

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN FRANCISCO LITHOTRIPSY GROUP, LLC

This Agreement is entered into this ____ day of _____, 2019, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County" on behalf of San Mateo Medical Center ("SMMC") and San Francisco Lithotripsy Group, LLC, 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 providing portable lithotripsy equipment and support personnel services.

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

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit C—Performance Metrics
- Exhibit E—Corporate Compliance SMMC Code of Conduct
- Attachment I—§ 504 Compliance
- Attachment J – Vendor/Contractor Access Policy

2. 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, including, but not limited to, Exhibits A and C and E, and the Attachments.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement, including but not limited to Exhibits A, C and E and the Attachments, 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 FOUR HUNDRED FIFTY- THOUSAND DOLLARS (\$450,000). 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. All invoices must be approved by the Deputy Director of Acute Care or their designee and paid within 30 days of receipt of the invoice. Invoices must be sent to: SMMC-Accounts-Payable@smcgo.org. Processing time may be delayed if invoices are not submitted electronically.

(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.

9. 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.

10. Insurance

a. 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.

b. 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.

c. 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) 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.

11. 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, and regulations, 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. 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 or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations ("Title 22"), San Mateo Medical Center retains all professional and administrative responsibility for services rendered under this Agreement to the extent that such services are subject to Title 22 and are rendered by a "qualified professional person" as used in Section 70713, and the parties further agree in that instance that this Agreement is otherwise subject to any applicable requirements of Title 22.

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

12. Non-Discrimination and Other Requirements

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall, upon request, report to the County Manager 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 Manager, 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 Manager.

To effectuate the provisions of this Section, the County Manager 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.

h. 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 employees providing services under this Agreement the current Living Wage and providing notice to all employees as required under the Ordinance.

13. 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 if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. 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.

16. 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.

17. 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: San Mateo Medical Center
Attn: Accounts Payable
Address: 222 W 39th Ave

San Mateo, CA 94403
Email: SMMC-Accounts-Payable@smcgov.org

In the case of Contractor, to:

Name/Title: San Francisco Lithotripsy Group, LLC
Address: 9825 Spectrum Dr., Bldg. 3
Austin, TX 78717
Telephone: (888) 252-6575
Facsimile: (512) 831-5338
Email: contracting@healthtronics.com or lisa.bui@healthtronics.com

18. 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.

* * *

Exhibit A

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

A. Lithotripsy equipment and support personnel services including

1. **Equipment.** The machinery, equipment, and other personal property described here, is hereinafter referred to, collectively, as the "equipment". The parties hereto mutually understand, agree, and state that this Agreement is not a joint venture between them and that neither party has an equity or ownership interest in the other, either direct or removed in any degree. Equipment maintenance logs will be made available for review upon requested by SMMC.
 - a. The equipment covered by this Agreement is one (1) portable Extracorporeal Shockwave Lithotripter, transported in a custom-built truck.
 - b. Schedule for use of equipment. Contract shall make the equipment and support personnel services available to SMMC at SMMC's election, at a site or sites identified by SMMC on SMMC's premises, from Monday through Friday, 7:30 a.m. to 5:00 p.m., depending upon SMMC's scheduled day of services.
 - c. Location. During the scheduled day of services, the equipment shall be located at a site within SMMC's premises. Said site shall have all utility hookups and all other conditions, hookups or other means of attachment recommended by Contractor to secure the equipment to SMMC's premises so that the equipment may be operated in the performance of lithotripsy procedures.
2. **Support Personnel.** Contractor shall provide one (1) certified radiology technologist to maintain continuous supervision over the operation of the equipment and to cooperate with those physicians who have been appointed to the Medical Staff of SMMC and granted lithotripsy privileges in performing lithotripsy procedures with the equipment by SMMC. Contractor shall have the sole responsibility for training its personnel pursuant to the standards promulgated by the manufacturer of the equipment for certification to operate the equipment. Such personnel shall meet the non-medical staff credentialing requirements of SMMC. SMMC will assist Contractor and provide Contractor with documentation to permit personnel to meet these requirements. Upon request, Contractor shall provide reasonable evidence of the qualifications of such personnel.
3. Contractor will provide SMMC with annual evaluations, radiology training certifications, and Purified Protein Derivative Tine Test (PPD) results conducted by Contractor's support personnel.
4. Contractor's technologists shall complete an orientation to the SMMC Surgery Department, prior to beginning work.
5. Contractor will provide equipment operations training to the Operating Room Staff at SMMC.

