

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND FORWARD ADVANTAGE**

This Agreement is entered into this \_\_\_\_\_, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Forward Advantage Holdings, Inc. dba Forward Advantage, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas it is necessary and desirable that Contractor be retained for the purpose of professional services and license for Imprivata system.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**2. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed **NINE HUNDRED FORTY-NINE THOUSAND SIX HUNDRED FIFTY-SIX DOLLARS (\$949,656)**. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**3. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from June 25, 2024 through June 24, 2029.

**4. Termination**

This Agreement may be terminated by Contractor or by the Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

## **5. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

## **6. Relationship to Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

## **7. Hold Harmless**

### **a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However,

Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### **1. Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### **8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County’s prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**9. Insurance**

**9.1. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County’s Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor’s coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**9.2. Workers’ Compensation and Employer’s Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**9.3. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability..... \$1,000,000 ,
- (b) Motor Vehicle Liability Insurance..... \$1,000,000 ,
- (c) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

9.4. Special Insurance Requirements - Cyber Liability

Cyber Liability	<p><b>\$5,000,000</b> per occurrence for Privacy and Network Security,</p> <p><b>\$1,000,000</b> per occurrence for Technology Errors and Omissions</p> <p>To be carried at all times during the term of the Contract and for three years thereafter.</p>
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If the work involves services or goods related to computers, networks, systems, storage, or access to County data or to any data that may, alone or in combination with other data, become Confidential Information or Personally Identifiable Information, the following insurance is required.

(1) Privacy and Network Security

During the term of the Contract and for three years thereafter, maintain coverage for liability and remediation arising out of unauthorized use of or access to County data or software within Contractor’s network or control. Provide coverage for liability claims, computer theft, extortion, network breach, service denial, introduction of malicious code, loss of Confidential Information, or any unintentional act, error, or omission made by users of Contractor’s electronic data or systems while providing services to the County. The insurance policy must include coverage for regulatory and PCI fines and penalties, crisis management expenses, and business interruption. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

(2) Technology Errors and Omissions

During the term of the Contract and for three years thereafter, maintain coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products, including at a minimum, coverage for systems analysis, design, development, integration, modification, maintenance, repair, management, or outsourcing any of the foregoing.

**10. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in

effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **11. Non-Discrimination and Other Requirements**

### **11.1. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **11.2. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

### **11.3. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

### **11.4. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

### **11.5. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

### **11.6. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s)

of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

#### 11.7. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

#### 11.8. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

### **12. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide

that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

**13. Access and Retention of Books and Records**

Upon written request of the Secretary of Health and Human Services, the Comptroller General, or County, or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor's representative by virtue of this Agreement.

**14. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**15. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.



## 16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Thomas Collins/Director, Portfolio and Program Management  
Address: 801 Gateway Blvd, South San Francisco, CA, 94080  
Telephone: (628) 258-3275  
Email: [tcollins@smcgov.org](mailto:tcollins@smcgov.org)

With Copy To:

County Attorney's Office  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Facsimile: (650) 363-4034

In the case of Contractor, to:

Name/Title: Mike Knebel, CEO  
Address: 7269 N. First Street, Suite 102, Fresno, CA 93720  
Telephone: (559) 447-1777  
Email: [mike.knebel@forwardadvantage.com](mailto:mike.knebel@forwardadvantage.com)

With Copy to:

Todd Ledyard  
[todd.ledyard@forwardadvantage.com](mailto:todd.ledyard@forwardadvantage.com)

## 17. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

## 18. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

- A. Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.

- B. Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.
- C. Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when services were provided to the County. Contractor must substantiate in writing to the County the actual services rendered and the specific dates. The County will reimburse for travel at 75% of the maximum reimbursement amount for the actual costs of meals and incidental expenses on the day preceding and/or the day following days when services were provided to the County, provided that such reimbursement is reasonable, in light of travel time and other relevant factors, and is approved in writing by authorized County personnel.
- D. Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. "Local Travel" means travel entirely within a fifty-mile radius of the Contractor's office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor's use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.
- E. The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/portal/content/104877> or by searching [www.gsa.gov](http://www.gsa.gov) for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current CONUS rate; for work being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.
- F. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride-shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.
- G. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.
- H. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.

## 19. Prevailing Wage

When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2- Wages, Chapter 1, Part 7, Division 2, Section 1770 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations

## **20. Additional Technology Terms and Conditions**

### **20.1. Disentanglement**

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that County shall pay Contractor on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree to the specific electronic format.

