

## BC\_\_\_\_\_

Agreement  
Page 1 of 9

## **AGREEMENT**

3. **SCOPE OF SERVICES.** Contractor agrees to provide services to County in accordance with Exhibit A attached hereto and incorporated herein by reference.
4. **TERM.** Contractor shall commence performance by **7/1/2013** and complete performance by **6/30/2014**, unless this Agreement is otherwise terminated at an earlier date pursuant to Section 18.
5. **COMPENSATION OF CONTRACTOR.** Contractor shall be paid for performance under this Agreement in accordance with the terms of Exhibit B, attached hereto and incorporated herein by reference. Contractor shall bill County by invoice, which shall include the Contract number assigned by County. Contractor shall direct the invoice to County's "Accounts Payable Department" at the address specified under Exhibit B, Section 5, after completing the increments identified in Exhibit B-1.
6. **LICENSES.**
  - A. **County License.** Contractor grants 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, and the specifications for County's internal purposes and for processing data for other County agencies and subcontractors.
  - B. **Term.** County and Contractor agree that such licenses will continue until such time that County returns the contractor technology and copies thereof to Contractor, erases such Contractor technology from its equipment's storage media or decides 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 Software.
  - D. **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 Software.
  - E. **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 any copy of it which is provided in Object Code or Source Code format.
7. **INDEPENDENT CONTRACTOR.** Contractor shall perform all of its services under this Agreement as an Independent Contractor and not as an employee of County. 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 insurance, and protection of tenure.
7. **STANDARD OF PERFORMANCE.** Contractor represents that it has the skills, expertise, and licenses and/or 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

## **AGREEMENT**

which Contractor is engaged. All products of whatsoever nature which Contractor delivers to County pursuant to this Agreement shall be prepared in a manner which will conform to high standards of quality 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. Contractor shall obtain and maintain all permits and/or licenses required for performance under this Agreement without additional compensation, at Contractor's own expense.

8. **NON-DISCRIMINATION.** County hereby notifies Contractor that Santa Barbara County's Unlawful Discrimination Ordinance (Santa Barbara County Code, Chapter 2, Article XIII) applies to this Agreement and is incorporated herein by reference with the same force and effect as if the ordinance were specifically set out herein. Contractor hereby agrees to comply with said ordinance.
9. **CONFLICT OF INTEREST.** Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, 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.
10. **RESPONSIBILITIES OF COUNTY.** County shall provide all information reasonably necessary to allow Contractor to perform the services contemplated by this Agreement.
11. **OWNERSHIP OF DOCUMENTS.** Upon production, County shall be the owner of the following items incidental to this Agreement, whether or not completed: all data collected and any material necessary for the practical use of the data and/or documents from the time of collection and/or production, whether or not performance under this Agreement is completed or terminated prior to completion.
12. **RECORDS, AUDIT, AND REVIEW.** Contractor shall keep those business records or documents created pursuant to this Agreement that would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records in a manner consistent with applicable Federal and State laws. All account records shall be kept in accordance with generally accepted accounting practices. County shall have the right to audit and review all such documents and records, either at any time during Contractor's regular business hours, or upon reasonable notice to Contractor. Contractor agrees to retain such records and documents for a period of not less than three (3) years, following the expiration or termination of this Agreement.
13. **COMPLIANCE WITH HIPAA.** Contractor is expected to adhere to Health Insurance Portability and Accountability Act (HIPAA) regulations and to develop and maintain comprehensive patient confidentiality policies and procedures, provide annual training of all staff regarding those policies and procedures, and demonstrate reasonable effort to secure written and/or electronic data. Contractor is considered a Business Associate per the HIPAA regulations and shall adhere to the County Business Associate Agreement, which is attached and included by reference and marked as Exhibit BAA. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.
14. **AUDIT.** County reserves the right to monitor, audit or investigate Contractor's use of County Confidential Information collected, used, or acquired by Contractor under this Agreement.