B. Items to be provided by SMMC:

1. **Services.** While the equipment is located on its premises, SMMC shall provide all services and facilities necessary to enable Contractor to properly perform its duties under this Agreement. Contractor requires: a suitable area adjacent to SMMC to park the transport truck; a site within SMMC to operate the equipment according to manufacturer's specifications; access to electrical power, telephone lines, water, and water drainage. In addition, SMMC shall provide certain general medical supplies reasonably necessary for the operation of the equipment including, but not limited to, shockwave electrodes, drugs, medications, x-ray film, IV set-ups, catheters, and stents. SMMC shall provide personnel to assist Contractor's certified radiology technologist with transport of equipment into SMMC. SMMC shall also provide reasonable security protection for Contractor's equipment and Contractor's personnel in order to enable Contractor to properly perform its duties while on SMMC's premises.
2. Under no circumstances shall SMMC or San Mateo County be liable for the acts or omissions of Contractor and Contractor is bound in full by the indemnification language of the Agreement.
3. **Data.** SMMC shall be solely responsible for making available to its medical staff data concerning treatment results from lithotripsy procedures performed with the equipment that is contained in SMMC's medical records. Further, SMMC shall be solely responsible for scheduling patients for the equipment. SMMC shall have in place necessary procedures to ensure that written consent is signed for each procedure; provided, however, that nothing herein shall act to transfer to SMMC any responsibility a physician may have to obtain informed consent from a patient.
4. **Medical Records.** SMMC shall maintain medical records for each patient who receives procedures performed with the equipment at SMMC's premises. Such medical records shall be the property of SMMC and SMMC shall be responsible for the storage, maintenance, and confidentiality of such records, except as to any unauthorized use or access by Contractor or its personnel or representatives. SMMC shall be solely responsible for fulfilling all requirements imposed by law with respect to the preparation, maintenance, security, disclosures, and retention of records concerning procedures performed with the equipment and records of patients receiving treatment with the equipment, except as to any unauthorized use or access by Contractor or its personnel or representatives. To the extent permitted by law, Contractor shall have access to medical records as reasonably necessary to perform its obligations under this Agreement. This provision shall not affect the obligation of the attending physician to document the medical record. Contractor agrees to keep confidential any and all records of SMMC to which it may from time to time have access in the performance of its obligations under this Agreement and to disclose such records to others only as may be required by law.
5. **Properly Qualified Medical Staff.** SMMC is responsible for establishing training standards and other credentialing requirements for physicians who are providing patient treatment with the equipment. SMMC shall notify Contractor of such physicians and other SMMC personnel who meet SMMC's qualifications and who will be using the equipment. SMMC and Contractor shall cooperate to permit only qualified physicians and other personnel to use the equipment. SMMC shall identify SMMC administrative personnel

who shall be reasonably available to Contractor personnel (including the certified radiology technologist) to respond to questions relating to the equipment and services performed under this Agreement, including the identification of properly qualified medical staff.

C. **Equipment.** With regard to the equipment SMMC and Contractor agree to the following:

1. **Site.** SMMC shall provide a single site on its premises at which the equipment will be located during the term of this Agreement.
2. **Use.** SMMC shall have the right to the use of the equipment during the term and intervals indicated herein and shall use the equipment in a careful and proper manner and SMMC and Contractor shall comply with and conform to all applicable national, state, municipal, and other laws, ordinances and regulations in any way relating to the use of the equipment. SMMC and Contractor shall, during all times that the equipment is in use by Contractor, comply with the aforesaid laws. At all times during which the equipment is located on site at SMMC's premises, SMMC shall maintain and make available to Contractor, parasurgical facilities, including but not limited to anesthesia, recovery facilities, cystoscopic tables, and the like, all of which shall be adequately staffed by medical staff physicians and personnel. SMMC expressly understands and consents to Contractor's use and/or lease of the equipment to other parties at any time other than those during which SMMC is actually using or is scheduled to use equipment to perform lithotripsy services. Contractor shall not permit anyone other than SMMC to treat patients using the equipment on the SMMC premises during the term of this Agreement.
3. **Contractor's Inspection.** Contractor shall, at any time that the equipment is located on site at the premises of SMMC during SMMC's normal business hours, have the right to enter into and upon the premises where the equipment may be located for the purpose of inspection, making repairs and/or alterations as required by law or contract.
4. **Alterations.** SMMC shall not make any alterations, modifications, additions or improvements to the equipment. Any alterations, modifications, additions, or improvements to the equipment required by the terms of any contract governing the equipment or any governmental rule, regulation, statute or order of any kind requiring such alterations or modification, whether currently in existence or enacted in the future, shall be made by Contractor. Contractor shall bear the cost of such alterations, modifications, additions or improvements.
5. **Repairs.** Contractor shall, at its own cost and expense, keep the equipment in good repair, condition, working order, and shall furnish any and all parts, mechanisms, and devices required to keep the equipment in good mechanical and working order, including the provision of any necessary maintenance required or advised by the manufacturer.
6. **Loss and Damage.** In the event of loss or damage of any kind whatever to any items of equipment provided by Contractor while located on site at SMMC, SMMC shall:
 - a. Permit Contractor to enter SMMC's premises and place the equipment in good repair, condition, and working order, or replace the same with like equipment in

