

STANDARD CONTRACT
(Purchase of Services – Long Form)

Number:
Fund/Org:
Account: 2310
Other:

1. **Contract Identification.**

Department: Contra Costa County Fire Protection District

Subject: Ambulance Billing, First Responder Billing, and Other Related Professional Services

2. **Parties.** The County of Contra Costa, California (County), for its Department named above, and the following named Contractor mutually agree and promise as follows:

Contractor: Advanced Data Processing, Inc.

Capacity: a Delaware Corporation

Address: 6451 North Federal Highway, Suite 1000, Fort Lauderdale, Florida 33308

3. **Term.** The effective date of this Contract is November 17, 2015. It terminates on December 31, 2020 unless sooner terminated as provided herein.

4. **Payment Limit.** County's total payments to Contractor under this Contract shall not exceed
\$ 8,500,000.

5. **County's Obligations.** County shall make to the Contractor those payments described in the Payment Provisions attached hereto which are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan attached hereto which is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

7. **General and Special Conditions.** This Contract is subject to the General Conditions and Special Conditions (if any) attached hereto, which are incorporated herein by reference.

8. **Project.** This Contract implements in whole or in part the following described Project, the application and approval documents of which are incorporated herein by reference.

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9. **Legal Authority.** This Contract is entered into under and subject to the following legal authorities:

California Health & Safety Code Section 13861 and all legal authorities cited in the HIPAA Business Associate Attachment to this Contract, which is incorporated herein by this reference.

10. **Signatures.** These signatures attest the parties' agreement hereto:

COUNTY OF CONTRA COSTA, CALIFORNIA

BOARD OF SUPERVISORS By: _____ Chair/Designee	ATTEST: Clerk of the Board of Supervisors By: _____ Deputy
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CONTRACTOR

Signature A Name of business entity: Advanced Data Processing, Inc. By: _____ (Signature of individual or officer) _____ (Print name and title A, if applicable)	Signature B Name of business entity: Advanced Data Processing, Inc. By: _____ (Signature of individual or officer) _____ (Print name and title B, if applicable.)
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Note to Contractor: For corporations (profit or nonprofit) and limited liability companies, the contract must be signed by two officers. Signature A must be that of the chairman of the board, president, or vice-president; and Signature B must be that of the secretary, any assistant secretary, chief financial officer or any assistant treasurer (Civil Code Section 1190 and Corporations Code Section 313). All signatures must be acknowledged as set forth on Form L-2.

ACKNOWLEDGMENT/APPROVALS
(Purchase of Services - Long Form)

Number: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On _____ (Date),

before me, _____ (Name and Title of the Officer),

personally appeared, _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL.

Signature of Notary Public



Place Seal Above

ACKNOWLEDGMENT (by Corporation, Partnership, or Individual)
(Civil Code §1189)

APPROVALS

RECOMMENDED BY DEPARTMENT

FORM APPROVED BY COUNTY COUNSEL

By: _____
Designee

By: _____
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By: _____
Designee

PAYMENT PROVISIONS
(Fee Basis Contracts - Long and Short Form)

Number _____

1. **Payment Amounts.** Subject to the Payment Limit of this Contract and subject to the following Payment Provisions, County will pay Contractor the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor:

[Check one alternative only.]

- ☐ a. \$ _____ monthly, or
- ☐ b. \$ _____ per unit, as defined in the Service Plan, or
- ☐ c. \$ _____ after completion of all obligations and conditions herein.
- ☒ d. Other: As set forth in Section D of the Service Plan.

2. **Payment Demands.** Contractor shall submit written demands for payment on County Demand Form D-15 in the manner and form prescribed by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by the head of the County Department for which this Contract is made, or his designee, County will make payments as specified in Paragraph 1. (Payment Amounts) above.
3. **Penalty for Late Submission.** If County is unable to obtain reimbursement from the State of California as a result of Contractor's failure to submit to County a timely demand for payment as specified in Paragraph 2. (Payment Demands) above, County shall not pay Contractor for such services to the extent County's recovery of funding is prejudiced by the delay even though such services were fully provided.
4. **Right to Withhold.** County has the right to withhold payment to Contractor when, in the opinion of County expressed in writing to Contractor, (a) Contractor's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) Contractor has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records, or (c) Contractor has failed to sufficiently itemize or document its demand(s) for payment.
5. **Audit Exceptions.** Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Contract. Within 30 days of demand, Contractor shall pay County the full amount of County's obligation, if any, to the state and/or federal government resulting from any audit exceptions, to the extent such are attributable to Contractor's failure to perform properly any of its obligations under this Contract.

Initials: _____
Contractor County Dept.

SERVICE PLAN OUTLINE
(Purchase of Services - Long Form)

Number _____

SERVICE PLAN

A. GENERAL

Contra Costa County Fire Protection District (District) provides emergency and non-emergency medical services, including 911-system emergency ambulance transports, emergency medical services (EMS) first response, and interfacility transports, for residents and visitors in its jurisdiction (collectively, the "EMS Services"), and charges for the EMS services. District uses an ambulance services subcontractor, American Medical Response West ("AMR") to provide ambulance transport services. Contractor is in the business of providing billing, collection, and related consulting services and equipment for municipalities and other providers of medical services. The parties are entering into this Contract, pursuant to which Contractor will render the services as described herein.

