor and County shall enter into a proper contract for reimbursement at the rates set forth in Exhibit B-1. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such subcontractors or for any delays which may be caused by any such subcontractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such subcontractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

### **35. AUTHORIZATION.** Contractor represents and warrants that:

- A. Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;
- B. It has the full power and authority to grant to County the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor;
- C. The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;
- D. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;
- E. Contractor currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor performance of the Services.

## AGREEMENT

### **36. MANDATORY DISCLOSURE**

Contractor must disclose, in a timely manner, in writing to the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. Failure to make required disclosures can result in any of the remedies described in 45 C.F.R. Section 75.371 Remedies for noncompliance, including suspension or debarment. (See also 2 C.F.R. part 180 and 376, and 31 U.S.C. 3321.)

### **37. STATE ENERGY CONSERVATION PLAN**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

### **38. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Contractor, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:
- i. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  - ii. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Contractor shall complete and submit California State Standard Form-LLL, "Disclosure Form to Report Lobbying," to the County and in accordance with the instructions found therein.
- C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **AGREEMENT**

### **39. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Contractor shall promptly disclose, in writing, to the County office, to the Federal Awarding Agency, and to the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

# AGREEMENT

## **THIS AGREEMENT INCLUDES:**

1. EXHIBIT A – Statement of Work
2. EXHIBIT B - Payment Arrangements
3. EXHIBIT B-1 – Schedule of Fees
4. EXHIBIT C – Standard Indemnification and Insurance Provisions
5. EXHIBIT BAA – HIPAA Business Associate Agreement

**AGREEMENT**

Agreement for Services of Independent Contractor between the County of Santa Barbara and Echo Consulting Services of California, Inc.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by County.

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
JANET WOLF, CHAIR  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

CONTRACTOR  
ECHO CONSULTING SERVICES OF CALIFORNIA,  
INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

APPROVED AS TO INSURANCE FORM:  
RAY AROMATORIO  
RISK MANAGER

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:  
MONA MIYASATO, COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By \_\_\_\_\_  
Deputy County Counsel

Date: \_\_\_\_\_

APPROVED AS TO FORM :  
ALCOHOL, DRUG, AND MENTAL HEALTH SERVICES  
ALICE A. GLEGHORN, PHD  
DIRECTOR

By \_\_\_\_\_  
Director

Date: \_\_\_\_\_



**Exhibit A  
Statement of Work**

Terms by which Contractor will provide Support and Maintenance Services to County.

1. **SOFTWARE PRODUCTS COVERED.** The following Software products (hereafter "Software") as provided for in System Agreement BC 06-129 dated June 10, 2006 are covered under this agreement.

- A. ShareCare;
- B. Managed Care Option (MCO);
- C. Clinician's Gateway Interface;
- D. Crystal Reports (or Substitute).

2. **SUPPORT.**

A. **Support Hours.** For purposes of this Agreement, Support Hours are categorized as follows:

- i. Contractor's Standard Support Hours are Monday through Friday from 8:00 AM to 5:00 PM Pacific Time excluding Contractor Holidays, as set forth below.
- ii. Off-Hours Support is defined as time outside of Contractor's Standard Support hours described in Section 2.A.i.
- iii. Standby/On Call Support is defined as time outside Standard Support hours, during which County and Contractor staff have pre-arranged a time for Contractor to provide assistance to County.

iv. **Contractor Holidays.**

New Year's Day	Columbus Day
Martin Luther King Day	Veterans Day (actual day)
Presidents Day	Thanksgiving Day
Memorial Day	Friday following Thanksgiving
Fourth of July	Christmas and Christmas Eve after 12 PM
Labor Day	

## Exhibit A Statement of Work

### B. Response Time.

- i. **First Tier Support.** Contractor shall respond within thirty (30) minutes to any call from County that is labeled as “Urgent” and Contractor shall give such Urgent request its highest priority. This response shall consist of Contractor contacting County to report on the status of the Error and taking steps to correct the Error. First Tier Support issues shall include those which have or may lead to a system failure, delay in claiming for services, adversely affect client care or failure of the System to provide mandated reporting.
- ii. **Second Tier Support.** Contractor shall make a good faith effort to respond to all County telephone or electronic mail requests which do not fall into the First Tier Support category within three (3) hours during Contractor’s Standard Support Hours. Contractor shall respond to all such Second Tier Support requests no later than one (1) business day from receipt of the request.
- iii. Outside of Contractor’s Standard Support Hours, the County may submit requests for support via voice message at the Contractor support line. County may also submit requests for support via electronic mail twenty-four (24) hours per day, seven (7) days per week. Contractor shall respond to County’s requests within the timeframe described in Section 2.B.i, First Tier Support, and 2.B.ii, Second Tier Support.
- iv. For purposes of this agreement, an Error shall be defined as any material failure of the Software to perform in accordance with its documentation, specifications or release notes