good repair, condition, and working order; or

- b. Permit Contractor to immediately remove the equipment from SMMC premises and repair or replace it with the same or similar equipment that is in good repair, condition, and working order.
- c. Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all loss or damage caused by those events beyond the reasonable control of SMMC, its employees, agents, or its Medical Staff, specifically including natural disasters or other Acts of God.

- 7. **Personal Property.** The equipment is, and shall at all times be and remain, personal property of Contractor notwithstanding that the equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, any real property or any building thereon, or attached in any manner to which is permanent as by means of cement, plaster, nails, bolts, screws, connection to utilities, or otherwise.

D. No Warranties

Contractor MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, except as is within the control of Contractor. Contractor hereby assigns, transfer, and passes through to SMMC any and all warranty rights it may possess with regard to or against the manufacturer of the equipment for the term of this Agreement. Contractor shall cooperate with SMMC in the enforcement of these warranty rights. In the event that the assignment of the warranty of the manufacturer of the equipment is prohibited, Contractor shall enforce any claims against manufacturer on behalf of SMMC as if no assignment had occurred. Such enforcement by Contractor shall be at the express and written request, direction, and expense of SMMC.

E. Record Retention; Access to Records

If this Agreement is subject to Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(v)(3)(I), and the regulations promulgated thereunder, 42 C.P.R., Section 420, Subpart I, both parties shall make available for a period of four (4) years after the furnishing of the services as stated in this Agreement, upon written request of the Section of Health and Human Services, or upon written request of the United States Comptroller General, or any of their duty authorized representatives, the contract and books, documents, and records of either party that are necessary to certify the nature and extent of the costs to SMMC of this Agreement. Further, if Contractor carries out any of its duties under the Agreement through a further subcontract having a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such further subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the stated organization shall make available upon written request of the Secretary, or upon written request of the Comptroller General, or any of their duly authorized representatives, the subcontractor and book, and records of such organization that are necessary to verify the nature of such costs.

F. Bankruptcy

Neither this Agreement nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Federal Bankruptcy Code, as amended, is commenced by SMMC or Contractor, or such an action is commenced against SMMC or Contractor and is not dismissed within 60 days after the commencement thereof, or if SMMC or Contractor is adjudged insolvent, or if SMMC or Contractor makes any assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on any item or items of the equipment and is not released or satisfied within ten days thereafter, or if a receiver is appointed in any proceeding or action to which SMMC or Contractor is a party with authority to take possession or control of any items of the equipment, then this Agreement shall automatically terminate upon such occurrence and, except for SMMC's liability to Contractor for unpaid amounts under this Agreement, shall be of no further form and effect. Upon any such occurrence, Contractor shall have and may also exercise any one or more of the remedies set forth in Section G hereof.

G. Default; Remedies

1. Default by SMMC. It shall constitute an event of default under this Agreement (an "Event of Default") if SMMC:
 - a. Fails to pay any amount herein provided within thirty (30) days after the same is due and payable and within ten (10) days after receipt of written notice of such failure;
 - b. Fails to observe, keep or perform any other provision of this Agreement required to be observed, kept or performed by the SMMC; or
 - c. Fails to remedy or cure any monetary default under this Agreement after receipt of written notice thereof from Contractor or fails to remedy, cure, or remove any other default within twenty (20) days after receipt of written notice thereof from Contractor.
2. Contractor's Remedies. If an Event of Default shall occur, Contractor shall have the right to exercise any one or more of the following remedies:
 - a. Sue for all payments then accrued with respect to any or all items of equipment.
 - b. Take possession of any or all items of equipment, without demand or notice, wherever the same may be located, without any court order or other process of law. SMMC hereby waives any and all damages occasioned by such taking of possession unless caused by Contractor's negligence or willful misconduct.
 - c. Terminate this Agreement as to any or all items of equipment.
3. Default by Contractor. It shall also constitute an Event of Default under this Agreement if Contractor:

"Contractor" is used herein, it shall include all assignees of Contractor.