## **AGREEMENT**

15. **INDEMNIFICATION AND INSURANCE.** Contractor shall agree to defend, indemnify and hold harmless the County and to procure and maintain insurance in accordance with the provisions of Exhibit C attached hereto and incorporated herein by reference.

16. **TAXES.** 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 reimburse County within one (1) week for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but are not limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and Workers' Compensation insurance.

### **17. DISPUTE RESOLUTION.**

A. **Good Faith Efforts.** Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies.

B. **Continued Performance.** Contractor and County agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement.

### **18. TERMINATION.**

A. **By County.** County, by written notice to Contractor, may terminate this Agreement in whole or in part at any time, whether for County convenience or because of the failure of Contractor to fulfill the obligations herein. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process.

B. **For Convenience.** County may terminate this Agreement upon thirty (30) days written notice. Following such notice of termination, Contractor shall notify County of the status of its performance and cease work at the conclusion of the thirty (30) day notice period.

Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made based on the rates set forth in Exhibit B-1. In no event shall Contractor be paid an amount in excess of the maximum budgeted amount for this Agreement as set forth in Exhibit B, or paid 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.

C. **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 this Agreement by written notice which shall be effective upon receipt by Contractor.

1. **Termination for Material Breach.** If Contractor fails to cure any material breaches of this Agreement which are described in a written Notice from County within 30 days

## **AGREEMENT**

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

2. **Termination for Rejection of Deliverables.** If Contractor is unable to correct deficiencies in a Deliverable, as described in Exhibit A, County shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to County, and return the Deliverable to Contractor and other Deliverables impacted or affected by the rejected Deliverable. If County terminates this Agreement under this Section, Contractor shall, within 20 days thereafter, or as otherwise mutually agreed to in writing, refund to County all payments made to Contractor for such returned Deliverable(s).

3. If it is determined that Contractor's failure to perform is not within Contractor's control or not due to Contractor's fault, or negligence, the termination by County shall be deemed to be a termination for convenience.

D. **By Contractor.** Contractor may, upon thirty (30) days written notice to County, terminate this Agreement in whole or in part at any time, whether for Contractor's convenience or because of the failure of County to fulfill the obligations herein. Following such termination, Contractor shall promptly cease work and notify County as to the status of its performance.

19. **ENTIRE AGREEMENT, AMENDMENTS, AND MODIFICATIONS.** In conjunction with the matters considered herein, this 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 amended or modified only by the written mutual consent of the parties hereto. 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 Alcohol, Drug & Mental Health Services. The Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications. Each party waives its 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.

### **20. NON-EXCLUSIVE AGREEMENT.**

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

## **AGREEMENT**

21. **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 parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.
22. **ASSIGNMENT.** Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without 90 days prior written notice to County. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.
23. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to the parties 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, now or hereafter existing at law or in equity or otherwise.
24. **NO WAIVER OF DEFAULT.** No delay or omission of the parties 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 the parties shall be exercised from time-to-time and as often as may be deemed expedient in the sole discretion of either party.
25. **CALIFORNIA LAW.** 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.
26. **COMPLIANCE WITH LAW.** Contractor shall, at his 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 be 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.
27. **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.
28. **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. 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.
29. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts. Each counterpart 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.
30. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement, and each covenant and term is a condition herein.
31. **AUTHORITY.** All 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

## **AGREEMENT**

by such entity(ies), person(s), or firm(s) and have complied with all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other Agreement or Agreement to which Contractor is obligated, which breach would have a material effect hereon.

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

## **AGREEMENT**

### **33. THIS AGREEMENT INCLUDES:**

- A. EXHIBIT A – Statement of Work
- B. EXHIBIT B – Financial Provisions
- C. EXHIBIT B-1 – Schedule of Fees
- D. EXHIBIT C – Standard Indemnification and Insurance Provisions
- E. EXHIBIT BAA – HIPAA Business Associate Agreement



## AGREEMENT

Agreement for Services of Independent Contractor between the County of Santa Barbara and Krassons, Inc.