### C. Telephone Support.

Contractor shall provide telephone support services that will include assistance either via telephone or the use of online diagnostic tools related to routine questions regarding use of the products, assistance in identifying and verifying the causes of suspected Errors or malfunctions in the products, advice on detours for identified Errors or malfunctions, where reasonably available, and advice on the best means for correcting operator error.

- i. **Included Telephone Support.** Contractor shall provide telephone support, free of charge, to County in the following circumstances:
  - a. Resulting from any failure of the Software to operate without Operating System Errors or compiler errors.
  - b. Resulting from the installation process of Software and/or Software updates.
  - c. Concerning the Errors resulting from appropriate operation and use of the Software.
  - d. Failure of Software to interface with third party products, including, but not limited to, Cold Fusion™, Crystal Reports™, SQL, Java, VMS, rdb, dBASE™, INFORMIX™, Clipper™, COBOL, Oracle, and BASIC™.
  - e. Concerning “how to” type questions related to the Software and/or Software Updates.

**Exhibit A**  
**Statement of Work**

- ii. **Telephone Support Exclusions.** Contractor's provision of telephone support, free of charge, to County excludes any problems arising from:
    - a. Products not listed in Section 1, Software Products Covered.
    - b. County failure to back-up data files routinely and systematically following significant data entry and/or editing.
    - c. System administration performed by the County as it relates to the operating environment.
    - d. Implementation or training services, other than as described in Section 4, Training, or the development of new programs by County.
    - e. Correction of County operator error.
    - f. Malfunctions in third party products including, but not limited to, Cold Fusion™, Crystal Reports™, SQL, Java, VMS, rdb, dBASE™, INFORMIX™, Clipper™, COBOL, Oracle, and BASIC™.
    - g. Modifications to Software by persons other than Contractor personnel.
    - h. Hardware malfunctions, e.g. Web server, Crystal Reports server, and SQL server.
    - i. County operating system, telecommunications and/or hardware products.
  - iii. **Billable Telephone Consultations.** Contractor shall notify County caller when the nature of what was initiated as a free telephone support call becomes a billable consultation call. County shall provide a list of representatives authorized to incur billable consultations on behalf of County. Notation will be made of the time the consultation rates begin, and notation will be made on the total time spent on the consultation call, as verbally agreed upon by both parties, at the termination of the consultation call. Contractor will not bill for consultation services until it is established that the nature of the call did not fall in part or in full within the scope of free telephone support as described in Section 2.C.i. In the event the nature of the call falls within both the scope of the free telephone support and billable consultation services, the time shall be prorated between the two and the County charged accordingly.
- D. **On-Site Support.** Contractor shall use its best efforts to promptly correct any Errors, as described in Section 2.C, Telephone Support, in the Software and when necessary, develop temporary workarounds until permanent corrections can be effected. If Contractor or County determines that the Error cannot be resolved through telephone consultation (including online diagnostic tools), and determines that resolution is likely by means of an on-site visit, Contractor will dispatch the appropriate technical Staff to County site at negotiated costs. All such On Site Support shall be approved in advance by County Authorized Representative. In the event Contractor dispatches Staff to County site and the issue addressed lies outside the scope of this Agreement, the County will be responsible for Contractor's time and travel expenses as described in Exhibits B and B-1.

**Exhibit A**  
**Statement of Work**

**E. Standby/On-Call and Off-Hours Support Reimbursement.**

- i. Standby/ On-Call, and Off-Hours Support shall be billed at the rates set forth in Exhibit B-1. Support provided during Contractor Holidays shall be billed at the Standby/ On-Call or Off-Hours Support rate as negotiated by Contractor and County, upon completion of a properly executed amendment. All such support will be made available solely by mutual agreement and will be based on the availability of County and Contractor staff resources.
- ii. County shall not be responsible to reimburse Contractor for any Support and Maintenance services performed by Contractor support Staff outside Standard Support hours as a result of Software Error.