L. Headings

The section's and paragraph's headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretations of this Agreement.

M. Time

Time is of the essence to this Agreement and each and all of its provisions.

N. Third-Party Beneficiary

Contractor and SMMC acknowledge that nothing contained herein is intended to nor shall it cause any person, including any individual partner of Contractor, or entity to become a third party beneficiary of any of the provisions or obligations of this Agreement.

O. Corporate Authorization

Each individual executing this Agreement on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, that this Agreement is binding on said corporation in accordance with its terms, and that this Agreement is not in violation of or inconsistent or contrary to provisions of any other agreement to which such corporation is a party.

P. Under Arrangement

The parties intend for the services provided pursuant to this Agreement be provided by Contractor "under arrangement" to the County as defined by the Social Security Act (the "Act"), including Sections 1832(a) and 1835(b) of the Act, and to otherwise comply with all applicable statutory and regulatory requirements as established from time to time by the Centers for Medicare & Medicaid Services ("CMS") or the federal or state governments relating to services provided by hospitals under arrangements by others. At all times Contractor shall retain dominion and control of the equipment and its employed technologist, and will arrange for all other related items, supplies and personnel, if any, required for the performance of the lithotripsy services. The County shall not exercise control over the equipment or technologist as a lessee of equipment or personnel. As provided herein, the County shall provide the facility and certain incidental supplies and services in furtherance of Contractor's provision of lithotripsy services, and the County shall be remunerated therefore as provided herein.

Exhibit B

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:

- A. SMMC shall pay to Contractor for the equipment provided under this Agreement an amount equal to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per procedure during which the equipment is utilized.
- B. All procedures are to be done on a to-follow basis unless prior arrangements are made. For down-time over one (1) hour, the cost is TWO HUNDRED FIFTY DOLLARS (\$250.00) per hour.
- C. Cancellation notice of 24 hours is required. SMMC shall use its best efforts to notify Contractor of all changes and/or cancellations in the schedule of cases by 5:00 p.m. of the preceding day. If a procedure is canceled before 5:00 p.m. the previous day or at any time for a medical reason, including, but not limited to, the patient passes the stone or the attending physician cancels the procedure due to the patient's medical condition, or due to emergency utilization of SMMC's operating rooms, SMMC shall not be liable to Contractor for any charge. If a procedure is canceled after 5:00 p.m. on the day prior to a scheduled procedure for reasons other than a medical reason or due to emergency utilization of SMMC's operating rooms, Contractor may require SMMC to pay for the canceled procedure unless at least one other lithotripsy procedure is performed on the day the procedure was scheduled to be performed.

Exhibit C

PERFORMANCE METRICS

- I. Both County and Contractor acknowledge the need to comply with The Joint Commission (TJC) all applicable standards regarding performance metrics in patient service contracts.
 1. Re-treatment Rate: Threshold = 10% or less
 2. Average fluoro time: Threshold = no more than 5 minutes
- II. Both the County and Contractor acknowledge Contractors cannot achieve the metrics without assistance and cooperation from the County, and at times, there are conditions the Contractor cannot control. The County remains committed to supporting the Contractor as they strive to achieve the performance thresholds.
- III. The Contractor will submit the performance metrics at least quarterly as part of their routine quality reports to the respective County department. The performance metrics and thresholds will be reported to the Medical Center's Quality Improvement Committee and any other venue deemed appropriate by the Medical Center to meet accreditation standards and improve the quality of care.
- IV. The performance metrics will be reviewed as needed but at least annually by County as part of the annual contract review process and may be changed or updated by County following discussion between the County and Contractor.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

Contractor recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

Contractor, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give, or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

ATTACHMENT I

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: **Jose Martinez, VP Human Resources**

Name of Contractor(s): **San Francisco Lithotripsy, LLC**

Street Address or P.O. Box: **9825 Spectrum Drive, Building 3**

City, State, Zip Code: **Austin, TX 78717**

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

Signature:



Title of Authorized Official:

Vice President

Date:

5-24-2019

COUNTY OF SAN MATEO



Attachment J Vendor/Contractor Access Policy

Policy Update: 10/22/2018

Overview

Vendors/Contractors play an important role in the support of hardware and software management for San Mateo County. They may be required to access, configure, maintain, and provide emergency support for systems. As a result, the vendor/contractor can be exposed to sensitive data or the need to connect to the County's network may expose the County to unwanted virus or security threats.