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

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
SALUD CARBAJAL, CHAIR  
BOARD OF SUPERVISORS  
Date: \_\_\_\_\_

ATTEST:  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

CONTRACTOR

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

By: \_\_\_\_\_  
Tax Id No 94-3274305.  
Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS MARSHALL  
COUNTY COUNSEL

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

By \_\_\_\_\_  
Deputy County Counsel  
Date: \_\_\_\_\_

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

APPROVED AS TO FORM :  
ALCOHOL, DRUG, AND MENTAL HEALTH  
SERVICES  
TAKASHI WADA, MD, MPH  
INTERIM DIRECTOR

APPROVED AS TO INSURANCE FORM:  
RAY AROMATORIO  
RISK MANAGER

By \_\_\_\_\_  
Director  
Date: \_\_\_\_\_

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

# AGREEMENT SUMMARY

BC \_\_\_\_\_

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$25,000) or Purchasing (<\$25,000). See also "Contracts for Services" policy. Form is not applicable to revenue contracts.

D1. Fiscal Year ..... 13-14  
D2. Budget Unit Number (plus –Ship/Bill codes in parenthesis) ..... 043  
D3. Requisition Number..... N/A  
D4. Department Name..... Alcohol, Drug, and Mental Health Services  
D5. Contact Person ..... Danielle Spahn  
D6. Telephone ..... (805) 681-5229

K1. Agreement Type (check one): ☐ Personal Service ☒ Capital  
K2. Brief Summary of Agreement Description/Purpose..... Software maintenance: Electronic Medical Record System  
K3. Original Agreement Amount..... \$219200  
K4. Agreement Begin Date..... 7/1/2013  
K5. Original Agreement End Date ..... 6/30/2014  
K6. Amendment History (leave blank if no prior amendments).....

Seq#	EffectiveDate	ThisAmndtAmt	CumAmndtToDate	NewTotalAmt	NewEndDate	Purpose (2-4 words)

K7. Department Project Number :  
B1. Is this a Board Agreement? (Yes/No)..... Yes  
B2. Number of Workers Displaced (if any) ..... N/A  
B3. Number of Competitive Bids (if any)..... N/A  
B4. Lowest Bid Amount (if bid) ..... N/A  
B5. If Board waived bids, show Agenda Date..... N/A  
and Agenda Item Number .....  
B7. Boilerplate Agreement Text Unaffected? (Yes / or cite Paragraph) ... Yes

F1. Encumbrance Transaction Code..... N/A  
F2. Current Year Encumbrance Amount ..... N/A  
F3. Fund Number ..... 0044/0048/0049  
F4. Department Number..... 043  
F5. Division Number (if applicable) ..... N/A  
F6. Account Number ..... 7457/ 7124  
F7. Cost Center number (if applicable) ..... Multi  
F8. Payment Terms..... Net 30

V1. Vendor Numbers (A=Auditor; P=Purchasing) ..... A=753657  
V2. Payee/Contractor Name ..... Krassons, Inc.  
V3. Mailing Address ..... 1300 Clay Street, Suite 600  
V4. City State (two-letter) Zip (include +4 if known) ..... Oakland, CA 94612  
V5. Telephone Number ..... 8057200708  
V6. Contractor's Federal Tax ID Number (EIN or SSN)..... 94-3274305  
V7. Contact Person..... David A. Platten  
V8. Workers Comp Insurance Expiration Date ..... N/A  
V9. Liability Insurance Expiration Date[s] (G=Genl; P=Profl) ..... G 11/1/2013  
V10. Professional License Number..... N/A  
V11. Verified by (name of County staff) ..... Danielle Spahn  
V12. Company Type (Check one): ☐ individual ☐ Sole Proprietorship ☐ Partnership ☒ Corporation

I certify information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_

## **EXHIBIT A**

### **Statement of Work**

**1. Software Products Covered.** The following software products are covered under this Agreement (hereafter "Software"):