**F. Error Correction Timeframe.** In the event a previously unreported Contractor Software Error is reported and Contractor cannot provide a resolution or temporary workaround within three (3) business days, Contractor shall provide County with an estimated completion date and a deadline by which the problem will be corrected within eight (8) business days of the date Error is reported.

**G. Contact Log.** Contractor shall maintain a log of all support requests received from the County and the status and/or resolution of each request. Contractor will provide an electronic report of all maintenance request items and their current status to County on a monthly basis and by request.

**3. MAINTENANCE.**

**A. Software Updates/Modifications.** Contractor will provide County with updated, enhanced versions of all Software at no additional cost to County. The interval of other updates and new features of updates will be at Contractor's sole discretion, but will include consideration of all County requests, and will be no later than when Contractor makes such updates available to Contractor's other customers receiving support. Updates will include a Readme file that lists all corrections and Enhancements that are part of the update. The cost of third party products required for the System to be operational will not be the responsibility of Contractor.

**B. Identifying Changes.**

- i. The Parties acknowledge that Contractor was selected, in part because of its expertise, experience, and knowledge concerning applicable Federal, State and/or County laws, regulations, codes, policies, or guidelines that affect the performance of the services and software.
- ii. In keeping with County's reliance on Contractor's knowledge, experience, and expertise, Contractor will be responsible for identifying changes in applicable Federal or State legislative enactments and regulations and the impact of such changes on the performance of the Software or services or County's use of the Software or services. Contractor must timely notify County of such changes and must work with County to identify the impact of such changes on how County uses the Software or services. If Contractor provides a written request for assistance from County, County will cooperate with Contractor to obtain clarification/interpretation from the State regarding required changes.

## **Exhibit A**

### **Statement of Work**

- iii. Notwithstanding the provisions described in Section 3.B.ii, in the ordinary course of business, if County becomes aware of any material changes in applicable law, regulation, codes, policy, or guidelines affecting the Agreement, County will promptly notify Contractor of the changes.

**C. Government Mandates.** The parties acknowledge that government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Except as provided in this Section 3, Contractor has provided for or will provide for adequate resources, to reasonably research, discover, implement, and accommodate such changes during the term. Contractor shall maintain Software so that it remains in compliance with applicable State and Federal rules, regulations, and statutes, the Federal Medicare and Medicaid Programs, HIPAA, and State of California mandates included in rules, regulations and statutes of the California Department of Health Care Services, and the California Office of Statewide Health Planning and Development.

- i. That portion of the Federal mandates, which is not modified or interpreted by State or third party, shall be performed by Contractor at Contractor's sole expense.
- ii. For other State-mandated requirements, County will reimburse Contractor for the cost of development at the rates set forth in Exhibit B-1. County shall be responsible for a share of the cost of development proportionate to the number of Counties using the Software, up to a maximum of 15% or \$35,000, whichever is lower, per fiscal year. If the development period for a given State-mandated compliance requirement extends beyond one fiscal year, County shall not be required to reimburse Contractor more than the 15% or \$35,000 fiscal year maximum.
- iii. **State-Mandate Timeframe.** Contractor shall provide County with an estimated completion date for such Software updates within 14 days of the release of State mandated requirements. Contractor shall complete all necessary updates or services, including testing, that are required to make Software compliant by the date the State-mandated requirement becomes effective. The date the State-mandated requirement becomes effective shall be defined as the first date of required submission and/or collection of new data elements, whichever comes first. Should Contractor be unable to bring the Software into compliance by the date the State mandate requirement becomes effective, Contractor shall provide to County a justification for the delay, an estimated date of completion, and be subject to withholding and/or reduction of payment, as described in Exhibit B, Section 4, Penalties.

**D. Update Shipment.** Shipment of updates, corrections, or other software by Contractor will be by electronic submission except by prior arrangement with County to utilize the next lowest cost carrier. Request by County for faster shipment will result in the difference of the shipping cost utilizing the lowest cost carrier to the shipping cost utilizing a faster carrier being borne by County.

**E. County-Specific Enhancements.** County may, at its discretion, engage Contractor to provide consulting services or other County-specific enhancements, to be provided at the rates described in Exhibit B-1 or as negotiated between County and Contractor.