Upon any termination of the Agreement, regardless of the nature or timing of the termination, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue to receive from Contractor all maintenance and support services, at the then-applicable rates provided, however, that the annual support and maintenance fee shall be prorated and paid in advance on a monthly basis during such time, and the amount of such support and maintenance fee shall remain subject to the limitations set forth in the Agreement regarding any increase in such fee.

### **20.2. Warranty**

This Software is subject to a warranty. Licensor warrants to Licensee that the Software will perform according to the Software's documentation at the time of the implementation and that, to the best of Licensor's knowledge, Licensee's use of this Software according to the documentation is not an infringement of any third party's intellectual property rights. If the Software is subsequently upgraded, repaired or otherwise changed by Licensor, Licensor warrants to Licensee that the Software will continue to perform according to its original documentation as well as according to updated documentation to the extent new features are added. To the extent permitted by law, the above-stated warranty replaces all other warranties, express or implied, and Licensor disclaims all implied warranties including any implied warranty of title, merchantability, or of fitness for a particular purpose. No agent of Licensor is authorized

to make any other warranties or to modify this warranty. Licensee is required to inform Licensor of any potential breach of this warranty within one year of identifying any performance defect in the Software that contradicts the expected performance as outlined in the original and/or updated documentation. Licensee will document any such potential breach of warranty by utilizing the Support Procedure outlined in the Exhibit <X> of this agreement. In the event of a breach of this warranty, Licensee's remedies include the following, to be selected at Licensee's sole discretion: if Licensee agrees that the Software's functionality is still partially acceptable despite the area related to the breach of warranty, Licensor shall provide a refund for the full amount Licensee reasonably attributes to the partial breach of warranty; if Licensee determines that the Software is materially in breach of warranty, Licensor shall issue a full refund, including for amounts already paid and in relation to which the Software was non-functional; and/or any other remedy available at law.

## **21. Intellectual Property**

### **21.1. Intellectual Property Rights**

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.

6. Contractor agrees that before commencement of any subcontract work it will incorporate this Section to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.

**22. Rehabilitation Act of 1973**

Refer to the attachment required to be completed by the Contractor.

SIGNATURE PAGE TO FOLLOW

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Forward Advantage

DocuSigned by:  
*Mike Knebel*  
44350F5F256146A...

May 10, 2024

Mike Knebel

Contractor Signature

Date

Contractor Name (please print)

---

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

**Exhibit A  
Scope of Work**

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

**Scope:**

San Mateo County (“County”) would like to engage the Forward Advantage Implementation Services to provide professional services consulting with the installation, setup, and configuration of the Imprivata Confirm ID software suite with Epic Hyperspace/Hyperdrive.

Specifically, San Mateo County desires services assistance with Electronic Prescribing of Controlled Substances (EPCS) and the two factor authentication workflows, institutional identity proofing (supervised enrollment), optional individual Identity proofing, and audit controls of the Imprivata Confirm ID solution.

**Note:**

This Statement of Work (tasks) assumes that a pre-existing installation of Imprivata OneSign is in place in the customer’s environment. This environment is configured to work with the customer’s Epic instance where the Epic Hyperspace/Hyperdrive client is running within Citrix (Published Application) and the OneSign Agent is installed on both the Workstation/Endpoint as well as the customers Citrix Servers.

**Details of Services Provided under this Statement of Work:**

Based on the San Mateo County Health requirements, Forward Advantage will provide the following services (delivered both onsite and remotely) to ensure a successful implementation of Confirm ID (EPCS) at San Mateo County Health. Below is a list of the activities that are included in the implementation as well as the estimated timeline.

<b>Project Management/Readiness</b>	
<b>Activity</b>	<b>Description</b>
Implementation Kick-off & Project Planning	A conference call between IT staff, the Project Manager, and the Technical Services Consultant to ensure project readiness, define project roles, set expectations, and articulate project definition. Once onsite the project team will construct a project plan that incorporates major deliverables and milestones.
Project status updates	Periodic 60-minute status meetings to be schedule by the Technical Services Consultant and the Customer Project Manager.
Project Readiness	<ul style="list-style-type: none"> <li>• Review project resource allocation.</li> <li>• Perform Technology discovery and clinical walkthrough.</li> <li>• Finalize solution design.</li> <li>• Recruit clinical advocates.</li> <li>• Define the awareness, enrollment, and deployment models.</li> <li>• Identify and onboard enrollment trainers/approvers.</li> <li>• Ensure Imprivata Platform Readiness (G4 Appliance and current version of Imprivata OneSign/Confirm ID infrastructure.)</li> </ul>
<b>Appliance Setup, Configuration, and Validation</b>	

