

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN DIEGO REGIONAL HEALTHCARE INFORMATION EXCHANGE

This Agreement is entered into this _____ day of __, 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and San Diego Regional Healthcare Information Exchange, dba San Diego Health Connect, 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 County with connectivity between the County's Health Information Exchange (HIE), American Medical Response, Inc. (AMR), and up to eight (8) participating hospitals in order to meet the SAFR +EMS grant requirements as described in the Statement of Work.

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—Statement of Work
Exhibit B—Payments and Rates
Attachment H—HIPAA Business Associate Requirements
Attachment I—§ 504 Compliance

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 and in Exhibit A.

3. 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 Three Hundred Seventy-Six Thousand Three Hundred Eighty Dollars, (\$376,380.00). 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.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from March 10, 2020, through-September 30, 2021.

5. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Chief of San Mateo County Health or 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.

6. 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.

7. Relationship of 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.

8. 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.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and 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.

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. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. 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:

Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

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.

12. 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.

13. 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.

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

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 must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity.

If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall 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 Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, 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 (N/A)

14. Compliance with County Employee Jury Service Ordinance (N/A)

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 Section 3, above, 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.

15. 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.

16. 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.

17. 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.

18. Disentanglement N/A

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 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.

19. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursement to Contractor for travel, lodging, and related expenses, the following restrictions apply:

19.1. Estimated travel expenses must be submitted to the County's contract contact person for advanced written authorization before such expenses are incurred. No travel expenses are reimbursable under this Agreement unless such written pre-authorization is obtained.

19.2. The maximum reimbursement amount for the actual cost of lodging, meals, and incidental expenses ("LM&I 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 for the term 'CONUS'). CONUS rates are set by fiscal year and are effective October 1st through September 30th.

19.3. The maximum reimbursement amount for the actual cost of airline and car rental travel expenses ("Air & Car Expenses") shall be a reasonable rate obtained through a cost-competitive travel service (e.g., a travel or car-rental website). Reimbursable air travel is restricted to economy or coach fares (not first class, business class, "economy-plus," or other non-standard classes) and reimbursable car rental rates are restricted to the mid-level size range or below (i.e., full size, standard size, intermediate, compact, or subcompact). No specialty, luxury, premium, SUV, or similar category vehicles may be submitted for reimbursement. Other reasonable travel expenses ("Other Expenses") such as taxi fares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis.

19.4. If in doubt about the propriety of LM&I Expenses, Air & Car Expenses, or Other Expenses, Contractor should err on the side of caution and not incur an expense at that level or obtain authorization from the County's contract contact person.

20. Escrow of Source Code

1.1. Option to Obtain Source Code. The Licensee may, after the date of this agreement, obtain the Software source code and all related Documentation from the Licensor upon the parties' execution of an escrow agreement in accordance with section 1.2 (Escrow Agreement).

1.2. Appointment of Escrow Agent and Escrow Fees

(a) Licensor and Licensee hereby appoints Escrow Agent to hold the Materials as defined herein in accordance with the terms and conditions of this Agreement and Escrow Agent agrees to act in such capacity.

(b) In consideration for the services to be performed hereunder, Licensee shall pay to Escrow Agent a monthly escrow fee of \$[X] dollars. In the event of non-payment of escrow fees, Escrow Agent will give Licensor and Licensee a sixty (60) day notice of default. In the event that the sixty (60) day notice period elapses without Escrow Agent having received payment, Escrow Agent shall have the right, without further notice being required and without any liability to any party whatsoever, to terminate this Agreement and destroy the Materials or, at the request of the Licensor, release and deliver the Materials to the Licensor.

1.3. Escrow Agreement. Such an escrow agreement will provide, at a minimum, that

(a) the Licensor shall deposit into escrow all the constituent elements of the proprietary software including but not limited to text, data, images, animation, graphics, video and audio segments and source and object code and user and system documentation of all software licensed to Licensee, and

(b) the Licensee may access the Software source code upon the occurrence of an Insolvency Event, in which case the Licensee may continue to use the Software for the remainder of the Term or the Renewal Term, as the case may be.

1.4. Release and Delivery of Materials by Escrow Agent

(a) The occurrence of any of the following events ("Release Events") shall provide to the Licensee the right to request the Escrow Agent to release and deliver the Materials held in escrow to the Licensee:

- (i) Licensor ceases to carry on business;
- (ii) Licensor becomes bankrupt, insolvent or the subject of receivership;
- (iii) Licensor commits a material breach of the License.