**Exhibit A**  
**Statement of Work**

- F. **Compatibility.** Contractor shall ensure the Software is compatible with no more than three (3) versions of third party software products required for the operations of Software. Contractor will publish a schedule for the retirement of versions and release of new versions for County planning purposes. Any related costs to maintain compatibility will be the sole responsibility of Contractor.
- G. **Electronic Data Interchange (EDI).** Contractor will provide EDI network Support and Maintenance. The EDI network will link County to external services. The EDI network fee and Electronic Data Services Maintenance fees are included in the quarterly maintenance charges set forth in Exhibit B-1.
4. **TRAINING.** County may at its discretion ask Contractor to provide onsite or over the phone training at a mutually agreeable time, at a cost negotiated between Contractor and County. The cost of training regarding updates, if needed, will be included in the cost of the update.
5. **INFRASTRUCTURE RESPONSIBILITY.** County agrees to assume responsibility for procuring, installing and maintaining all Equipment, telephone lines, communications interfaces and other hardware necessary for Contractor to provide modem and telephone support. County must have a 56K dedicated digital line and/or other mutually agreed upon data connection and will provide Contractor with a County e-mail address.
6. **POSSESSION OF SOURCE CODE.**
- A. At any time during the term of this Agreement, Contractor shall provide to County a copy of all ShareCare source code and technical documentation under the following conditions:
- i. Declaration of bankruptcy by Contractor.
  - ii. Contractor ceases to support ShareCare product.
  - iii. Contractor fails to correct ShareCare Errors classified as First Tier issues, described in Section 2.B.1 of this Exhibit A, within three (3) Correction Cycles. A correction cycle begins with County notification to Contractor's Designated Representative that County is invoking the "Correction Cycle." Contractor will have thirty (30) days to correct the Error. County shall have thirty (30) days following installation of corrections to notify Contractor of additional problems.
- B. Contractor will provide County with a complete copy of ShareCare source code and technical documentation as soon as practicable but no later than ninety (90) days from receipt of County's written request. County will pay Contractor the actual and reasonable cost of media and reproduction for ShareCare source code.
- C. Contractor shall provide such source code in an electronic or other media format acceptable to County.
- D. Contractor shall allow County access to Contractor's proprietary source code using the process described in Section 6.B and C. At its option and expense, County may request that the completeness and accuracy of any such source code and/or associated technical documentation be verified. Such verification will be conducted by, upon at least ten business days' prior notice to Contractor, a representative from the County, after full disclosure to Contractor of information reasonably requested by Contractor about such

## **Exhibit A Statement of Work**

representative. Unless otherwise agreed in writing by Contractor and County, verification will be performed on-site at Contractor's premises, utilizing Contractor's equipment and Software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification. In the event the source code and/or associated technical documentation is not accurate or complete, Contractor shall promptly correct such inaccuracies within 10 days.

- E. County may use, modify and reproduce the source code only for the purpose of maintaining County's internal ShareCare installation, and not for any other purpose. Without limiting the foregoing, County shall not use the source code to modify or maintain the ShareCare Software or any other software program for any other entity, or to create new software programs or functions.
- F. County shall maintain the secrecy of the source code and shall not disclose it to anyone outside of the County. However, County may allow a third party access to the source code for the purpose of maintaining County's internal ShareCare installation, as long as the third party signs an agreement protecting the confidentiality of the source code.
- G. County may enter into a third party escrow agreement with an outside entity and Echo for deposit of the source code.

## EXHIBIT B

### PAYMENT ARRANGEMENTS AND SCHEDULE OF FEES

1. **Maximum Contract Amount.** For Support and Maintenance Services rendered under this Agreement, Contractor shall be paid a Maximum Contract Amount not to exceed **\$570772**, as described in Exhibit B-1. The Maximum Contract Amount shall be inclusive of Support and Maintenance Fees in an amount not to exceed \$465,772 and Contingency Fund in an amount not to exceed \$105,000, which shall be available to reimburse Contractor for County's share of the cost of development of State Mandated Updates described in Exhibit A, Section 3.C, County-specific enhancements, and training.
  
2. **Invoices.** Contractor shall submit invoices to County that identify the fees and reimbursable expenses in connection with the services provided by Contractor and identifying the specific services provided by Contractor to which the fees apply. If applicable, Contractor will account in such invoices for charges against County's retainer (if any) during such period.
  - A. **Support and Maintenance Fees:** Quarterly, Contractor shall submit to the County-Designated Representative an invoice or certified claim on the County Treasury for the Support and Maintenance Fees for the period specified, as described in Exhibit B-1.
  