Activity	Description
Appliance Preparation & Set-up	The Technical Services Consultant will work with the customer's Technical Resources for the installation of the Confirm ID License Key and Appliance Set-up.
Configure Base Settings	The Technical Services Consultant will work with the customer's Technical Resources to configure Confirm ID base settings within the Imprivata Appliances in order that Signing Workflows can be configured.
Creating and Managing Confirm ID Signing Policies (Workflows)	<p>The Technical Services Consultant will work with the customer's Confirm ID Administrator to develop, establish, and configure Signing Policies within Confirm ID. This includes the authentication modalities to be utilized by providers when ordering controlled substances.</p> <p><i>Imprivata Supports a wide-range of two-factor authentication including AD/Network Password, Fingerprint, Imprivata ID (OTP Token, Push to Accept, and Hands Free) as well as Hardware Tokens.</i></p>
Epic Configuration	<p>The Technical Services Consultant will work with customer's Confirm ID Administrator and customer's Epic Resource to configure:</p> <ul style="list-style-type: none"> <li>• Create Category Item (ImprivataAuthTwoFactorEPCS)</li> <li>• EOG Master File</li> <li>• Specify Number of Factors (ImprivataAuthTwoFactorEPCS = 2)</li> <li>• Configuration of workstation records. Context E-Prescribing Controlled Medications – First Context (Primary Devices)</li> </ul>
Epic Configuration <i>For Mobile EPCS - Epic Haiku &amp; Canto</i>	<p>The Technical Services Consultant will work with customer's Confirm ID Administrator and customer's Epic Resource to configure:</p> <ul style="list-style-type: none"> <li>• EOG Master File (Authentication Record)</li> <li>• Option 5: Mobile EPCS Device</li> <li>• Planform: Mobile</li> <li>• Mobile Auth Type: Web Form</li> <li>• Web Form Base URL: The integration URL from the Imprivata Integration, except remove everything including and after '&amp;tenant...'</li> <li>• Seems in newer versions, Imprivata has cleaned this url up and its just a direct copy.</li> <li>• Enter the Tenant ID where it says Organization ID.</li> <li>• Token Type: SAML 2</li> <li>• SAML Issuer: Currently, Epic has to parse logs when we initiate a transaction to find this HTTPS URL. R&amp;D is working to see if they can make this more easily accessible via some sort of UI. An example of the SAML Issuer would be: HTTPS://A9882B58-CD0E-4A67-842B58ED0D7E67DF.IMPRCUST.COM</li> </ul> <p><i>Note: Mobile EPCS (Facial Biometrics) is iOS Only, due to the DEA and Camera/Facial Biometric Security Requirements.</i></p>
Defining Enrollment Supervisors	The Technical Services Consultant will work with the customer's Confirm ID Administrator to identify and configure the enrollment supervisors (trainers).



Application Testing with IT (prior to any end-user deployment)	The Technical Services Consultant will work with the customer's Confirm ID Administrator to establish test accounts and begin base testing within an Epic Test Environment for EPCS Signing Events (Two Factor Authentication). <b>This would include testing within Epic Hyperspace/Hyperdrive as well as Epic Haiku &amp; Canto for mobile EPCS.</b>
Workflow Documentation	The Technical Services Consultant will work with the customer's Confirm ID Administrator to document the end user workflows within Epic as well as options for Two Factor Authentication within the Confirm ID solution.
IT Team Training	The Technical Services Consultant will provide Technical Training on the Confirm ID solution and its configuration within the customer's environment. Including the options that are available as well as troubleshooting of the solution.
Train Help Desk & Clinical Champion	The Technical Services Consultant will work with the customer's Confirm ID Administrator to provide two (2) training sessions for the Help Desk and Clinical Champions (typically Clinical Analysts) on the Confirm ID solution. <ul style="list-style-type: none"> <li>• End User Enrollment Process</li> <li>• Signing Policies and Workflow</li> <li>• FAQ's</li> <li>• Basic Troubleshooting</li> </ul>
Enrollment Supervisor Training	The Technical Services Consultant will work with customer's Confirm ID Administrator to provide training for the Enrollment Supervisors <ul style="list-style-type: none"> <li>• Requirements to Enroll End Users</li> <li>• End User Enrollment Process</li> <li>• Workflow for End Users</li> </ul>
Application and user workflow testing	The customer's Confirm ID Administrator will coordinate with the Clinical Champions (typically Clinical Analysts) to test the application and workflow of EPCS within the Epic Application to ensure that the solution is operating as expected.
Coordination of end user enablement	The Technical Services Consultant will work with customer's Confirm ID Administrator to ensure that the initial group of end user (Providers) are enabled within Signing Policies (Confirm ID) and are ready for the supervised Enrollment and initial Deployment. <p><b>Note: In the event; individual identity proofing is necessary, these users (Providers) will be separated and enabled.</b></p>
<i>Optional for Individual Identity Proofing</i> Creating and Managing Confirm ID Policies (Workflows)	The Technical Services Consultant will work with the customer's Confirm ID Administrator to develop, establish, and configure Policies within Confirm ID for the providers who will be perform individual identity proofing.
<i>Optional for Individual Identity Proofing</i> Coordination of end user enablement	The Technical Services Consultant will work with the customer's Confirm ID Administrator to ensure that the initial group of end user (Providers) are enabled within Signing Policies (Confirm ID) and are ready for the individual identity proofing process.
<b>Deployment – San Mateo County Health</b>	
<b>Activity</b>	<b>Description</b>

