

**AGREEMENT  
FOR SERVICES OF INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara (hereafter County or Department), a political subdivision of the State of California, and Echo Consulting Services of California, Inc. (hereafter Contractor), with an address at 15 Washington Street, Conway, NH, 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 retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

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

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

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

**WHEREAS**, effective July 1, 2015, Contractor and County entered into a new Support and Maintenance Agreement, referenced as BC 16048, extending the support and maintenance obligations through June 30, 2018;

**WHEREAS**, effective July 1, 2018, Contractor and County entered into a new Support and Maintenance Agreement, referenced as BC 19006, extending the support and maintenance obligations through June 30, 2021;

**WHEREAS**, this Agreement incorporates the terms of the prior Support and Maintenance Agreements for the purposes of continued Support and Maintenance for the ShareCare Software product; and

**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:

**1. DESIGNATED REPRESENTATIVE.**

Division Chief of Information Technology at phone number (805) 681-5227 is the representative of County and will administer this Agreement for and on behalf of County. Tracy Orlando at phone number (603) 447-8600 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:                    Division Chief of Information Technology  
County of Santa Barbara  
Department of Behavioral Wellness  
429 N. San Antonio Road  
Santa Barbara, CA 93110  
Fax: (805) 681-5262

To Contractor:            Tracy E. Orlando, VP of Contract Management & Compliance  
Echo Consulting Services of California, Inc.  
15 Washington Street  
PO Box 2150  
Conway, NH 03818  
Phone: (603) 447-8600  
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(s) attached hereto and incorporated herein by reference.

**4. TERM.**

Contractor shall commence performance on 7/1/2021 and end performance upon completion, but no later than 6/30/2024 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(s) attached hereto and incorporated herein by reference.

**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, including but not limited to exclusion from participation from federal health care programs under Sections 1128 or 1128A of the Social Security Act. 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.

#### **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. Contractor must promptly disclose to the County, in writing, any potential conflict of interest. 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. Contractor acknowledges that state laws on conflict of interest apply to this Agreement including, but not limited to, the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.), Public Contract Code Section 10365.5, and Government Code Section 1090.

#### **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, all documents of any type whatsoever, all photos, sound or audiovisual recordings, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County. Contractor shall comply with all Federal and State confidentiality laws, including Welfare and Institutions Code (WIC) § 5328; 42 United States Code (U.S.C.) § 290dd-2; and 45 Code of Federal Regulations (C.F.R.), Parts 160 – 164 setting forth the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor shall inform all of its officers, employees, and agents of the confidentiality provision of said laws. Within HIPAA guidelines, County shall have the unrestricted authority to publish, disclose, distribute, and/or otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

Unless otherwise specified in Exhibit A(s), Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, sound or audiovisual recordings, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be

incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

**12. 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.

**13. 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.

**14. RECORDS, AUDIT, AND REVIEW.**

- A. Contractor shall make available for inspection, copying, evaluation, or audit, all of its premises; physical facilities, or such parts thereof as may be engaged in the performance of the Agreement; equipment; books; records, including but not limited to beneficiary records; prescription files; documents, working papers, reports, or other evidence; contracts; financial records and documents of account, computers; and other electronic devices, pertaining to any aspect of services and activities performed, or determination of amounts payable, under this Agreement (hereinafter referred to as "Records"), at any time by County, Department of Health Care Services (DHCS), Centers for Medicare & Medicaid Services (CMS), Department of General Services, Bureau of State Audits, Health and Human Services (HHS) Inspector General, U.S. Comptroller General, or other authorized federal or state agencies, or their designees ("Authorized Representative") (hereinafter referred to as "Audit").
- B. Any such Audit shall occur at the Contractor's place of business, premises, or physical facilities during normal business hours, and to allow interviews of any employees who might reasonably have information related to such Records. Contractor shall maintain Records in accordance with the general standards applicable to such book or record keeping and shall follow accounting practices and procedures sufficient to evaluate the quality and quantity of services, accessibility and appropriateness of services, to ensure fiscal accountability, and to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. All records must be capable of verification by qualified auditors.
- C. This Audit right will exist for 10 years from: the close of the State fiscal year in which the Agreement was in effect or if any litigation, claim, negotiation, Audit, or other action involving the Records has been started before the expiration of the 10-year

period, the Records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 10-year period, whichever is later.