  - B. **Time and Materials Invoices:** Monthly, Contractor shall submit to County-Designated Representative an invoice or certified claim on the County treasury for the service performed over the period specified. The invoice will specify each reimbursable expense by category and state the total number of hours worked by billable labor category. County's representative shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate payment processing. Payment for services and/or reimbursement of costs shall be made upon Contractor's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A. Payment for services shall be based upon the expenses and hourly rates for personnel, as defined in EXHIBIT B-1 (Schedule of Rates) or as negotiated between Contractor and County. For expenses related to County's share of State Mandated Updates, Contractor shall include the total cost of the Update, based on the rates in Exhibit B-1, or as otherwise agreed, and County's portion of those costs, subject to the limitations described in Exhibit A, Section 3.C.
  
  - C. **Travel:** County will reimburse Contractor for travel expenses, subject to the conditions described in Exhibit A and Contractor's Travel Policy, except as follows:
    1. Contractor will provide County with an estimate of travel expenses in advance and obtain prior authorization from County. Travel expenses shall include: airfare or other transportation cost, car rental/mileage, lodging, meals at the rates specified in Exhibit B-1.
  
    2. County will reimburse Contractor for actual Staff time worked at the rates specified in Exhibit B-1. In no event will County reimburse Contractor for time Contractor Staff spends travelling to County's site from Contractors' location.
  
3. Invoices submitted for payment that are based upon Exhibit B-1 must contain sufficient detail and provide supporting documentation to enable an audit of the charges. These



invoices or certified claims must cite the assigned BC Number and if found to be satisfactory and within the cost basis of Exhibit B-1, County shall initiate payment processing. County shall pay invoices or claims for satisfactory work within thirty (30) days of approval. Payments shall be made in United States Dollars, by check sent to Contractor at the address specified in Section 2 of the Agreement, Notices, or by wire transfer of funds to an account designated in writing by Contractor.

4. Penalties. In the event a Software modification published by Echo is determined to impact the functionality of Software such that the Software fails to accurately process the exchange of data between the County and the State for more than 45 days after the month of service, resulting in: i) a financial loss to County; ii) an adverse effect on client care; or iii) failure of the System to meet State or Federal mandated requirements specified in Exhibit A, Section 3.C, County will implement penalties for the period that the System is out of compliance. The minimum penalty shall be a deduction equal to the value of one (1) month's Maintenance and Support Fees, as depicted in Exhibit B-1 and will continue until the Error is resolved to County's satisfaction up to the Maximum Amount during the applicable Fiscal Year as set forth in Exhibits B and B-1. In the case of rejected Medi-Cal claim(s) due to Software Errors, penalties will continue until the claim(s) are accepted by the State. The penalty amount will be deducted from the next quarterly payment.
5. County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Contractor to correct such work or billings or to seek any other legal remedy.
6. The County-Designated Representative:  
Alcohol, Drug and Mental Health Services  
Attn: Dana Fahey  
429 N. San Antonio Road  
Santa Barbara, CA 93110  
[dfahey@co.santa-barbara.ca.us](mailto:dfahey@co.santa-barbara.ca.us)
7. Overpayments to Contractor. Contractor shall promptly, but in all cases within thirty (30) days, pay to County the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor and County mutually agree Contractor is not entitled.

**EXHIBIT B-1**  
**SCHEDULE OF FEES**

July 1, 2015 – June 30, 2018

**Support and Maintenance Fees**

80 Concurrent ShareCare Administrative/Fiscal Licenses  
200 Concurrent ShareCare Clinical Licenses  
16 Concurrent MCO Module Licenses