- A. **Clinician's Gateway (Mental Health Module).** Clinician's Gateway provides users with a web interface for entering and accessing information in the ADMHS MIS System. The software provides a variety of database access features, including account, client, staff and provider look-ups, listings of active clients, client diagnosis information, and services provided. The clinician login screen allows providers to review their caseload, enter progress notes, and services. Clinician's Gateway also verifies service data for audit exceptions and uploads services to the MIS system for billing to Medicare and Medi-Cal.
- B. **IMAViser.** The IMAViser imaging system is integrated with Clinician's Gateway, and allows County to scan medical and client records for inclusion in the Electronic Health Record (EHR).
- C. **Clinician's Scheduler.** Clinician's Scheduler provides calendaring and scheduling functionality. The software is an electronic calendar that allows ADMHS staff to schedule client appointments, record client check-in, and interfaces with Clinician's Gateway to auto-populate progress notes.
- D. **Clinician's Gateway (Alcohol and Drug Program Module).** Clinician's Gateway for Alcohol and Drug Program (ADP) will provide users a web interface for entering and accessing information in the ADMHS MIS System, specifically from the ADP database. The software will provide a variety of database access features, including account, client, staff and provider look-ups, listings of active clients, client diagnosis information, and services provided. The clinician login screen allows providers to review their caseload, enter progress notes, and services. Support and Maintenance for the Clinician's Gateway (ADP Module) will commence upon County's final acceptance of the completed software.

**2. Deliverables.**

- A. **EHR Certification and Meaningful Use.** The Centers for Medicare and Medicaid Services (CMS) EHR Incentive Programs provide incentive payments to Eligible Professionals as they adopt, implement, upgrade or demonstrate meaningful use of certified EHR technology. EHRs must be certified by the Office of the National Coordinator for Health Information Technology (ONC HIT) Certification Program. The ONC HIT Certification Program validates that an EHR stores data in a structured format, allowing the EHR to capture and share patient data efficiently, and allowing the provider to use the EHR in ways that can aid patient care. In order to receive an incentive payment, Eligible Professionals must demonstrate that they are meaningfully using their EHRs by meeting thresholds for a number of objectives.
  - 1. Contractor will provide the ONC HIT Mandatory certified version of the EHR to County.
  - 2. Contractor will work with County to ensure that County Eligible Professionals are able to demonstrate Stage I Meaningful Use using Clinician's Gateway, by June 30, 2014.

**EXHIBIT A**  
**Statement of Work**

- 3. 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.
- A. Support Hours.** For purposes of this Agreement, Contractor's Standard Support Hours are, at a minimum, Monday through Friday from 8:00 AM to 5:00 PM Pacific Time excluding Holidays.
- B. Response Time.** County may submit requests for support via telephone or 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 by the end of the next business day.
- C. Support Exclusions.** Contractor's provision of telephone support, free of charge, to County excludes any problems arising from:
1. Software not listed in Section 1, Software Products Covered.
  2. County failure to back-up data files routinely and systematically following significant data entry and/or editing.
  3. System administration performed by the County as it relates to the operating environment.
  4. Implementation or training services, or the development of new programs by County.
  5. Malfunctions in third party software including, but not limited to, Share Care, SQL, VMS, rdb, RxNT ePrescribing, and Microsoft Internet Explorer.
  6. Modifications to Software by persons other than Contractor personnel.
  7. Hardware malfunctions, e.g. Web server, Crystal Reports server, and SQL server.
  8. County operating system, telecommunications and/or hardware products.
- D. 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 upon request.
- 4. Maintenance.** Contractor will provide maintenance for Software specified in Section 1. Maintenance includes, as applicable:
- 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.

## **EXHIBIT A**

### **Statement of Work**

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 Software to be operational will not be the responsibility of Contractor.