B. CONTRACTOR SERVICES AND OBLIGATIONS

1. Revenue Cycle Management Services. Contractor shall provide revenue cycle management services for District as follows (the "Billing Services"):
 - a. Prepare and submit initial claims and bills to the parties responsible for payment of District's EMS Services, e.g.; individuals, Medicare, Medicaid, private insurance companies ("Payors"), for District promptly upon receipt thereof, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
 - b. Assist District in identifying necessary documentation in order to process and bill Payor accounts.
 - c. Direct payments to a lockbox or bank account designated by District, over which only District and the Office of the Contra Costa County Treasurer will have signature authority.
 - d. Pursue appeals of Payor payment denials, partial payment denials, and payment rejections when deemed appropriate by District.
 - e. Respond to and follow up with Payors and respond to messages or inquiries from Payors.
 - f. Maintain records of all services performed and financial transactions conducted under this Contract.
 - g. Meet, as requested by District, with representatives of District to discuss results, problems, and recommendations.
 - h. Provide any District-designated collection agency with the data necessary for collection services to be performed when an account is referred to such agency.
 - i. Assist District in filing and maintaining required documentation and agreements with commonly-used Payors. District will maintain responsibility for enrollment, required

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documentation, and agreements with out of state Payors, such as out of state Medicaid programs, and other Payors not commonly billed.

- j. Provide reasonably necessary training periodically, as requested by District, to District and AMR EMS personnel regarding the gathering of the necessary information and proper completion of run reports.
- k. Utilize up-to-date knowledge and information with regard to coding requirements and standards to comply with applicable federal, state, and local regulations.
- l. Provide a designated liaison for District, patient, and other Payor concerns.
- m. Provide a toll free telephone number for patients and other Payors to be answered as designated by District.
- n. Keep confidential information secure and shred and dispose of materials containing confidential information.
- o. Establish arrangements with hospitals to obtain/verify patient insurance and contact information.
- p. Respond to any District, Payor, and patient inquiries and questions promptly.
- q. Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments, and refunds.
- r. Provide access to District for requested information in order for District to perform periodic audits. District will provide reasonable notice to Contractor for any planned audit that will be conducted during normal business hours of Contractor.
- s. Provide timely reports facilitating required aspects of monitoring, evaluating, auditing, and managing the services provided under this Contract.
- t. Process refund requests and provide District with documentation substantiating each refund requested.
- u. Assign billing to patient account numbers providing cross-reference to District-assigned ora AMR-assigned transport numbers.
- v. Maintain responsibility for obtaining missing or incomplete insurance and billing information.
- w. Provide accurate coding of medical claims based on information provided by District and AMR.
- x. Negotiate and arrange modified payment schedules for individuals unable to pay the full amount when billed.
- y. Retain accounts for a minimum of twelve (12) months (unless otherwise specified by mutual agreement) and after twelve (12) months turn over accounts for which no collection has been made (unless insurance payment is pending) to an agency designated by District.

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- z. Create, implement, and comply with a compliance plan consistent with the Compliance Program Guidance for Third Party Medical Billing Companies set forth at 63 Federal Register 70138 (December 18, 1998) promulgated by the Office of Inspector General (OIG) of the Department of Health and Human Services. Contractor shall assist District in conducting a claims review on an annual basis as described in the OIG Compliance Program Guidance.
- aa. Contractor shall implement a comprehensive plan and develop the appropriate policies and procedures to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, the HIPAA Business Associates Attachment attached to this Contract and incorporated herein, and the current rules and regulations enacted by the U.S. Department of Health and Human Services as it relates to services provided under this Contract.
2. Software Application and Data Storage Services.
- a. Right to Use. Contractor hereby grants to District, during the term of this Contract, a license to use and access Contractor's electronic billing system application (the "Billing Portal") solely to view District's accounts, run various reports, and access all data associated with Billing Services Contractor is providing under this Contract. District's access to the Billing Portal shall be real-time and read-only to obtain patient data and billing information. Contractor shall not in any way transfer to any third party or use in direct or indirect competition with District any information or data posted on the Billing Portal by or for the benefit of District and acknowledges that all such information is confidential. Contractor further acknowledges that its handling of information on behalf of District is or may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. Contractor agrees to comply with all of such laws, rules and regulations and restrictions, including without limitation, the obligations set forth in the Business Associate Attachment attached hereto and incorporated into this Contract at its sole cost and expense. The provisions of this Access to Billing System and Security Section shall survive any termination or expiration of this Contract.
- b. User Restrictions. District shall not, and shall not permit others to, without the express written consent of Contractor: (A) use, receive, reproduce, copy, market, sell, distribute, license, sublicense, lease, timeshare, or rent the Billing Portal application or any component thereof; (B) modify, alter, translate or prepare derivative works based on the Billing Portal application or related documentation; (C) disassemble, decompile, decrypt or reverse engineer the Billing Portal application or in any way attempt to discover or reproduce source code for the Billing Portal application, or any portion thereof; or (D) develop or license any third party programs, applications, tools or other products that interface or interact with the Billing Portal. County agrees not to remove the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Billing Portal or the related documentation.
- c. Internet Access. District is responsible for providing its own Internet access necessary to access the Billing Portal, and in no event shall District be provided with direct access (by modem or otherwise) to the Billing Portal server, other than access that is available to third parties generally through the Internet.
- d. Reporting. Operational and financial data reports for District will be available on the Billing Portal when the Billing Portal is available. The format and content of the data will be established and defined by Contractor and such reports may be added, modified or deleted without notice to

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District. Notwithstanding the foregoing, District may request that specific, custom reports be made available to it at the hourly rate that Contractor charges for this type of service.