- D.** Contractor shall retain all records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Agreement, including beneficiary grievance and appeal records identified in 42 C.F.R. § 438.416 and the data, information and documentation specified in 42 Code of Federal Regulations Sections 438.604, 438.606, 438.608, and 438.610 for the 10-year period as determined in Paragraph 14.C.
- E.** If this Agreement is completely or partially terminated, the Records, relating to the work terminated shall be preserved and made available for the 10-year period as determined in Paragraph 14.C.
- F.** Contractor shall ensure that each of its sites keep a record of the beneficiaries being treated at each site. Contractor shall keep and maintain records for each service rendered, to whom it was rendered, and the date of service, pursuant to Welfare & Institutions Code Section 14124.1 and 42 C.F.R. Sections 438.3(h) and 438.3(u). Contractor shall retain such records for the 10-year period as determined in Paragraph 14.C.
- G.** Contractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an Authorized Representative to inspect, audit or obtain copies of said records, the Contractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- H.** The Authorized Representatives may audit Contractor at any time if there is a reasonable possibility of fraud or similar risk.
- I.** Contractor agrees to include a similar right of Authorized Representatives to audit records and interview staff in any subcontract related to performance of this Agreement.
- J.** 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.

**15. INDEMNIFICATION AND INSURANCE.**

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

**16. 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. Contractor shall also comply with the nondiscrimination provisions set forth in Exhibit A-1 to this Agreement.

**17. 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.

**18. 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.

**19. 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. **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.

2. **For Nonappropriation of Funds.**

i. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

ii. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this

Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.

iii. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

3. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, 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(s), 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.** 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 shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.



**20. SUSPENSION FOR CONVENIENCE.**

The Director of the Department of Behavioral Wellness or designee may, without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 120 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

**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. 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. Requests for changes to the terms and conditions of this agreement after April 1 of the Fiscal Year for which the change would be applicable shall not be considered. All requests for changes shall be in writing. Changes shall be made by an amendment pursuant to this section. Any amendments or modifications that do not materially change the terms

of this Agreement (such as changes to the Designated Representative or Contractor's address for purposes of Notice) may be approved by the Director of the Department of Behavioral Wellness. The Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications.

**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. AUTHORITY.**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**32. 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.

**33. 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.

### 34. 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 E. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.

### 35. 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 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.

### 36. COURT APPEARANCES.

Upon request, Contractor shall cooperate with County in making available necessary witnesses for court hearings and trials. County shall issue subpoenas for the required witnesses upon request of Contractor.

### 37. MANDATORY DISCLOSURE.

#### A. Prohibited Affiliations.

1. Contractor shall not knowingly have any prohibited types of relationships with the following:
  - i. An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549. (42 C.F.R. § 438.610(a)(1).)
  - ii. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 C.F.R. Section 2.101, of a person described in this Section. (42 C.F.R. § 438.610(a)(2).)
2. The Contractor and its subcontractors shall not have a relationship with an individual or entity that is excluded from participation in any Federal Health Care Program (as defined in Section 1128B(f) of the Social Security Act) under either Sections 1128, 1128A, 1156, or 18420(2) of the Social Security Act. (42 C.F.R. §§ 438.214(d)(1), 438.610(b); 42 U.S.C. § 1320c-5.)
3. The relationships described in paragraph A of this section, are as follows:
  - i. A director, officer, agent, managing employee, or partner of the Contractor. (42 U.S.C. § 1320a-7(b)(8)(A)(ii); 42 C.F.R. § 438.610(c)(1).)
  - ii. A subcontractor of the Contractor, as governed by 42 C.F.R. § 438.230. (42 C.F.R. § 438.610(c)(2).)
  - iii. A person with beneficial ownership of 5 percent or more of the Contractor's equity. (42 C.F.R. § 438.610(c)(3).)
  - iv. An individual convicted of crimes described in Section 1128(b)(8)(B) of the Social Security Act. (42 C.F.R. § 438.808(b)(2).)