Policy Purpose

The purpose of this policy is to establish rules and responsibilities for the vendors/contractors who require not only physical access but also access to the County's network and information resources. This policy is intended to minimize potential exposure from damages and to mitigate any liability to the County as a result of unauthorized use.

Scope

This policy applies to all vendors/contractors who require access to County facilities as well as access to the County's network using non-County owned computing devices to perform work on behalf of the County. This policy also applies to all portable computers (laptops) and portable computing devices (devices that have similar hardware and software components used in personal computers such as a tablet PC).

Policy

Vendor/contractors shall:

- A. Only use information and systems for the purpose of the business agreement with County and any information acquired in the course of the agreement shall not be used for personal purposes or divulged to others.
- B. All contractors and vendors contracting with the County shall provide a list of its employees that require access to the County's system and data pursuant to the agreement
 1. The list shall be updated and provided to the Departments and Chief Information Officer (CIO) or his/her designee within 24 hours of staff changes.
- C. Safeguard all County data by:
 1. Utilizing data encryption to protect information on computing devices.
 2. Securing the computing device at all times; especially if the device is left unattended for any length of time.

HEALTHTRONICS
APPROVED BY: _____

GK

3. Implementing precautions to prevent others from viewing on-screen data in public areas.
 4. Notifying the County immediately if the mobile device containing County data or used in the performance of County activities is lost or stolen.
 5. Not downloading, uploading, or maintaining, on a computing device, any information that is considered sensitive without authorization of his/her Project Manager or Department Head or his/her designee.
- D. Vendor/contractor shall use unique accounts and password management that complies with the County's Information Technology (IT) Security Policy.
1. All passwords and accounts shall be unique to the vendor/contractor and shall not be shared.
- E. Vendor/Contractor shall take reasonable steps to protect against the installation of unlicensed or malicious software.
1. All commercial software installed must have a valid license and that the terms, conditions, and copyright laws shall be strictly followed.
- F. All County-owned software installed on the computing device must be removed when the vendor/contractor services are terminated.
1. Upon termination of work, the vendor/contractor shall return or destroy all County information and data as well as provide written certification of that return or destruction within 24 hours.
- G. Remote access rules and procedures shall be strictly adhered to.
1. Remote access usage must be confined to provide support for County systems; personal use shall be strictly prohibited.
- H. In the event that a vendor/contractor disposes of a computing device containing County's confidential information and/or data, the device must be sanitized in such a way that does not allow for the retrieval of data and by Department of Defense (DOD) standards.
1. Alternatively, computing devices may be physically destroyed by a method that leaves the device's data unrecoverable.
- I. Vendor/contractor understands that its written security protocols for County-related business shall be available for inspection by the County upon request.
1. For the period that the computing device is on the County's network, there is no expectation of privacy with regard to the contents of the device despite the fact that it is a privately-owned equipment.
- J. Vendors/contractors must wear visible identification and if issued a County cardkey, the cardkey must be visible at all times. Use of another individual's cardkey is expressly prohibited.
- K. Vendor/Contractor access to County data center(s) must be authorized and approved in writing by the Chief Information Officer (CIO) or his/her designee.

Responsibilities

The vendor/contractor will be responsible for assuring that anti-virus software, with scanning and update services be applied, is installed on its computing device used for County business and that the anti-virus software meets the requirements as set forth in the County's IT Security Policy and the Virus, Patch, and Vulnerability Management Policy. Vendor must also ensure that all computing devices have operating system security patches installed and are updated on a regular basis.

Additionally, computing devices, such as laptops and/or tablets, must include an approved encryption program with configuration that meets or exceeds the County's IT Security Policy.

Vendor/Contractor device(s) may connect directly to the County network with express written approval from the CIO or his/her designee. The Vendor/Contractor must verify to the County that the device(s) have been patched, virus protected, and encrypted. Vendors using devices without approved software and encryption will not be permitted to connect to the County's network.

It is also the responsibility of the vendor/contractor to be familiar with the following policies to ensure its adherence:

- IT Security Policy
- Internet Usage Policy
- Email Policy (if applicable)
- Virus, Patch, and Vulnerability Management Policy
- Data Center Policy

Policy Enforcement

The Director of ISD (CIO) is the policy administrator for information technology resources and will ensure this process is followed. Additionally, Division Directors, Department Heads, and managers are responsible for compliance with County policy within their respective administrative areas.

Those vendors who violate this policy may be subject to contract termination, denial of service, and/or legal penalties, both criminal and civil.

Revision History

Effective Date	Changes Made
August 8, 2009	Policy established
October 22, 2018	Policy updated