- e. Acknowledgement with Respect to Reports. With respect to each report generated for District and made available through the Billing Portal, District acknowledges and agrees that: (A) such report represents a “snapshot” of a moment in time, and as such, the snapshot may not be accurate with respect to financial results on the whole; (B) the underlying data may be subject to correction from time-to-time, which may change the results of the report or its interpretation; and (C) the data represented in the report constitutes only a limited portion of all data available regarding District’s business. Accordingly, any particular report may not accurately represent the District’s then-current or future financial condition.
- f. Intellectual Property. District agrees that the equipment, computer hardware and software, billing and collection processing, Billing Portal and other related systems and equipment are the property and that certain portions thereof constitute trade secrets of Contractor, and that District will not, except as required under the California Public Records Act (California Government Code Section 6250, et seq.), release any trade secrets of Contractor to any third party without the prior written consent of Contractor. District further agrees that, in connection with the use of certain data entry devices, District may gain access to the intellectual property of third parties.
- g. Audit Rights. From time to time and upon reasonable prior written notice, Contractor may audit District’s use of the Billing Portal to help ensure that District is in compliance with the terms and conditions of this Contract, including, but not limited to, any payment terms. Any such audit will be conducted during regular business hours at the applicable facilities of District. District will identify and cooperate with Contractor (or its representatives) to provide Contractor (or its representatives) with reasonable access to all relevant equipment, personnel and records.
- h. Billing Records; Security. District acknowledges that it is solely responsible for providing security software, including without limitation, firewalls and similar applications, to prevent unauthorized access to its computer systems, including malware prevention software on Billing Portal user’s computers. District is responsible for requiring its Billing Portal users to use a password that is at least eight (8) characters in length, and contains three (3) of four (4) of the following characteristics: lowercase letter, uppercase letter, special character, or a number. Contractor is not responsible for the County’s loss or dissemination of passwords. Contractor shall maintain records in an electronic format that is readily accessible by District personnel and that meets federal and state requirements for maintaining patient medical records. Contractor shall provide appropriate storage and data back-up for records pertaining to District’s bills and collections hereunder, accessible to District at reasonable times.
- i. Billing Portal Services.
 - A. Contractor shall host the Billing Portal all related data using a web server that is owned, and operated by Contractor and, and will be delivered over the Internet.
 - B. Billing Portal Availability. Subject to the terms of this Contract, the Billing Portal shall be available to users not less than 99% of the time each calendar month excluding Planned Outages, or due to unexpected outages not in Contractor’s control, including but not limited to force majeure circumstances or Internet outages not in Contractor’s control (“Unplanned Outages”). Contractor shall notify District in writing, via electronic mail or facsimile, of any

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planned outages in the Billing Portal that are necessary for performing software updates or testing (a "Planned Outage") and Unplanned Outages. Contractor shall schedule, perform and maintain a duplicate record of District's data on backup Servers.

- C. Database and System Hosting. Contractor shall keep the Billing Portal safe and secure as required by law. Contractor is responsible for the installation, operation and maintenance of the Billing Portal. Billing Portal services include, without limitation, the following services (the "Hosting Services"):
- i. Routine monitoring of the Billing Portal and corrective action;
 - ii. Regular back-up procedures that will have minimal impact on the 24/7 availability of the hosted Billing Portal;
 - iii. Recovery procedures in the event of loss or corruption of the Billing Portal;
 - iv. Contractor (i) will not host the hosted Billing Portal on any servers outside the continental United States, (ii) will cause the Billing Portal to reside on servers with security features designed to prevent breaches of security, including without limitation, appropriate encryption, firewalls, and conforming to Tier 3-type Data Center security standards; and (iii) cause the Billing Portal to be audited under SAS 70/SSAE16 audits at least every two (2) years.
- D. Disaster and Recovery Plans. Contractor shall, maintain backup and recovery capabilities for critical functions in the event of a system failure. Contractor shall maintain multiple servers for both software and hardware redundancy and shall co-locate servers on which the Billing Portal and related data is located in geographically different locations. Should an interruption of system services occur at a primary production server, the system function will rollover and begin processing using the back-up until service is restored at the primary production server.
- E. Technical Support. Contractor shall provide District with technical environmental support services for the Billing Portal 24 hours per day, 7 days per week. Technical support may be accessed by District by calling the Technical Support Help Desk at 1-888-735-9559.

C. DISTRICT RESPONSIBILITIES

1. District shall use its best efforts to, or to cause AMR to, obtain and forward the following information ("Patient Information") for each person who receives medical services from District ("Patient"), to Contractor:
 - a. the Patient's full name and date of birth;
 - b. the mailing address (including zip code) and telephone number of the Patient or other party responsible for payment ("Guarantor");
 - c. Patient's social security number;
 - d. the name and address of the Patient's health insurance carrier, name of policyholder or primary covered party, and any applicable group and identification numbers;
 - e. auto insurance carrier address and/or agent's name and phone number if an automobile is involved;