- v. A network provider or person with an employment, consulting, or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's obligations under this Contract. (42 C.F.R. § 438.610(c)(4).)
- vi. The Contractor shall not employ or contract with, directly or indirectly, such individuals or entities for the furnishing of health care, utilization review, medical social work, administrative services, management, or provision of medical services (or the establishment of policies or provision of operational support for such services). (42 C.F.R. § 438.808(b)(3).)

**B. Written Disclosures.**

1. **Written Notice of Prohibited Affiliations.** The Contractor shall provide to County written disclosure of any Prohibited Affiliations identified by the Contractor or its subcontractors. (42 C.F.R. § 438.608(c)(1).)
2. **Ownership or Controlling Interests.** Pursuant to 42 C.F.R. § 455.104, Medicaid providers, other than an individual practitioner or group of practitioners; fiscal agents; and managed care entities ("Disclosing Entities") must disclose certain information related to persons who have an "ownership or control interest" in the Disclosing Entity, as defined in 42 C.F.R. § 455.101. (For the purposes of this section "person with an ownership or control interest" means a person or corporation that – a. Has an ownership interest totaling five percent or more in a Disclosing Entity; b. Has an indirect ownership interest equal to five percent or more in a Disclosing Entity; c. Has a combination of direct and indirect ownership interests equal to five percent or more in a Disclosing Entity. d. Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the Disclosing Entity if that interest equals at least five percent of the value of the property or assets of the Disclosing Entity.) The disclosure must include the following information:
  - i. The name, address, date of birth, and Social Security Number of any **managing employee**, as that term is defined in 42 C.F.R. § 455.101. For purposes of this disclosure, Contractor may use the business address for any member of its Board of Supervisors.
  - ii. The name and address of **any person (individual or corporation) with an ownership or control interest** in the Disclosing Entity. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address.
  - iii. Date of birth and Social Security Number (in the case of an individual).
  - iv. Other tax identification number (in the case of a corporation) with an ownership or control interest in the Disclosing Entity (or fiscal agent or managed care entity) or in any subcontractor in which the Disclosing Entity (or fiscal agent or managed care entity) has a five percent or more interest.

- v. Whether the person (individual or corporation) with an ownership or control interest in the Disclosing Entity (or fiscal agent or managed care entity) is related to another person with ownership or control interest in the Disclosing Entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the Disclosing has a five percent or more interest is related to another person with ownership or control interest in the Disclosing Entity as a spouse, parent, child, or sibling.
  - vi. The name of any other Disclosing Entity in which an owner of the Disclosing Entity has an ownership or control interest.
  - vii. Is an officer or director of a Disclosing Entity that is organized as a corporation.
  - viii. Is a partner in a Disclosing Entity that is organized as a partnership.
3. **Timing for Disclosure of Ownership and Controlling Interests.** Contractor shall complete a *Disclosure of Ownership or Controlling Interest* form provided by County upon submitting a provider application; before entering into or renewing its contract; annually, upon request during the re-validation of enrollment process under 42 C.F.R. Section 455.104; within 35 days after any change of ownership; or upon any person newly obtaining an interest of 5% or more of any mortgage, deed of trust, note or other obligation secured by Contractor, and that interest equals at least 5% of Contractor's property or assets.
4. **Business Transactions. (42 C.F.R. § 455.105).**
- i. Contractor agrees to furnish to County or the Secretary of DHCS on request, information related to business transactions. Contractor shall submit, within 35 days of the date on a request by County or the Secretary of DHCS full and complete information about:
    - a. The ownership of any subcontractor with whom the provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
    - b. Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.
5. **Crimes.**
- i. **Violations of Criminal Law.** 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 this Agreement. Contractor is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at [www.sam.gov](http://www.sam.gov). Failure to make required disclosures can result in any of the remedies for noncompliance described in 45 C.F.R. Section 75.371 and/or 2

C.F.R. § 200.338, including suspension or debarment. (See also 2 C.F.R. parts 180 and 376, and 31 U.S.C. § 3321.)