1.5. Representations, Warranties and Indemnifications

(a) Escrow Agent represents and warrants that:

(i) Other than being a party to this Agreement, it is an independent third party in respect to the Licensor and Licensee and is not an affiliated, associated or related entity to Licensor or Licensee;

(ii) It has the right and capacity to enter into this Agreement and fully perform all of its obligations and provide the services hereunder;

(iii) It shall use commercially reasonable efforts to keep the Materials in safe keeping and perform its

obligations as Escrow Agent in accordance with the terms of this Agreement;

(iv) It shall not disclose to any third party or make use of the Materials without the express written approval of Licensor and Licensee;

(v) It shall take such steps as are reasonably necessary and desirable to protect the confidentiality of the Materials and prevent the unauthorized disclosure thereof, including without limitation storing the Materials in such a way to preserve the confidentiality of the Materials and restrict disclosure of and access to the Materials.

(b) Escrow Agent shall indemnify and save harmless Licensor and the Licensee from any and all damages, costs, liability, expenses, including reasonable legal fees, suffered by Licensor and/or Licensee as result of any breach of its representations and warranties. Notwithstanding the forgoing, Escrow Agent shall not be held responsible or liable for any acts of Licensor and/or Licensee and Escrow Agent shall have no liability under this Agreement whatsoever except for its acts of negligence, misconduct or a material breach of this Agreement. Licensor and Licensee shall indemnify and save harmless Escrow Agent from any and all damages, costs and liability suffered by Escrow Agent arising as result of the breach of this Agreement or the License, breach or infringement any law or right of any third party by Licensor and/or Licensee.

21. 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: Stephen Dean
Address: 225 37th Avenue/San Mateo, CA 94403
Telephone: 650-573-2206
Facsimile:
Email: sdean@smcgov.org

In the case of Contractor, to: San Diego Health Connect

Name/Title: Daniel J. Chavez/ Executive Director
Address: 5575 Ruffin Road, Suite 240
San Diego, CA 92117
Telephone: (619) 573-4445
Facsimile:
Email: dchavez@sdhealthconnect.org

22. Electronic Signaturee

If 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, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

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

For Contractor: San Diego Regional Healthcare Information Exchange, dba San Diego Health Connect


Contractor Signature

6 February 2020
Date

Daniel J. Chavez
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: Statement of Work

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

Overview

County is the recipient of a grant from the California Emergency Medical Services Authority ("CAEMSA") to establish interfaces, connectivity and transfer of patient health records between hospitals and emergency medical services in order to coordinate the care of patients transported by emergency services to hospital emergency departments (the "Grant"). The purpose of this Statement of Work is to engage Contractor to implement the EMSA Project as specified in the "Grant". The Contractor acknowledges having received a copy of the Grant, and is familiar with the requirements of the Grant and the conditions of funding of the Grant. Contractor shall comply with all grant requirements for the project and if grant money is withdrawn from the County due to any deficiency, Contractor shall not be paid or shall refund to County the funds covering the deficient work.

This Statement of Work sets forth a description of the CONTRACTOR professional services, products, and documentation to be made available by CONTRACTOR for County's access and use in connection with the EMS Project. These include implementation, and maintenance and support services to be made available and performed by CONTRACTOR for County in connection with CONTRACTOR's "SAFR Services." Unless a requirement or provision of this Scope of Work specifically and expressly provides it is to be provided or performed by County, such requirement shall be provided or fulfilled by Contractor.

The Parties realize that the EMSA Project will be operating under some time stress due to late completion of the contracting process by CAEMSA. The end of the functioning of the grant demonstrations is, at the latest, June 30, 2021, unchanged despite the delay in CAEMSA contracting.

The Parties to this Agreement both agree to operate in good faith to jointly implement as many County Participant Projects as is feasible during the term of this Agreement.

1. Glossary

In addition to the terms defined under the Agreement, the following terms, when used in this SOW shall have the following meanings:

1.1 Acceptance – means Production go-live has been achieved as determined by County consistent with the Statement of Work and respective go-live acceptance criteria which will be mutually agreed upon during the Design Phase as described below. County shall not be required to accept or pay for Services or Deliverables until they have been Accepted by County in its reasonable discretion.

1.2 Participant - means any organizations or entities that have entered into a written agreement with the County to utilize Health Information Exchange (HIE) Services.

1.3 Participant Project - each technical activity for a Participant (transport agency or receiving hospital) is called a *Participant Project*.

1.4 Participant Project Readiness- Each of the organizational entities Contractor serves, including Contractor, County and San Mateo County, will prepare a Participant Project letter confirming and certifying readiness to proceed timely.

Contractor will address these in the order of receipt and will provide County and San Mateo with the status list of all certified Participant Projects weekly, those underway and those awaiting commencement.