Quarter	Period	Due	Amount Due			3-year Contract Maximum
			FY 15-16	FY 16-17	FY 17-18	
Qtr 1	Jul. 1 to Sep. 30	Jul. 31	\$ 37,487	\$ 38,799	\$ 40,082	
Qtr 2	Oct. 1 to Dec. 31	Sep. 30	\$ 37,487	\$ 38,799	\$ 40,082	
Qtr 3	Jan. 1 to Mar. 31	Dec. 31	\$ 37,487	\$ 38,799	\$ 40,082	
Qtr 4	Apr. 1 to Jun. 30	Mar. 31	\$ 37,487	\$ 38,799	\$ 40,082	
<b>Total SMA Fees FY 15-18</b>			<b>\$ 149,948</b>	<b>\$ 155,196</b>	<b>\$ 160,628</b>	<b>\$465,772</b>
<b>Contingency Fund Maximum</b>						
<b>State Mandated Update and Other County-Requested Modifications</b>			<b>\$35,000</b>	<b>\$35,000</b>	<b>\$35,000</b>	<b>\$105,000</b>
<b>Maximum Contract Amount Not to Exceed</b>			<b>\$184,948</b>	<b>\$190,196</b>	<b>\$195,628</b>	<b>\$570,772</b>

**Additional Fees**

The following fees will apply during the period this Agreement is in effect. Reimbursement for services will be provided only upon execution of a proper Amendment between Contractor and County

**Travel Expense Reimbursement**

(As described in Exhibit B and Contractor's Travel Reimbursement Policy)

Expense	Rate	Increment
Mileage	IRS Maximum - Currently \$0.575/mile	Mile
Meals	Currently \$66.00	Day

**Published Rates for Billable Consultation Services**

Service	Rate	Increment
Technical Support (Including EDI/EDS Support and Training)	\$225.00	Hour
Standby/On Call Support	\$50.00	Hour
Data Analysis	\$225.00	Hour
Off-Hours Support	\$337.50	Hour
Custom Enhancement/ Product Development	\$225.00	Hour

## EXHIBIT C

### INDEMNIFICATION, INSURANCE AND LIMITATION PROVISIONS

#### 1. INDEMNIFICATION

##### a. Intellectual Property.

- i. Contractor shall, at its expense, defend, indemnify, and hold harmless County and its employees, officers, directors, contractors and agents from and against any third-party claim or action against County which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. County shall promptly give Contractor notice of any such claim.
- ii. In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of County's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for County the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of notice from County and refund the Purchase Price of each Deliverable, as applicable.
- iii. However, Contractor shall not be liable to the extent claims of misappropriation of infringement arise from Contractor's compliance with any designs, Specifications or written instructions of County and Contractor could not have avoided such claims through alternative products.

##### b. General.

- i. Contractor shall, at its expense, indemnify, defend, and hold harmless County, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors. County shall promptly give Contractor notice of such claim.
- ii. County shall, at its expense, indemnify, defend, and hold harmless Contractor, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, for: (i) property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of County, its officers, employees, or agents; and (ii) a breach of its obligations in Agreement, Termination section. Contractor shall promptly give County notice of such claim and shall cooperate in the defense of such claims at County's expense.

## 2. INSURANCE

### a. Liability and Auto Insurance

Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and that have a Best's rating of no less than A: VII, or that are approved by the County. Contractor shall include County, its boards, agencies, contractors, offices, employees, agents and volunteers as an additional insured party in Contractor's general liability insurance policy obtained hereunder.

If Contractor fails to buy and maintain the insurance coverage described in this Exhibit, County may terminate this Agreement under the Termination for Material Breach Section. The minimum acceptable limits shall be as indicated below with no deductible except as indicated below. In the event the Contractor is unable to comply with the County's insurance requirements, County may, at its sole discretion and at the Contractor's expense, provide compliant coverage.

The insurance requirements set forth below are subject to periodic review by the County. The County's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against County or inflation. This option may be exercised during any amendment to this Agreement that results in an increase in the nature of County's risk and such changes of provision will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

- i. Commercial General Liability Insurance: shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of Contractor and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the Agreement, Confidential Information Section and this Exhibit C, Section 1 of this Agreement with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- ii. Automobile Liability Insurance: The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of Contractor pursuant to Contractor's activities hereunder. The limit of liability of said policy or policies shall not be less than \$1 million per occurrence for bodily injury and property damage per occurrence. Self-Insured Retention (SIR) over \$10,000 requires approval by the County;

- iii. Employers Liability Insurance: covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- iv. Professional Liability Insurance: shall include coverage for the activities of Contractor's professional Staff with a combined single limit of not less than \$1million per occurrence or claim /\$2 million general aggregate and a deductible of \$25,000.
- v. Crime Coverage: with a deductible not to exceed \$1 million, subject to Section 2.b (Extended Coverage), and coverage as follows: Forgery-\$100,000.00; Money and Securities-\$5,000.00; and Employee Dishonesty-\$100,000.00.