- ii. **Persons Convicted of Crimes Related to Federal Health Care Programs.** Contractor shall submit the following disclosures to County regarding its owners, persons with controlling interest, agents, and managing employee's criminal convictions prior to entering into this Agreement and at any time upon County's request:
  - a. The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a)(1), (2).)
  - b. The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. Section 455.101.
- iii. **Timing for Disclosures of Crimes.** The Contractor shall supply disclosures regarding crimes before entering into the contract and at any time upon the County or DHCS' request.

C. **Lobbying.** Contractor shall complete a Certification Regarding Lobbying as set forth in Exhibit D, Attachment 1, and, if applicable, a Lobbying Restrictions and Disclosure Certification as set forth in Exhibit D, Attachment 2, of this Agreement.

1. 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.
2. Contractor also agrees by signing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.
3. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**D. Remedies.**

1. **Denial of Federal Financial Participation (FFP) for Failure to Provide Timely Disclosures.**

- i. FFP is not available in expenditures for services furnished by Contractors who fail to comply with a request made by the County or Secretary of DHCS under this section, Mandatory Disclosures, or under 42 C.F.R. § 420.205 (Medicare requirements for disclosure).
  - ii. FFP will be denied in expenditures for services furnished during the period beginning on the day following the date the information was due to the County or the Secretary of DHCS and ending on the day before the date on which the information was supplied.
  - iii. A provider shall be required to reimburse those Medi-Cal funds received during any period for which material information was not reported, or reported falsely, to the County or DHCS (Welf. & Inst. Code § 14043.3).
2. **Other Remedies.** County or DHCS may pursue any remedies provided by law, including but not limited to, the right to withhold payments, disallow costs, or issue a CAP, pursuant to Cal. Health and Safety Code, Section 11817.8(h) for Contractor's failure to provide required disclosures.

### **38. PROCUREMENT OF RECOVERED MATERIALS.**

Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **39. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

- A.** As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontractor agreements.
- B.** For purposes of this section:
1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  2. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.



**40. 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, the Federal Awarding Agency, and the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this Agreement or any subcontract thereunder, the Contractor has credible evidence that Contractor itself, 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, as amended (33 U.S.C. §§ 1251-1387).

**41. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.**

The Contractor shall comply with the requirements of 2 C.F.R. Part 200 which are hereby incorporated by reference in this Agreement.

**42. PRIOR AGREEMENTS.**

Upon the effective date, this Agreement supersedes all prior agreements between County and Contractor related to the scope of work contained in this Agreement.

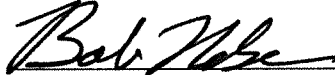
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SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE**

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 July 1, 2021.

**COUNTY OF SANTA BARBARA:**

By:   
BOB NELSON, CHAIR  
BOARD OF SUPERVISORS  
Date: 6/22/2021

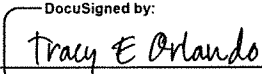
**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By:   
Deputy Clerk  
Date: 6-22-21

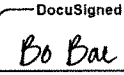
**CONTRACTOR:**

**Echo Consulting Services of California, Inc.**

By:   
Authorized Representative  
Name: Tracy E Orlando  
Title: VP Contract Management & Compliance  
Date: 6/10/2021

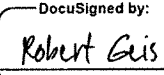
**APPROVED AS TO FORM:**

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By:   
Deputy County Counsel

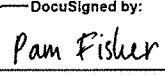
**APPROVED AS TO ACCOUNTING FORM:**

BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By:   
Deputy

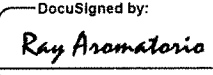
**RECOMMENDED FOR APPROVAL:**

PAM FISHER, PSY.D., ACTING  
DIRECTOR  
DEPARTMENT OF BEHAVIORAL  
WELLNESS

By:   
Acting Director

**APPROVED AS TO INSURANCE FORM:**

RAY AROMATORIO, RISK MANAGER  
DEPARTMENT OF RISK MANAGEMENT

By:   
Risk Manager

<b>THIS AGREEMENT INCLUDES THE FOLLOWING EXHIBITS:</b>	<b><u>Page</u></b>
EXHIBIT A Statement of Work .....	20
EXHIBIT A-1 MHP Subcontractor Terms .....	27
EXHIBIT B Payment Arrangements .....	32
EXHIBIT B-1 Schedule of Fees .....	34
EXHIBIT C Standard Indemnification and Insurance Provisions .....	35
EXHIBIT D Certifications Regarding Lobbying.....	39
EXHIBIT E HIPAA Business Associate Agreement .....	42