<p>Epic EHR Go-Live Support</p>	<p>The Technical Services Consultant will work with the Project Manager, Confirm ID Administrator, OneSign Administrator and Desktop Administrator and other Customer resources to install, configure and test Confirm ID. Additionally, the Technical Services Consultant will participate in the Go-Live of the Epic EHR to ensure successful usage of EPCS.</p> <ul style="list-style-type: none"> <li>• Deploy Client Agent             <ul style="list-style-type: none"> <li>• Endpoint Workstations, Citrix Servers</li> </ul> </li> <li>• Deploy Authentication Devices</li> <li>• Shadow End Users for EMR Workflows</li> <li>• Report of Deployment and End User Utilization</li> <li>• Modify Signing Policy Configurations as approved by the customer's team (based on end user feedback)</li> <li>• Monitor end-user activity for issues (Technical, Training, Other)</li> </ul>
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**Proposed Project Schedule:**

The proposed schedule would be as follows (assuming a November 2024 Epic Go-Live):

- Project Kick Off - May 2024
- Solution Build – May-June 2024
- Solution Testing – July 2024
- Epic TDR – August 2024
- Provider Enrollment – September-October 2024
- Epic EHR Go-Live – November 2024

**Project Assumptions:**

1. The Services described in this SOW constitute Forward Advantage’s entire obligation. If the San Mateo County Health requests services in addition to the Services presented in this SOW, the performance of such additional services will require a modification to the Details of Services Provided and an adjustment to the schedule and/or fees to be paid by the San Mateo County Health. The VP of Client Services or lead System Engineer will track any such requests via a change control process and arrange for such services to be rendered.
2. Customer will provide Forward Advantage access to the Customers Administration Center, Epic Test System, Active Directory if applicable, and allow the Services Consultant to ensure infrastructure is functioning properly.
3. Customer will designate a project manager (“Project Manager”) as the principal point of contact throughout the engagement. The Project Manager’s responsibilities include scheduling and planning of the Customer’s resources, coordination of project meetings and requirements gathering sessions, point of escalation and problem and conflict resolution management.
4. The customer will provide the Forward Advantage Services Consultant with remote

access using Global Protect, VDI, a screen-sharing application (MS Teams), or another comparable County approved remote access solution to facilitate the delivery of offsite services and/or troubleshooting as required.

5. Prior to the evaluation phase, Customer is responsible for producing the necessary testing scenarios, which include the consideration for end-user communication workflows.
6. Forward Advantage Services Consultant on-site deployment days are scheduled in minimum quantity of 2 days.
7. The Confirm ID solution services is limited to Two Factor Authentication within the EPCS Workflows of the Epic System.
8. Forward Advantage Services Consultant is not responsible for the EPCS transition once the two-factor authentication is completed. This is in reference to the prescription flowing from Epic to the Pharmacy and/or Pharmacy intermediary.

**Project Roles (Forward Advantage & Imprivata):**

Forward Advantage Technical Services Consultant	<p>This role is responsible for configuring, training, testing and troubleshooting the Imprivata Confirm ID Solution. The Technical Services Consultant will provide information as to best practices for OneSign within Epic facilities as well as approaches that have been successful in other deployments in conjunction with HIS Systems and Clinical Modules.</p> <p>The Technical Services Consultant is not responsible for the direct resolution of defects found within the Imprivata Confirm ID Product or within other systems being utilized by Customer (e.g. Microsoft, Citrix, VMware, HIS System, etc.).</p>
Imprivata Epic Consultant	<p>This role is resource to the Forward Advantage Technical Services Consultant for specific configuration recommendations and/or issues regarding Epic and the Epic Connector. This resource is available during the implementation process.</p>
Imprivata Technical Support	<p>This role is responsible for issues raised during the implementation process (as well as post Implementation). Tier 2 is responsible for review of issue and preparation of information (logs, video files, reproduction steps) in order that this issue can be prioritized with Tier 3 (Engineering).</p>
Imprivata Engineering	<p>This role (Tier 3) is responsible for the resolution of software defects identified and confirmed during the implementation process.</p>