**b. Extended Coverage**

If the policy providing liability coverage is on a "claims made" form, the Contractor is required to maintain such coverage for a minimum of three years following expiration or termination of this Agreement, naming County as an additional insured and providing County with certificates of insurance on an annual basis. Said policy or policies shall provide that the County shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

**c. Worker's Compensation Coverage**

Statutory Workers' Compensation and Employers Liability Insurance shall cover all Contractor's Staff while performing any work incidental to the performance of this Agreement. In the event Contractor is self-insured, it shall furnish a copy of a Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Contractor has no employees as defined in Labor Code Section 3350 *et. seq.* during the entire period of this Agreement and Contractor submits a written statement to the County stating that fact.

**d. Premiums and Notice to County**

Contractor or its Subcontractors shall pay premiums on all insurance policies. Such insurance policies provided for County pursuant to this Exhibit shall expressly provide therein that County be named as additional insured, and that it shall not be revoked by the insurer until thirty (30) days Notice of intended revocation thereof shall have first been given to County by such insurer. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance provided to County.

**e. Cancellation**

Contractor's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or non-renewal shall not take place or reduced in scope of coverage until five business days' written Notice has been given to County, attention County Designated Representative, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Exhibit. Contractor's insurance policies shall not be reduced in scope without County's prior written consent.

**f. Insurance Documents**

Contractor shall submit to the office of the County Designated Representative certificate(s) of insurance documenting the required insurance as specified in this Exhibit prior to this Agreement becoming effective, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Exhibit. County shall maintain current certificate(s) of insurance at all times in the office of the County Designated Representative as a condition precedent to any payment under this Agreement. Approval of insurance by County or acceptance of the certificate of insurance by County shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's Services pursuant to the Agreement, nor shall it be deemed a waiver of County's right to insurance coverage hereunder. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by County for material breach.

**g. Increased Coverage**

County is to be notified by Contractor immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

**h. Subrogation**

Contractor agrees to waive all rights of subrogation against County, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Agreement.

**i. Cross-Liability**

All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the County and shall include a severability of interests or cross-liability provision in the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

**3. Damages Disclaimers and Limitations**

**a. County's Disclaimer of Damages.** Except for claims of breach of confidentiality or intellectual property infringement, County shall not be liable, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT for consequential, incidental, indirect, or special damages, including without limitation lost profits and lost business opportunities.

**b. County's Limitation of Liability.** Except for claims of breach of confidentiality or intellectual property infringement, IN NO EVENT SHALL COUNTY'S AGGREGATE

LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT DURING THE APPLICABLE FISCAL YEAR AS SET FORTH IN EXHIBITS B AND B-1.

- c. **Contractor's Limitation of Liability.** Contractor will not be liable to County to the extent of any loss, damage, or liabilities:
- i. Caused by the failure of County, another County agency, or a County contractor to perform in connection with this Agreement and such nonperformance prevented Contractor from performing in accordance with this Agreement; or
  - ii. Resulting from Contractor acting prudently in accordance with instructions given by authorized representatives of County or other authorized County agencies.
  - iii. Except for claims of breach of confidentiality or intellectual property infringement, County agrees that Contractor's liability hereunder for damages, regardless of the form of the action, shall not exceed the sum of amounts earned and invoiced under this Agreement up to the Maximum Amount during the applicable Fiscal Year as set forth in Exhibits B and B-1.

EXCEPT FOR CLAIMS OF BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY INFRINGEMENT, IN NO EVENT WILL CONTRACTOR BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOSS OF REVENUES OR LOSS OF PROFITS OR ECONOMIC LOSSES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORESEEABLE, WHETHER IN AN ACTION BASED ON CONTRACT OR TORT.

## Exhibit BAA

### HIPAA Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

#### RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

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

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

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.



- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

## 2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose

Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.

- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If 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, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but

not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.

- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### 3. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or

requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

#### **4. Indemnification**

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

#### **5. Disclaimer**

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### **6. Certification**

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

#### **7. Amendment to Comply with Law**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by

Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

## **8. Assistance in Litigation of Administrative Proceedings**

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

## **9. No Third-Party Beneficiaries**

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

## **10. Effect on Agreement**

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

## **11. Entire Agreement of the Parties**

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

## **12. Interpretation**

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.