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**EXHIBIT A**  
**STATEMENT OF WORK**

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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 in Section 2.A.iv.
- ii. Off-Hours Support is defined as time outside of Contractor’s Standard Support Hours described above in Section 2.A.i.
- iii. Standby/On Call Support is defined as time outside of Contractor’s 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	

## **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 requests its highest priority. This response shall consist of Contractor contacting County to report on the status of the Error, as defined below in Section 2.B.iv, 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 above in Section 2.B.i, First Tier Support, and Section 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 Software, assistance in identifying and verifying the causes of suspected Errors or malfunctions in the Software, 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.
- 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 above in Section 2.C.i, Included Telephone Support. 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 above in Section 2.C, Telephone Support, in the Software and when necessary, develop temporary workarounds until permanent corrections can be affected. 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's Designated 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.

**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 of Contractor's 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.
- iii. Notwithstanding the provisions described above 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-Mandated Timeframe.** Contractor shall provide County with an estimated completion date for such Software updates within fourteen (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-mandated 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.
- 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 Support 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 above 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 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 ten (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.

County may enter into a third party escrow agreement with an outside entity and Echo for deposit of the source code.

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**EXHIBIT A-1**

**MHP SUBCONTRACTOR TERMS**

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1. **Adherence to Applicable Laws.** Contractor shall adhere to all applicable County, State, and Federal laws in the performance of this Agreement, including but not limited to the statutes and regulations set forth in the County Mental Health Plan (“MHP”) (Contract No. 17-94613) between the County Department of Behavioral Wellness and the State Department of Health Care Services (DHCS), available at [www.countyofsb.org/behavioral-wellness](http://www.countyofsb.org/behavioral-wellness), including but not limited to subparagraphs C and F of the MHP, Exhibit E, Paragraph 7, and the applicable provisions of Exhibit D to this Agreement. Contractor shall comply with any changes to these statutes and regulations that may occur during the Term of the Agreement and any new applicable statutes or regulations without the need for amendments to this Agreement. To the extent there is a conflict between federal or state law or regulation and a provision in this Agreement, Contractor shall comply with the federal or state law or regulation and the conflicting contract provision shall no longer be in effect.
2. **Reports.** Contractor agrees to submit data and reports as required by this Agreement or subsequently required by County and/or DHCS.
3. **Termination.** In addition to Paragraph 19 (Termination) of this Agreement, the County or DHCS may revoke, in full or in part: this Agreement, any subcontract made pursuant to this Agreement, and activities or obligations delegated by County to Contractor. Furthermore, the County or DHCS may apply other remedies permitted by state or federal law when the County or DHCS determines that the Contractor or its subcontractor has not performed satisfactorily. (42 C.F.R. § 438.230(c)(1)(iii).)
4. **Nondiscrimination**
  - A. **Federal Nondiscrimination Provisions**
    - i. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment

Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

- ii. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- iii. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- iv. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- v. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vi. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No.

11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- vii. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

**B. State Non-Discrimination Provisions**

- i. During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person or discriminate unlawfully against any employee, applicant for employment, or independent contractor on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or other protected category ("Protected Category").
- ii. Consistent with the requirements of applicable federal law, such as 42 Code of Federal Regulations, part 438.3(d)(3) and (4), and state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of a Protected Category.
- iii. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health

and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

- iv. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to California Code of Regulations, title 9, sections 1820.205, 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.
- v. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
- vi. Contractor shall include the nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.