**Changes to Statement of Work**

The hours provided in this Statement of Work are based on the information we have received

**Change Orders**

Occasionally, after a project is underway, the scope of services required can be unexpectedly altered. Significant changes in, or additions to, this scope of work during the project that

require additional time/services from Forward Advantage Implementation Services will require a Change Order to detail a revised Statement of Work. This will ensure that the changes to the Statement of Work are documented, and that both the San Mateo County and Forward Advantage agree to the changes.

A Change Order reflects the new deliverables, activities, and budget for the remainder of the project. It amends the Agreement and Statement of Work from the date on which it is signed.

## Exhibit B Payments

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Descriptions	Quantity	Year 1	Year 2	Year 3	Total
ConfirmID EPCS + Hands Free Authentication Bundle - Premium Support	100	\$ 12,360.00	\$ 12,360.00	\$ 12,360.00	\$ 37,080.00
ConfirmID EPCS + Hands Free Authentication Bundle - Premium Support	275	\$ 31,642.00	\$ 31,642.00	\$ 31,642.00	\$ 94,926.00
Confirm ID for Mobile EPCS	375	\$ 9,540.00	\$ 9,540.00	\$ 9,540.00	\$ 28,620.00
OneSpan License for Hard Token Use	50	\$ 438.00	\$ 438.00	\$ 438.00	\$ 1,314.00
<b>OneSign Licenses:</b>					
Virtual Desktop Access (VDA)	600	\$ 81,097.00	\$ 81,097.00	\$ 81,097.00	\$ 243,291.00
Fingerprint Biometric Identification (FBID)	25				
Single Sign On/Authentication Management (SSO/AM) and Self Service Password Management	5000				
<b>OneSign Appliances:</b>					
Four G4 Virtual Appliances	n/a	\$ -	\$ -	\$ -	\$ -
<b>Licenses Sub-Total:</b>		<b>\$ 135,077.00</b>	<b>\$135,077.00</b>	<b>\$ 135,077.00</b>	<b>\$ 405,231.00</b>
<b>Other Services</b>					
	<b>Quantity</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Total</b>
Confirm ID EPCS for EPIC (Remote/On-Site) Implementation Services	1	\$ 28,000.00	\$ -	\$ -	\$ 28,000.00
Implementation: Travel Expenses	1	\$ 4,000.00	\$ -	\$ -	\$ 4,000.00
Imprivata Fingerprint Reader - FIPS/EPCS*	25	\$ 4,225.00	\$ -	\$ -	\$ 4,225.00
Digipass Go7 Series Token*	50	\$ 3,200.00	\$ -	\$ -	\$ 3,200.00
Estimate (non-binding) for Licenses for Year 4 & 5					\$ 315,000.00
Contingency (Project Contingency and additional hardware)					\$ 190,000.00
<b>Other Services Sub-Total:</b>		<b>39,425.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$ 544,425.00</b>
				<b>Grand Total:</b>	<b>\$ 949,656.00</b>

\* Taxable items

## Attachment H

# Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

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### DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
  1. Nature and extent of PHI included, identifiers and likelihood of re-identification;

2. Identity of the unauthorized person or to whom impermissible disclosure was made;
  3. Whether PHI was actually viewed or only the opportunity to do so existed;
  4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
  - m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
  - n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

## **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or

- the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
  - l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
  - m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
  - n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
  - o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
  - p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
  - q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

### **PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE**

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

### **OBLIGATIONS OF COUNTY**

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

### **PERMISSIBLE REQUESTS BY COUNTY**

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County,



unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

### **DUTIES UPON TERMINATION OF AGREEMENT**

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

### **MISCELLANEOUS**

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

**Attachment I  
Rehabilitation Act of 1973**

**Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended**

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

**Name of 504 Person:** Michelle Pannett

**Name of Contractor(s):** Forward Advantage Holdings, Inc. dba Forward Advantage

**Street Address or P.O. Box:** 7269 N. First Street, Suite 102

**City, State, Zip Code:** Fresno, CA 93720

**I certify that the above information is complete and correct to the best of my knowledge**

**Signature:**  44350F5F256146A...

**Title of Authorized Official:** CEO

**Date:** May 10, 2024

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."