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- f. the employer's name, address and Workers Compensation Insurance information if the incident is work related;
 - g. the patient's Medicare or Medicaid HIC numbers if applicable;
 - h. the Patient's or other responsible party's signed payment authorization and release of medical authorization form or other documentation sufficient to comply with applicable signature requirements;
 - i. the call times, transporting unit, and crew members with their license level, e.g., EMT-I or EMT-P;
 - j. odometer readings or actual loaded miles flown such that loaded miles may be calculated;
 - k. physician certification statements (PCS) for non-emergency transports that are to be billed to Medicare pursuant to CMS regulations; and
 - l. any other information that Contractor may reasonably require to bill the Patient or other Payor.
2. District will provide Contractor with necessary documents required by third parties to allow for the electronic filing of claims by Contractor on District's behalf.
 3. District will provide Contractor with its approved billing policies and procedures, including dispatch protocols, fee schedules, and collection protocols. District will be responsible for engaging any third party collection service for uncollectible accounts after Contractor has exhausted its collection efforts.
 4. District will provide a lock box or bank account address to Contractor and will instruct the lock box or bank custodian agency to forward all documents to Contractor for processing.
 5. District will cooperate with Contractor in all matters to ensure proper compliance with laws and regulations.
 6. District represents and warrants that all of its employees, personnel and, to the best of its knowledge as to its independent contractors involved in the delivery of medical services or otherwise performing services for District: (i) hold the licensure or certification required to perform such services; (ii) have not been convicted of a criminal offense related to health care or been listed as debarred, excluded or otherwise ineligible for participation in a Federal health care program; and (iii) are not excluded persons listed on any of the following: (a) the Office of the Inspector General List of Excluded Individuals and Entities; (b) the General Services Administration's Excluded Parties List; and (c) the Office of Foreign Asset Control's Specially Designated Nationals List. If any refunds of Patient accounts of District are required to be refunded to or offset by any government and commercial Payor as the direct result of a breach of the foregoing warranties (such a refund, an "Excluded Person Refund"), Contractor shall not be required to refund to District any commissions or fees earned or previously paid to Contractor as a result of its collection of such Excluded Person Refund or otherwise include such Excluded Person Refunds in its calculation of Ambulance Transport Net Collections and First Responder Net Collections as set forth herein.
 7. District agrees that it will forward to Contractor copies of checks, or other payment documentation requested by Contractor relating to the services provided under this Contract.
 8. District agrees to notify Contractor in the event that their Electronic Patient Care Reporting (ePCR)

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vendor performs any system upgrades. Notification may be made in writing to support@Intermedix.com.

D. FEES AND METHOD OF PAYMENT.

1. Fees. District shall pay Contractor a monthly amount representing fees for the services provided by Contractor, computed as follows:
 - a. Two and Ninety-Five Hundredths percent (2.95%) of all monies collected by Contractor for ambulance transport accounts provided by District less refunds ("Ambulance Transport Net Collections"), plus
 - b. Fifteen Percent (15.00%) of all monies collected by Contractor for first responder accounts provided by District less refunds ("First Responder Net Collections").
2. Invoices. Contractor shall submit monthly invoices for fees for the services to Contra Costa County Fire Protection District ATTN: Fiscal Special, Accounts Payable. District shall pay the amount invoiced within thirty (30) days of receipt of such invoice. In the event District disputes any part of the invoiced amounts, such dispute shall be raised in writing to Contractor within such thirty (30) day period. Contractor shall respond to any such notice of dispute within thirty (30) days of receipt thereof.
3. Bank Accounts. District agrees that it will be solely responsible for the cost and maintenance of any and all of District's bank accounts, lock-box, and/or remote deposit services. District, should it elect to participate in any credit card acceptance program, agrees to assume and be responsible for all costs associated with such program.
4. Taxes. If applicable to District, all amounts payable under this Contract are exclusive of all sales, use, value-added, withholding, and other taxes and duties. District shall promptly pay, and indemnify Contractor against, all taxes and duties assessed in connection with any such amounts, this Contract and its performance by any authority within or outside of the U.S., except for taxes payable on Contractor's net income.

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SPECIAL CONDITIONS

Contractor and District agree that these Special Conditions modify the General Conditions of the Contract and the HIPAA Business Associate Attachment to the Contract, and are part of the Contract.

1. References. All references in the General Conditions and the HIPAA Business Associate Attachment to "County" shall be deemed references to "District". The "Covered Entity" under the HIPAA Business Associate Attachment is District.

2. The first paragraph of Section 3 (**Records**) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"3. Records. Contractor must keep and make available for inspection and copying by authorized representatives of the District, the State of California, and the United States Government, the Contractor's records pertaining to this Contract as may be required by the District."

3. Section 3(b) (**Access to Books and Records of Contractor, Subcontractor**) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"b. Access to Books and Records of Contractor, Subcontractor. Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the District, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and its related books, documents and records necessary certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the District, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records related to this Contract to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor."

4. Section 5(b) (**Failure to Perform**) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"i. Failure to Perform. If either party to this Contract believes the other party has failed to perform or observe any material term, covenant or provision of this Contract (a "Default"), the non-defaulting party shall deliver a written notice to the other party

specifying the nature of the failure of performance and request a cure ("Notice to Cure"). Within thirty (30) days following the date of the mailing of the Notice to Cure, the receiving party shall cure the Default or, if the Default is not reasonably capable of cure within thirty (30) days, the defaulting party will be allowed to cure such Default if it provides the non-defaulting party with a good faith plan to cure such Default, but only for so long as it diligently pursues cure of such Default and provides evidence thereof to the non-defaulting party. If the defaulting party fails to cure such Default within thirty (30) days of the date the Notice to Cure is mailed or fails to provide a good faith plan to cure a Default incapable of cure within thirty (30) days, or fails to diligently pursue a cure of such Default incapable of cure within thirty (30) days, then, in addition to any other rights available to the non-defaulting party under law or equity, the non-defaulting party may terminate this Contract by providing written notice to the other party.