**5. Monitoring for Compliance.**

- A. County shall monitor Contractor's compliance with the provisions of this Agreement and the MHP and shall provide a corrective action plan if deficiencies are identified.
- B. When monitoring activities identify areas of non-compliance, the County or DHCS shall issue reports to the Contractor detailing findings, recommendations, and corrective action. (Cal. Code Reg., tit. 9, § 1810.380.) Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to Cal. Code Reg., tit. 9, § 1810.385.

**6. Audit.**

- A. Contractor shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the terms of this Agreement, or determinations of amounts payable available at any time for inspection, examination or copying by DHCS, CMS, HHS Inspector General, the

United States Comptroller General, their designees, and other authorized federal and state agencies. (42 C.F.R. §438.3(h).)

- B. If the County, DHCS, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the County, DHCS, CMS, or the HHS Inspector General may inspect, evaluate, and audit the Contractor at any time. (42 C.F.R. § 38.230(c)(3)(iv).)
  - C. The inspection shall occur at the Contractor's place of business, premises or physical facilities. Contractor shall keep books and records in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least ten (10) years from the close of the state fiscal year in which this Agreement was in effect.
  - D. This audit right will exist through 10 years from the final date of this Agreement period or from the date of completion of any audit, whichever is later. (42 C.F.R. § 438.230(c)(3)(iii).)
7. **Hold Harmless.** Contractor agrees to hold harmless the State and beneficiaries in the event the County cannot or does not pay for services performed by the Contractor pursuant to this Agreement.
8. Contractor shall comply with the Department of Behavioral Wellness' Policy # 3.004 on advance directives and the County's obligations for Physician Incentive Plans, as applicable.
9. **Overpayments.** Contractor shall promptly report to County all overpayments identified or recovered, specifying the overpayments due to potential fraud. (42 C.F.R. §438.608(a), (a)(2).) Contractor shall notify County within 30 calendar days when it has identified payments in excess of amounts specified for reimbursements of Medi-Cal services. Contractor shall return any overpayments to County within 30 calendar days from when the overpayment was identified.
10. **MHP Exhibit D(F).** Paragraphs 5 Subcontract Requirements, 7 Audit and Record Retention, 9 Federal Contract Funds, 10 Intellectual Property Rights, 11 Air and Water Pollution, 13 Confidentiality of Information, 17 Human Subjects Use, 19 Debarment and Suspension Certification, 20 Smoke-Free Workplace Certification, 24 Officials Not to Benefit, and 32 Lobbying Restrictions and Disclosure Certification of Exhibit D(F) of the MHP, Contract Number 17-94613, are hereby incorporated by reference into this Agreement.

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**EXHIBIT B**  
**FINANCIAL PROVISIONS**

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(With attached Schedule of Fees [Exhibit B-1])

**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 **\$680,232**, as described in Exhibit B-1. The Maximum Contract Amount shall be inclusive of Support and Maintenance Fees not to exceed \$186,104 for FY 21-22, \$191,688 for FY 22-23, \$197,440 for FY 23-24; and a Contingency Fund not to exceed \$35,000 per fiscal year, 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 (Government Mandates), County-specific enhancements, and training. Notwithstanding any other provision of this Agreement, in no event shall County pay Contractor more than the Maximum Contract Amount for Contractor's performance hereunder without a properly executed amendment.
- 2. Invoices.** Contractor shall submit invoices to County that identify the fees and reimbursable expenses in connection with the services provided by Contractor and identify 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. The County-Designated 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 Fees) 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, Government Mandates.
  - 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, and 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 Contractor's 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, Government Mandates, 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:  
Department of Behavioral Wellness  
Attn: Marshall Ramsey  
429 N. San Antonio Road  
Santa Barbara, CA 93110  
mramsey@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, 2021 – June 30, 2024

**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 21-22	FY 22-23	FY 23-24	
Qtr 1	Jul. 1 to Sep. 30	Jul. 31	\$ 46,526	\$ 47,922	\$ 49,360	
Qtr 2	Oct. 1 to Dec. 31	Sep. 30	\$ 46,526	\$ 47,922	\$ 49,360	
Qtr 3	Jan. 1 to Mar. 31	Dec. 31	\$ 46,526	\$ 47,922	\$ 49,360	
Qtr 4	Apr. 1 to Jun. 30	Mar. 31	\$ 46,526	\$ 47,922	\$ 49,360	
<b>Total SMA Fees FY 21-24</b>			<b>\$ 186,104</b>	<b>\$ 191,688</b>	<b>\$ 197,440</b>	<b>\$575,232</b>