1.5 Ability to Service Participants - In the event that there are more than three County Participant Projects immediately ready to proceed, and Contractor cannot provide services within a month of their certification of readiness, County may contract for a qualified consultant to address its backlog until such time as Contractor can provide services in a more timely manner.

1.6 EMR – Electronic Medical Records that constitute Protected Health Information (PHI) as that term is defined under HIPAA.

1.7 Software Subscription Services – means the use of products and services as described in this SOW.

1.8 Delivery - means, with respect to any Services, or Software provided hereunder communication of County through electronic means that allows County to access or take possession of associated item.

1.9 Interface – means an electronic communication conduit between a CONTRACTOR solution component and a 3rd party source system. A single transport with content requiring customization for more than one organization or sub-organization shall be considered multiple interfaces for each customization. Examples of interfaces include: ADT HL7 v2.5 uni-directional interface, IHE XDS.b bi-directional interface. An interface facilitates the exchange of information in a predetermined format as specified in the SAFR Technical Documentation v16 and unless otherwise specified.

2. Solution Overview

2.1 SAFR; Search – Alert – File – Reconcile; is a solution tailored to the provision of health information exchange services in the emergency medical care setting. Contractor will implement the SAFR solution to meet the objectives of the Cal-EMSA Plus EMS grant, with the concurrence of County, in accordance with the Documentation.

3. Deliverables

3.1 Interface development.

The parties intend that Contractor will provide the following services

1. **Interface development.** Contractor will provide interfaces between the separate County instance of the San Diego Contractor EMS Connector (“Connector”) and
 - a. AMR MEDS ambulance Contractor Electronic Patient Care Record (“ePCR”) for Search, Alert, File, and Reconcile per the CAEMSA Grant requirements;
 - b. CONTRACTOR will query Mirth HIE for patient matches and problems, medications, allergies, and encounters;
 - c. Although it is anticipated that all interoperability with participating EDs will be via Mirth, the Contractor may provide, at the discretion of County, interfaces directly to participating EDs
 - d. The POLST eRegistry for input and retrieval of POLST forms, as an option with additional pricing, if included in grant funding, and at the sole discretion of the County which will require a separate scope of work.

3.2 Delivery schedule objectives are as follows:

Target/Due Date	Deliverable Definition
-----------------	------------------------

Within 15 days of County signing CAEMSA grant contract with CONTRACTOR.	CONTRACTOR and County shall have finalized a project plan that specifies the implementation milestones and tasks with corresponding projected dates.
Within 45 days of County signing CAEMSA grant contract with CONTRACTOR.	CONTRACTOR shall deploy a test environment to County to allow for end-user testing of functionality, support, education, training, and demonstration.
All above target dates are based upon all CONTRACTOR external dependencies being completed upon mutually agreed upon schedule.	

4. Dependencies

4.1 Below are the known external dependencies necessary for the proposed delivery timeline. CONTRACTOR delivery dates are dependent on the items listed below. County is responsible for coordinating with other organizations to ensure external dependencies are met. Delays in receiving required external dependencies in accordance with a mutually agreed upon project plan will result in a day-for-day slip of the project schedule

Dependency Description
<p>County to provide CONTRACTOR with source system content and integration specifications which include:</p> <ol style="list-style-type: none"> 1. Vendor name 2. Software name and version 3. Security Transport (e.g. HTTPS, IPsec VPN) 4. Content Transport (e.g. HL7 MLLP, IHE XDS.b, sFTP) 5. Confirmation of support of HL7 ADT v2.3.x or v2.5.1 or the ability to not consume ADTs and instead synthesize them as necessary from CCDs 6. CCD standard (e.g. C32 2.5.1, C-CDA CCD)
Sample CCDs from each of the source systems that meet NIST/ONC validation compliance
Availability of working REST API in primary instance/store that service patient search, global consent check, and compliant C-CDA CCD.
Feeders configured for facilities to populate primary instance/store and creation of standards compliant CCDs.
Availability of computing resources and related IT dependencies including VPNs, storage, and Virtual Machines based on timing of executed Agreement and selected Hosting Partner.

5. Professional Service Methodology

5.1 Contractor's Professional Services Methodology Summary

Phases	Definition of Contractor Responsibilities
Inception	Establish project scope and boundary conditions. Focus on evaluating areas of highest variability to mitigate risk and establish the framework of a project plan.
Elaboration/Design	Capture and document requirements in addition to gathering other vital information needed to build out the solution.
Construction	Implement the solution based on information gathered during Elaboration. This phase represents the configuration of the proposed solution.
Transition	Deploy the solution to the target users and is the final phase in the project. This phase includes making the test environment available for County validation; and the production environment for a period of production validation (i.e. achievement of the metrics in the CAEMSA Grant.)