- B. **Error Correction.** Contractor shall correct deficiencies that fail to meet the specifications agreed to between County and Contractor at no additional charge.
  - 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 4.C, 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, 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.
    - 1. 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.
    - 2. Federal and State Mandate Timeframe. Contractor shall provide County with an estimated completion date for such Software updates within 14 days of the release of Federal or State mandated requirements. Contractor shall complete all necessary updates or services, including testing, that are required to make Software compliant by the date the Federal- or State-mandated requirement becomes effective. The date the 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 Federal- or 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, Timely Completion.
  - D. **Compatibility.** Contractor shall ensure the Software products are compatible with the most recent and two prior major releases of third party software products required for the operations of the 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.
5. **Consulting.** County may, at its discretion, engage Contractor to provide consulting services or other County-specific enhancements, to be provided at the lower of the rates described in Exhibit B-1 or as negotiated between County and Contractor. Consulting and support services may include, as requested by the County Data Processing Manager, programming and testing, related to any legacy software previously developed by Contractor; hardware and software planning, miscellaneous utility hardware, form development and software support as required and requested by the County Data Processing Manager.
- A. Prior to providing consulting services, Contractor will provide to the County Data Processing Manager an estimate of the hours required to complete the project, and a timeline for completion.

**EXHIBIT A**  
**Statement of Work**

- B. Work Plan. Contractor and County will agree upon a written Work Plan prior to beginning any consulting project. The Work Plan will specify the agreed upon timeline, the project increments to be completed, the estimated hours for each increment, and the project specifications. Any changes to the Work Plan should be agreed upon in writing by Contractor and County.

**6. Other.**

- A. Contractor will facilitate the Clinicians Gateway users group, made up of Counties that use the Software, and develops and prioritizes product recommendations.
- B. Contractor will attend user and planning group meetings as mutually agreed.

## EXHIBIT B

### FINANCIAL PROVISIONS

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

1. **Maximum Contract Amount.** For Services rendered under this Agreement, Contractor shall be paid at the rate specified in the Exhibit B-1, Schedule of Rates, with a maximum value not to exceed **\$219200**. The Maximum Contract Amount shall be inclusive of Support and Maintenance Fees in an amount not to exceed \$115,200, and Consulting Services in an amount not to exceed \$104,000, which shall be available to reimburse Contractor for County's share of the cost of development of State and Federal Mandated Updates, and other consulting services as requested by County.
2. **Invoices.** Contractor shall submit invoices to County that identify the fees and reimbursable expenses in connection with the services provided by Contractor and identifying the specific services provided by Contractor to which the fees apply.
  - A. **Support and Maintenance Fees:** Monthly, 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. **Consulting Invoices:** Upon completion of the agreed upon increments specified in the Work Plan, Contractor shall submit invoices to the County Designated Representative that identify the fees and the specific services provided by Contractor to which the fees apply. Invoices submitted for payment must contain sufficient detail and provide supporting documentation to enable an audit of the charges. For Federal and State-mandated updates, Contractor shall include the total cost of the Update, based on the rate in Exhibit B-1, or as otherwise agreed, and County's portion of those costs. County shall be responsible for a share of the cost of development proportionate to the number of Counties using the Software.
3. **Payment.** Invoices submitted for payment that are based on 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.
4. **Timely Completion.** For special consulting and projects resulting from changes in State and/or Federal mandates, County and Contractor shall establish a date for completion and delivery of deliverables. Within this period, Contractor shall complete the deliverables described in the Work Plan, agreed to by County and Contractor. In the event Contractor fails to complete the deliverables outlined in the Work Plan within the agreed upon timeframe, County shall deduct 1% of the total estimate for the Project for every five (5) business days that the deliverables are not completed. County may grant one five-day grace period per project. County will reduce the payment due to Contractor for the cost of the deliverables by the total amount of the deduction for timeliness.