**Contingency Fund Maximum**

<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>
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<b>Maximum Contract Amount Not to Exceed</b>	<b>\$221,104</b>	<b>\$226,688</b>	<b>\$232,440</b>	<b>\$680,232</b>
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**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 \$0.56/mile	Mile
Meals	Currently \$69.00	Day

**Published Rates for Billable Consultation Services**

Service	Rate	Increment
Technical Support (Including EDI/EDS Support & 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

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**EXHIBIT C**

**INDEMNIFICATION AND INSURANCE REQUIREMENTS**

(For ECHO Contract Only – 2021 05 05)

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**1. INDEMNIFICATION**

**A. Intellectual Property Indemnification**

1. 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.
2. 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.
3. 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 Non-Intellectual Property Indemnification**

1. 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.

**2. INSURANCE**

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR’S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
5. **Cyber Liability Insurance:** Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

#### **B. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR’S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR’S insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the

CONTRACTOR's insurance and shall not contribute with it.

3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.

- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

**11. Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

**EXHIBIT D**  
**CERTIFICATIONS REGARDING LOBBYING**

**Attachment 1**  
**State of California**  
**Department of Health Care Services**

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) 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 agency of the United States Government, 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, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

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.C., 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.

Echo Consulting Services of CA, Inc.

Name of Contractor

Contract / Grant Number

6/10/2021

Date

Tracy E Orlando

Printed Name of Person Signing for Contractor

DocuSigned by:

*Tracy E Orlando*

Signature of Person Signing for Contractor

VP Contract Management & Compliance

Title

After execution by or on behalf of Contractor, please return to:

Santa Barbara County Department of Behavioral Wellness  
Contracts Division  
Attn: Contracts Manager  
429 N. San Antonio Rd.  
Santa Barbara, CA 93110

County reserves the right to notify the contractor in writing of an alternate submission address.

Attachment 2

Approved by OMB  
0348-0046

**CERTIFICATION REGARDING LOBBYING**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. contract</li> <li><input type="checkbox"/> b. grant</li> <li><input type="checkbox"/> c. cooperative agreement</li> <li><input type="checkbox"/> d. loan</li> <li><input type="checkbox"/> e. loan guarantee</li> <li><input type="checkbox"/> f. loan insurance</li> </ul>	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. bid/offer/application</li> <li><input type="checkbox"/> b. initial award</li> <li><input type="checkbox"/> c. post-award</li> </ul>	<p>3. Report Type:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. initial filing</li> <li><input type="checkbox"/> b. material change</li> </ul> <p>For Material Change Only: Year ____ Quarter ____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prime</li> <li><input type="checkbox"/> Subawardee Tier ____, if known:</li> </ul> <p>Congressional District If known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District If known:</p>	
<p>6. Federal Department Agency</p>	<p>7. Federal Program Name/Description:</p> <p>CDFA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a last name, first name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p>	
	<p>Print Name: _____</p>	
		<p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
<p><b>Federal Use Only</b></p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
  - (a) Enter the full names of the Individual(s) performing services, and include full address if different from 10.
  - (b) Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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**EXHIBIT E**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)**

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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 five (5) business 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 (d) 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.
- q. **Compliance with HIPAA Workforce Training.** As set forth in section 164.530 of 45 CFR Business Associate is expected to adhere to the Health Insurance Portability and Accountability Act (HIPAA) regulations to the extent necessary to comply with Covered Entity's legal obligations and to develop and maintain comprehensive consumer confidentiality policies and procedures, provide annual training of all affected staff regarding those policies and procedures including Security and Privacy safeguards, and demonstrate reasonable effort to secure written and/or electronic data to document the provision of such training and agrees to make available to the Covered Entity upon request. The parties should anticipate that this agreement will be modified as necessary for full compliance with HIPAA.

### 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.