6. CONTRACTOR Responsibilities

6.1 CONTRACTOR will provide and backup for County a SQL database that persists the NEMESIS (National Emergency Medical Services Information System) data from the ambulance and eOutcome data from the receiving hospital including the discharge summary as an option. County will be provided access to that data store using County analytics tools for project reporting.

6.2 CONTRACTOR shall facilitate meetings and communications with Mirth, on an as needed basis to support integration.

6.3 General Support: CONTRACTOR will provide general support which will include program planning, training, kickoffs and onboarding. This may focus on initial efforts in each area and some ongoing availability for assistance. The Parties will conduct weekly coordination meetings, either by webinar, conference call or in-person at Contractor. These meetings will deal with such factors as progress against schedule, factors putting the schedule at risk, potential remedies, needs for less or more resources, communication with EMSA, with ePCRs, with hospitals, with data storage providers, etc. The Parties may jointly determine that it is judicious to include other Contractor contracted client parties in these meetings/calls.

7. County Responsibilities

7.1 County shall facilitate meetings and communications with receiving hospitals for the hospital side of the EHR Interfaces. Final determination of each hospital's model – federated or central – will be determined during the Inception phase of project planning.

7.2 County shall facilitate meetings and communications with the Providers (e.g. AMR) and application Users on an as needed basis.

- 7.3 County shall make technical resources available to support the success of this project according to the project schedule.
- 7.4 County shall assist with the facilitating of meetings and communications with Mirth, AMR, and other vendors, on an as needed basis to support integration.
- 7.5 County shall make clinical resources available to provide feedback in design, product roadmap and recommended enhancements.
- 7.6 County shall test the functionality, and engage other testers as necessary, and shall provide authorization to move the build to production.
- 7.7 County shall provide Tier 1 and Tier 2 support for participants.

8. Business Process Terms

- 8.1 The respective roles and responsibilities of the Parties in respect of this SOW include the parameters listed below.
 - a. A mutually agreed upon consistent named resource from CONTRACTOR will be assigned to provide the CONTRACTOR technical staff support services of hours needed to complete the project on time and on budget for the duration of this SOW.
 - b. Both Parties' project teams will meet on a regularly scheduled timeframe, as deemed necessary by both parties in order to complete the project.
 - c. All project changes and updates will be documented and reviewed weekly with the CONTRACTOR assigned resource, including new or revised due dates and assignments.
 - d. All Parties will make resources available to troubleshoot any issues as appropriate.
 - e. The CONTRACTOR Project Manager will respond to County Project Manager communications via mutually agreed communication channel (e.g. email, phone, SMS).
 - f. The County Project Manager and CONTRACTOR Project Managers will be included on any email communication, and may need to be present on planned phone calls.
 - i. Call notes will be distributed by the next business day and will include key discussion points, action items and next steps. Such notes will be distributed to all parties on the call as well as the project managers for each party.
 - g. The CONTRACTOR Project Manager will work with the County Project Manager to develop a Project Summary report updated and delivered to management on a periodic basis.

9. Subscription Period and Pricing

- 9.1 Classification. At the beginning of each Participant Project, the Parties will agree on the classification of the project: Initial (the ePCR or hospital EMR has not been developed in San Mateo or any other region); Subsequent Instance (ePCR or hospital EMR has been developed in other regions, but not implemented in San Mateo); or Subsequent Same Instance (ePCR or hospital EMR has been implemented at other organizations within San Mateo County). Classification assures that the proper resourcing can be achieved for each Participant Project.

9.2 Testing of a Participant Project. The Testing of a Participant Project will involve two Participant Projects, one for a transport agency and another for a receiving hospital.

9.3 Demonstration of Participant Project. The three-month Demonstration of a Participant Project will always involve two Participant Projects, one for a transport agency and another for a receiving hospital.

9.4 Pricing of Service. The pricing and payments of a Participant Project will be the amount shown in Exhibit B. The resources used for a Participant Project may vary from what is noted but the Parties agree that they will work in good faith to use the excess from one project to support a project with higher resource requirements.