- ii. Termination Due to Bankruptcy. If District or Contractor: (i) apply for or consent to the appointment of a petition in bankruptcy; (ii) make a general assignment for the benefit of creditors; (iii) file a petition or answer seeking reorganization or arrangement with creditors; (iv) take advantage of any insolvency, or (v) if any order, judgment, or decree shall be entered by any court of competent jurisdiction on the application of a creditor or otherwise, adjudicating either party bankrupt or approving a petition seeking reorganization of either party, or the appointment of a receiver, trustee or liquidator of either party or all or a substantial part of its assets (subsections (i) through (v), each a "Bankruptcy Event"), this Contract shall terminate automatically and immediately upon written notice from the other party to the party who is the subject of a Bankruptcy Event.
- iii. Rights Upon Termination. If this Contract is terminated for any reason, except for termination based on breach of this Contract by Contractor, Contractor shall be entitled to recover when due and payable hereunder, all amounts owed to Contractor hereunder accrued but unpaid as of the date of termination. For a period of ninety (90) days following termination of this Contract (the "Transition Period"), Contractor, at its sole discretion and upon written notice to District of its election to do so, may continue its billing and collection efforts as to those accounts referred to Contractor prior to the effective date of termination, subject to the terms and conditions of this Contract, for the fees set forth in this Contract. At the end of the Transition Period, Contractor shall return all records to District in a commercially standard format on a commercially standard media acceptable to District; provided, however, that Contractor may keep any copies of records as required by applicable law. The expiration or termination of this Contract, for whatever reason, will not relieve a party that has breached this Contract from liability for damages resulting from such breach, and will not destroy or diminish the binding force and effect of any of the provisions of this Contract that by their express terms survive the expiration or termination hereof."

5. Section 6 (**Entire Agreement**) of the General Conditions is hereby amended by deleting the word "Agreement" from the title of the Section and replacing it with "Contract".

6. Section 16 (**Confidentiality**) of the General Conditions is hereby deleted in its entirety and replaced with the following:

“16. Confidentiality and HIPAA Business Associate Obligations.

- a. **Confidentiality Laws.** To the extent allowed under the California Public Records Act (California Government Code Section 6250 et seq., the “Public Records Act”), Contractor and District agree to comply, and to require its officers, partners, associates, agents and employees, to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor and District agree to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
- b. **Confidential Information.**
 - i. **Definition.** As used herein the term, “Confidential Information” means any nonpublic information pertaining to District employees or District operations, and Contractor’s proprietary information and trade secrets regarding its business, and any other information that a party marks confidential. The term “Confidential Information” does not include information which the party receiving the information can document: (A) was in the possession of or known by it without an obligation of confidentiality prior to receipt of the information; (B) is or becomes general public knowledge through no act or fault of the receiving party; (C) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality; and (D) is independently developed by the receiving party without the use of any Confidential Information or violation of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), or the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”). District’s Confidential Information includes, but is not limited to, data, medical records, records concerning any individual relating to services provided, employment records, personnel data, payroll data, passwords to District computer systems, methods of accessing District computers and data, proprietary software, and any information or documents identified as confidential in a writing signed by District, and delivered to Contractor. Contractor’s Confidential Information expressly includes, without limitation, proprietary technical, marketing, financial, personnel, planning information.
 - ii. **Use and Disclosure.** Either party to this Contract may disclose Confidential Information (the “Discloser”) to the other party (the “Recipient”). Except as expressly permitted by this Contract or the HIPAA Business Associate Attachment attached to this Contract as Exhibit B to this Contract (the “HIPAA BAA”), and subject to applicable law, the Recipient shall:
 - A. not disclose Discloser’s Confidential Information except: (1) to the employees or contractors of the Recipient to the extent that they need to

know that Confidential Information for the purpose of performing the Recipient's obligations under this Contract, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this subsection (b), or (2) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Recipient will promptly notify the Discloser of such obligation;

- B. use the Discloser's Confidential Information only for the purpose of performing Recipient's obligations under this Contract;
 - C. use all reasonable care in handling and securing the Discloser's Confidential Information, and employ all reasonable data security measures that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance; and
 - D. use and disclose Confidential Information that contains Protected Health Information as defined and in accordance with the terms of HIPAA BAA attached to this Contract.
- iii. **Public Records Act.** If District receives a request under the Public Records Act for disclosure of information that Contractor has specifically marked "Confidential" or "Proprietary," District will provide Contractor with written notice of such request (the "Notice of Request for Disclosure"). If Contractor has a reasonable basis for contending that the disclosure of such information is not required by the Public Records Act, Contractor shall, within eight (8) days following the date of mailing of the Notice of Request for Disclosure, notify District in writing of its objection to disclosure of the information and the basis therefor. If District determines that the information requested is not exempt from disclosure and intends to release the requested information in compliance with the Public Records Act, then it will provide written notice of such intent to Contractor ("Notice of Disclosure"), and the Contractor shall then have ten (10) days from the date of the Notice of Disclosure to seek relief from disclosure required under the Public Records Act in court. If District receives no written objection from Contractor within ten (10) days of the date of the Notice of Disclosure, District may disclose the information referenced in the Notice of Disclosure. Contractor is responsible for any attorneys' fees or costs District incurs as a result of Contractor's objection to disclosure.
- c. **Return of Confidential Information.** Upon the expiration or termination of this Contract, and subject to applicable law, the Recipient of Confidential Information will return it to the Discloser, and destroy or erase all of the Discloser's Confidential Information in tangible form, and the Recipient will promptly certify in writing to the Discloser that it has done so.
- d. **HIPAA Business Associate Exhibit/Changes In HIPAA.** Each party agrees to its obligations set forth in the HIPAA BAA attached to this Contract. The HIPAA BAA constitutes the complete and exclusive agreement of the parties with respect to Contractor's obligations regarding Protected Health Information, superseding and replacing any and all prior communications, representations, and understandings (both written and oral) regarding such subject matter; provided, however, that in the event of any additions, modifications or amendments to any

statute or regulation including HIPAA, the HITECH Act, or future federal regulations adopted pursuant thereto, then Contractor and District shall promptly enter into negotiations to revise the HIPAA BAA to reflect such changes.