## EXHIBIT B

### 5. The County Designated Representative:

Santa Barbara County  
Department of Alcohol, Drug and Mental Health Services  
Attn: Accounts Payable  
429 North San Antonio Road  
Santa Barbara, CA 93110  
[admhs\\_accounts\\_payable@co.santa-barbara.ca.us](mailto:admhs_accounts_payable@co.santa-barbara.ca.us)

6. 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.
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 Rates**

**Support and Maintenance Fees**

<b>SERVICE</b>	<b>UNIT</b>	<b>RATE</b>	<b>MAXIMUM ALLOWABLE</b>
Clinician's Gateway (Mental Health Module) Support and Maintenance	Monthly	\$7,370	\$88,440
IMAViser Support and Maintenance	Monthly	\$330	\$3,960
Clinician's Scheduler Support and Maintenance	Monthly	\$400	\$4,800
Clinician's Gateway (ADP Module) Support and Maintenance (effective upon County acceptance of Software)	Monthly	\$1,500	\$18,000
<b>Total Support and Maintenance</b>	<b>Monthly</b>	<b>\$9,600</b>	<b>\$115,200</b>

**Additional Fees**

<b>SERVICE</b>	<b>UNIT</b>	<b>RATE</b>	<b>MAXIMUM ALLOWABLE</b>
License for ONC HIT Certified Clinician's Gateway	License	\$40,000	\$40,000
Meaningful Use Stage I Enhancements	Hourly	\$110	\$20,000
Clinician's Gateway for ADP Enhancements	Hourly	\$110	\$9,000
County Share of State and Federally Mandated Updates and other Consulting Services	Hourly	\$110	\$35,000
<b>Total Additional Fees – Not to Exceed</b>			<b>\$104,000</b>

**TOTAL CONTRACT MAXIMUM**

Not to Exceed **\$219,200**

## EXHIBIT C

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

#### 1. INDEMNIFICATION

##### **Indemnification pertaining to other than Professional Services:**

Contractor shall defend, indemnify and save harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to: any act or omission to act on the part of the Contractor or his agents or employees or other independent Contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the County.

Contractor shall notify the County immediately in the event of any accident or injury arising out of or in connection with this Agreement.

##### **Indemnification pertaining to Professional Services:**

Contractor shall indemnify and save harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the Contractor or his agents or employees or other independent Contractors directly responsible to him to the fullest extent allowable by law.

Contractor shall notify the County immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### 2. INSURANCE

Without limiting the Contractor's indemnification of the County, Contractor shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the County. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place Contractor in default. Upon request by the County, Contractor shall provide a certified copy of any insurance policy to the County within ten (10) working days.

**Workers' Compensation Insurance:** Statutory Workers' Compensation and Employers Liability Insurance shall cover all Contractor's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the County. In the event Contractor is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Contractor has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and Contractor submits a written statement to the County stating that fact.

**General and Automobile Liability Insurance:** The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of Contractor

## EXHIBIT C

and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the Contractor in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between County and Contractor. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of Contractor pursuant to Contractor's activities hereunder. Contractor shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. County, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000, per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000, requires approval by the County.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

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

If the policy providing liability coverage is on a 'claims-made' form, the Contractor is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the County shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

**Professional Liability Insurance.** Professional liability insurance shall include coverage for the activities of Contractor's professional staff with a combined single limit of not less than \$1,000,000, per occurrence or claim and \$2,000,000, in the aggregate. Said policy or policies shall provide that County shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is on a 'claims-made' form, the Contractor is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

Contractor shall submit to the office of the designated County representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. County shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by County or acceptance of the certificate of insurance by County shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services of operation pursuant to the Agreement, nor shall it be deemed a waiver of County's rights to insurance coverage hereunder.

3. In the event the Contractor is not able to comply with the County's insurance requirements, County may, at their sole discretion and at the Contractor's expense, provide compliant coverage.

## **EXHIBIT C**

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

## HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

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.

## Exhibit BAA

- 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

## Exhibit BAA

- that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

## Exhibit BAA

- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business



## Exhibit BAA

- 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

## Exhibit BAA

state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

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

### 3. Termination

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

## Exhibit BAA

- 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.

### 4. 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.

### 5. Amendment to Comply with Law

## **Exhibit BAA**

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.

### **6. 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.

### **7. 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.

### **8. 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.

### **9. 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

## **Exhibit BAA**

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.

### **10. 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.