- e. **Right to Injunctive Relief.** The parties expressly acknowledge and agree that the breach, or threatened breach, by a party of any provision of this Section 16 may cause the other party to be irreparably harmed, and that the harmed party may not have an adequate remedy at law. Therefore, the parties agree that upon a perceived breach of this Section 16, or a threatened breach, the harmed party may seek injunctive relief to prevent the other party from commencing or continuing any action constituting such breach. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to either party at law or in equity.

7. Section 18 (**Indemnification**) of the General Conditions is hereby deleted in its entirety and replaced with the following:

- “18. **Indemnification.** Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney’s fees and costs. Contractor’s obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.”

8. Section 25 (**Copyrights, Rights in Data, and Works Made for Hire**) of the General Conditions is hereby modified by deleting the word “Agreement” from the third sentence therein and replacing it with “Contract”.

9. A new Section 30 (**Limitation of Liability**) is added to the General Conditions immediately following Section 29 (No Implied Waiver) as follows:

- “30. **Limitation of Liability.** IN NO EVENT WILL A PARTY TO THIS CONTRACT BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM THE PERFORMANCE OF THIS CONTRACT, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE.”

10. A new Section 31 (**Cyberinsurance**) is added to the General Conditions immediately following Section 30 (Limitation of Liability) as follows:

“31. **Cyberinsurance.** Contractor shall provide commercial cyberinsurance, in form and substance satisfactory to District, including without limitation, coverage for loss of data, breaches of personally identifiable information, call center services, credit monitoring remedies, and identity restoration services. Contractor shall cause such insurance to be endorsed to include District and its officers and employees as additional insureds. Such policies must constitute primary insurance as to District and its officers, agents, and employees, so that other insurance policies held by them or their self-insurance programs will not be required to contribute to any loss covered under Contractor’s insurance policy or policies. Contractor shall provide District with a copy of the endorsement making the District an additional insured on its commercial cyberinsurance policies as required herein no later than the effective date of this Contract.”

11. A new Section 32 (Infringement Indemnification) is added to the General Conditions immediately following Section 31 (Cyberinsurance) as follows:

“32. **Infringement Indemnification.** If a third party claims that Contractor’s billing system infringes any United States patent, copyright, trade secret or similar intellectual property right, Contractor shall defend District against such claim at Contractor’s expense and pay all damages that a court finally awards against District. If such a claim is made or appears possible, Contractor shall, within sixty (60) days of such claim, and at its option: (a) secure for District the right to continue to use the infringing portion of the billing system; or (b) modify or replace the billing system so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Contractor shall require District to stop using the infringing module(s) of the billing system, and Contractor shall refund District an amount equal to the fees paid for use of the billing system that were unrealized by District. The foregoing notwithstanding, Contractor shall have no obligation to indemnify District for any infringement claim based on District’s modification or misuse of the billing system, if the claim would have been avoided had the billing system not been modified or misused.”

12. Section 2(n) (**Associate’s Insurance**) of the HIPAA Business Associate Attachment to the Contract is hereby amended by deleting the second sentence thereof and replacing it with the following:

“Associate will obtain, keep in force and maintain insurance with appropriate limits, as determined by County, at its sole discretion, that will cover losses that may arise from any breach of this Attachment, breach of security, or any unauthorized use or disclosure of Protected Information.”

13. Section 2(o) (**Notification of Breach**) of the HIPAA Business Associate Attachment to the Contract is hereby amended by deleting the first sentence thereof and replacing it with the following:

“During the term of the Agreement, Associate shall notify County within five (5) calendar days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which 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.”

14. Section 2(p) (**Breach Pattern or Practice by District**) of the HIPAA Business Associate Attachment to the Contract is hereby amended by deleting the third sentence thereof and replacing it with the following:

“Associate shall provide written notice to County of any pattern of activity or practice of County that Associate believes constitutes a material breach or violation of the County’s obligations under the Agreement or Attachment within ten (10) days of discovery and shall meet with County to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.”

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1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
 - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
 - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section applies only if the Payment Limit of this Contract exceeds \$5,000.

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5. Termination and Cancellation.

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. Modifications and Amendments.

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$100,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$100,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

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10. Choice of Law and Personal Jurisdiction.

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. Conformance with Federal and State Regulations and Laws. Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. No Waiver by County. Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. Subcontract and Assignment. This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. Independent Contractor Status. The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Contractor is not a County employee. This Contract does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. Conflicts of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government

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Code section 1090. In addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality**. To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services**. Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification**. Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance**. During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
 - a. **Commercial General Liability Insurance**. For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to

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County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
 - c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
 - d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice

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requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.** (A) If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements. (C) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County. If any such audit is required, Contractor must provide County with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the

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contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

28. **Authorization**. Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver**. The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.

HIPAA BUSINESS ASSOCIATE ATTACHMENT

To the extent, and as long as required by the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, this HIPAA Business Associate Attachment ("Attachment") supplements and is made a part of the Contract identified as Number _____ (hereinafter referred to as "Agreement") by and between a Covered Entity (Contra Costa County for its Health Services Department, hereinafter referred to as "County") and Business Associate (the Contractor identified in the Agreement, hereinafter referred to as "Associate").

- A. County wishes to disclose certain information to Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI"), defined below.
- B. County and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Agreement as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and the regulations promulgated thereunder (collectively, the "HIPAA Regulations"), and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule, defined below, require County to enter into a contract containing specific requirements with 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 and contained in this Attachment.

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

1. **Definitions.** As used in this Attachment, the following terms have the following meanings:
 - a. **Breach** has the meaning given to such term under the HITECH Act set forth at 42 U.S.C. Section 17921.
 - b. **Business Associate** ("Associate") means an individual or entity that provides services, arranges, performs or assists in the performance of activities on behalf of the County and who uses or discloses PHI, pursuant to the HIPAA Regulations including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
 - c. **Covered Entity** ("County") means Contra Costa County for its Health Services Department.
 - d. **Data Aggregation** has the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501, as in effect or as amended.
 - e. **Designated Record Set** has the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501, as in effect or as amended.
 - f. **Electronic Media** is:
 - (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
 - (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media.

- g. **Electronic Protected Health Information (ePHI)** is any Protected Health Information that is stored in or transmitted by electronic media.
- h. **Electronic Health Record** has the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- i. **Health Care Operations** has the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501, as in effect or as amended.
- j. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. Parts 160 and 164, as in effect or as amended.
- k. **Protected Health Information** ("PHI") means any information in any form or medium, including oral, paper, or electronic: (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).
- l. **Protected Information** means PHI provided by County to Associate or created or received by Associate on behalf of the County in connection with the Agreement.
- m. **Required by Law** has the same meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103.
- n. **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- o. **Security Rule** means the standards for protecting the security of electronic Protected Health Information in 45 C.F.R. Parts 160 and 164, as in effect or as amended.
- p. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to said Act including, but not limited to, 42 U.S.C. Section 17932(h).

Terms used, but not defined, in this Attachment will have the same meanings as those terms are given in the HIPAA Privacy Rule.

2. **Obligations of Associate.**

- a. **Permitted Uses.** Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Agreement and as permitted under the Agreement and this Attachment, or as Required by Law. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act.
- b. **Permitted Disclosures.** 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 County. However, Associate may disclose Protected Information (i) in a manner permitted pursuant to the Agreement and this Attachment, (ii) for the proper management and administration of Associate, (iii) as Required by Law, or (iv) for Data Aggregation purposes for the Health Care Operations of County. To the extent that Associate discloses Protected Information to a third party, 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 Attachment 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

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to immediately notify Associate or any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach.

- c. **Prohibited Uses and Disclosures.** Associate shall not use or disclose Protected Information for fundraising or marketing purposes. 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 services to which the PHI solely relates (42 U.S.C. Section 17935(a)). Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of County and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by County to Associate for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Information that it creates, receives, maintains, or transmits on behalf of County as required by the Agreement or this Attachment and in accordance with 42 C.F.R. Sections 164.308, 164.310, and 164.312. Associate shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316.
- e. **Reporting of Improper Use or Disclosure.** Associate will notify County in writing within twenty-four (24) hours of its discovery of any security incident or any other use or disclosure of Protected Information not permitted by the Agreement or this Attachment of which Associate or its officers, employees or agents become aware, without unreasonable delay, and in no case later than ten (10) calendar days after discovery. Associate will take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- f. **Associate's Agents.** Associate agrees to ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Associate with respect to such Protected Information and implement the safeguards required by paragraph c, above, with respect to ePHI. Associate agrees to implement and maintain sanctions against agents and subcontractors who violate such restrictions and will mitigate the effects of any such violation.
- g. **Access to Protected Information.** Associate agrees to make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to County for inspection and copying within ten (10) days of request by County to enable County to fulfill its obligations under the Privacy Rule set forth at 45 C.F.R. Section 164.524. If Associate maintains an Electronic Health Records, Associate shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of Protected Information.** Within ten (10) days of receipt of a request from County for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors will make such Protected Information available to County for amendment and incorporate any such amendment to enable County to fulfill its obligations under the Privacy Rule set forth at 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify County within five (5) calendar days of the request, without unreasonable delay. County, and not Associate, will determine if and when to deny a request for an amendment of Protected Information maintained by Associate.
- i. **Availability and Accounting of Information.** Within ten (10) calendar days of notice by County of a request for an accounting of disclosure of Protected Information, Associate and its agents or subcontractors shall make available to County the information required to provide an accounting of disclosures to enable County to fulfill its obligations under the Privacy Rule set forth at 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 County. As set

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forth in, and as limited by, 45 C. F. R. Section 164.528, Associate need not provide an accounting to County of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 C.F.R. Section 164.502; (ii) to individuals of PHI about them as set forth in 45 C. F. R. 164.502; (iii) to persons involved in the individual's care or other notification purposes as set forth in 45 C. F. R. Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 C.F.R. Section 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. 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 Associate maintains an electronic health record and is subject to this requirement. At a minimum, such information must 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 the 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 Associate or its agents or subcontractors, Associate will send the request, in writing, to County within five (5) calendar days of receipt. It will then be County's responsibility to prepare and deliver or otherwise respond to the accounting request. Associate will not disclose any Protected Information except as set forth in Section 2.b. of this Attachment.

- j. **Governmental Access to Records.** Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the HIPAA Privacy Rule. Associate agrees to provide County with copies of any Protected Information that Associate provides to the Secretary of the U.S. Department of Health and Human Services at the same time Associate provides such Protected Information to the Secretary of the U.S. Department of Health and Human Services.
- k. **Minimum Necessary.** Associate and its agents and subcontractors will only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. 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.** Associate acknowledges that Associate has no ownership rights with respect to Protected Information.
- m. **Retention of Protected Information.** Except as provided in Section 3.c. of this Attachment, Associate and its subcontractors and agents must retain all Protected Information throughout the term of the Agreement and must continue to maintain the information required by Section 2.h. of this Attachment for a period of six (6) years after termination or expiration of the Agreement. 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 Associate maintains an electronic health record and is subject to this requirement.
- n. **Associate's Insurance.** In addition to any other insurance requirements specified in the Agreement, Associate will, at its sole cost and expense, insure its activities in connection with this Attachment. Associate will obtain, keep in force and maintain insurance or equivalent program(s) of self-insurance with appropriate limits, as determined by County, at its sole discretion, that will cover losses that may arise from any breach of this Attachment, breach of security, or any unauthorized use or disclosure of Protected

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Information. It is expressly understood and agreed that the insurance required herein does not in any way limit the liability of Associate with respect to its activities in connection with this Attachment.

- o. **Notification of Breach.** During the term of the Agreement, Associate shall notify County within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which 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. 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. In the event the breach was caused, directly or indirectly, by negligent misconduct on the part of Associate, Associate's agents or subcontractors, Associate will be solely responsible for all damages resulting from the breach.
- p. **Breach Pattern or Practice by County.** Pursuant to 42 U.S.C. Section 17934(b), if the Associate knows of a pattern of activity or practice of County that constitutes a material breach of violation of the County's obligations under the Agreement or Attachment, the Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Associate must terminate the Agreement, if feasible, or if termination is not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services. Associate shall provide written notice to County of any pattern of activity or practice of County that Associate believes constitutes a material breach or violation of the County's obligations under the Agreement or Attachment within five (5) days of discovery and shall meet with County to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- q. **Certification and Enforcement.** At any time during the term of the Agreement, and without advance notice, County and its authorized agents or contractors may examine Associate's facilities, systems, procedures and records as may be necessary to determine the extent to which Associate's security safeguards comply with HIPAA, HITECH Act, other HIPAA Regulations, and this Attachment.

3. **Termination.**

- a. **Material Breach.** A breach by Associate of any material provision of this Attachment, as determined by County, constitutes grounds for termination of the Agreement pursuant to General Conditions Paragraph 5. (Termination and Cancellation), Subsection b. (Failure to Perform), of the Agreement.
- b. **Reasonable Steps to Cure Breach.** If County knows of an activity or practice of Associate that constitutes a material breach or violation of Associate's obligations under the provisions of this Attachment, County may, in its sole discretion, terminate the Agreement pursuant to Section 3.a., above, or provide Associate an opportunity to cure such breach or end such violation. If Associate's efforts to cure such breach or end such violation are unsuccessful, County will either (i) terminate the Agreement, if feasible or (ii) if termination of the Agreement is not feasible, County will report Associate's breach or violation to the Secretary of the U.S. Department of Health and Human Services.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Associate must return or destroy, at the exclusive option of County, all Protected Information that Associate, its agents and subcontractors, still maintain in any form, and Associate may not retain any copies of such Protected Information. If return or destruction is not feasible, Associate may retain the Protected Information and must continue to extend the protections of Sections 2.a., 2.b., 2.c., and 2.d. of this Attachment to such information and limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible. If Associate destroys the Protected Information, Associate must verify in writing to County that such Protected Information has been destroyed.

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4. **Disclaimer.** County makes no warranty or representation that compliance by Associate with this Attachment, HIPAA, HITECH Act, or the HIPAA Regulations, will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
5. **Changes to HIPAA and its regulations.**
- a. **Compliance with Law.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that changes to this Attachment may be required to ensure compliance with such developments. The parties agree to take such action(s) as may be necessary to implement the standards and requirements of HIPAA, HITECH Act, the HIPAA Regulations, and other applicable state and federal laws relating to the security and/or confidentiality of PHI.
 - b. **Negotiations.** In the event that a state or federal law, statute, or regulation materially affects the Agreement or this Attachment, the parties agree to negotiate immediately and in good faith any necessary or appropriate revisions to the Agreement or this Attachment. If the parties are unable to reach an agreement concerning such revisions within the earlier of thirty (30) calendar days after the date of notice seeking negotiations or the effective date of a change in law or regulations, or if the change is effective immediately, then County may, in its sole discretion, immediately terminate the Agreement upon written notice to Associate.
6. **Miscellaneous Provisions.**
- a. **Assistance in Litigation or Administrative Proceedings.** Associate will make itself, and any subcontractors, employees or agent assisting Associate in the performance of its obligations under the Agreement, available to County, at no cost to County, to testify as witnesses or otherwise, in the event of litigation or administrative proceedings against County, its officers or employees, based upon a claimed violation of HIPAA, HITECH Act, the HIPAA Regulations, or other laws relating to security and privacy and arising out of the Agreement or this Attachment.
 - b. **No Third Party Beneficiaries.** Nothing express or implied in this Attachment is intended to confer, nor shall anything herein confer, upon any person other than County, Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
 - c. **Interpretation.** The provisions of this Attachment prevail over any provisions in the Agreement that may conflict, or appear to be inconsistent with, any provision of this Attachment. This Attachment and the Agreement will be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Attachment will be resolved in favor of a meaning that complies, and is consistent, with HIPAA and the Privacy Rule.
 - d. **Notice to Secretary.** Associate understands and agrees that if County knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of Associate's obligations under this Attachment and the breach or violation continues and termination of the Agreement is not feasible, County will report the problem to the Secretary of the U.S. Department of Health and Human Services, as required by HIPAA, HITECH Act, and the HIPAA regulations.
 - e. **Survival.** The obligations of Associate pursuant to Sections 2.1. and 3.c. of this Attachment survive the termination or expiration of the Agreement.