9.5 Payment. Notwithstanding any other provision of this Agreement and Exhibits, the Parties acknowledge that the work to be performed by Contractor under this Statement of Work will be funded exclusively through the Grant, and County is obligated to pay for it only to the extent of Contractor's share of funding actually received by County through the Grant, as and when it is received. The Parties also acknowledge that the receipt by County of grant funding is contingent upon the timely attainment of certain milestones, each of which entitles County to payment of a specified percentage of Grant funds, and that the amounts due to Contractor pursuant to Exhibit B will be paid within thirty (30) days of invoicing if such grant funds have been received. In addition, the Parties acknowledge that failure to meet the Grant milestones within the time limits specified in the Grant may result in a reduction in Grant funding, and in recoupment of Grant funding previously received. Contractor agrees that, in the event of any reduction in or recoupment of Grant funding, it will bear (and will if necessary refund) the reduction or recoupment in proportion to the funding received by it or to which it would otherwise be entitled under Exhibit B; and such reduction or recoupment shall not, in and of itself, constitute a breach by County of this Agreement.

9.6 Implementation Services. The compensation to Contractor by County is included in Exhibit B. This is 100% of Technical services, 100% of Testing services, and 75% of the Project Management costs for each first install of an EMR or ePCR and 25% of the Project Management cost thereafter.

9.7 Infrastructure Services. These include setup of EMS Connector for County and support, connection to Mirth, setup of the Persistent Database to support Milestone 4 of the Grant, and setup of HIE connection to the AMR MEDS ePCR.

9.8 Access to Persistent Database. Contractor will store all NEMESIS and relevant receiving hospital data in a Persistent SQL (or open source) database. Contractor will assist County in connecting to this database with its analytical tool(s) if and as needed.

9.9 Infrastructure Payment. County will pay Contractor for its infrastructure services at the rates agreed and detailed in Exhibit B.

9.10 POLST. County may contract with Contractor for Physicians Orders for Life Sustaining Treatment (POLST) services if additional funding is achieved by CAEMSA for POLST implementations the rates under the new separate CAEMSA grant are satisfactory to both Parties.

9.11 Post-Grant costs. County agrees to pay Contractor for support at the rates detailed in Exhibit B.

10. Schedule

10.1 A mutually agreeable project schedule and project status reporting will be defined and implemented in a project charter no longer than 15 (fifteen) business days following the execution of the Agreement. This Agreement shall not be binding until the parties have agreed on the project schedule.

11. Work Performance

- 11.1 Hours & Overtime: CONTRACTOR staff resources shall work in daily increments of 8 hours a day on this project unless otherwise identified as part-time. No overtime pricing has been approved for this SOW. CONTRACTOR and County Engagement Executives must jointly provide written approval prior to incurring any overtime charges. Pre-approval of overtime and travel expenses is required.
- 11.2 Professional Services will be performed between the hours of 8:00 a.m. and 5:00 pm (local time where Professional Services are performed) Monday through Friday excluding public and generally observed holidays.

Exhibit B

: SAFR - San Mateo Payment Schedule

Note: project management expenses are for SMC + SDHC. Setup of Project #1 and each new EMR, will be 75% SDHC; then 25% of each additional. Install numbers in the cells are listed: Project Management, Technical, Test. Payment 1 is for MILESTONE 1a; Payment 2 is for MILESTONE 1b, 2, 3; Payment 3 is for MILESTONE 4

Install payment (MILESTONE 1a, 1b, 2, 3,) for each Project is 50% at Kickoff and 50% when Live.

Support (maintenance) is \$160 per month per entity (i.e. ePCR and hospitals) will begin in July 2021

Revenue numbers to be supplied by SMC, if desired.

Please verify: the total number; EMR type; and sequencing of participant projects.

There will be travel expenses primarily for major Kickoffs and Lives.

	2021																		
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Participant Project #1 - AMR MEDS/HIE with New SDHC EMS Connector/Mills Peninsula Epic Hospital																			
Revenue (MILESTONE 1a, 1b, 2, 3, 4)																			
SDHC																			
License																			
Config																			
Install						61275													3840
Tier 3 support																			
Reporting DB - HW				5000															
Reporting DB - setup				6000															
Reporting DB - maintenance								250	250	250	250	250	250	250	250	250	250	250	250
	126275	0	0	11000	0	61275	0	250	250	250	250	250	250	250	250	250	250	250	205390

Participant Project #2 - Add Stanford Hospital (Epic)

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC																			
Install				2775															1760
Tier 3 support																			
	0	2775	0	0	0	0	2775	0	0	0	0	0	0	0	0	0	0	0	7310

Participant Project #3 - Add UCSF Hospital (Epic)

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install	2775	2775	2775	2775	2775	1600
Tier 3 support	0	0	0	0	0	7150

Participant Project #4 - Add Epic Hospital #4

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install	2775	2775	2775	2775	1440
Tier 3 support	0	0	0	0	6990

Participant Project #5 - Add Epic Hospital #5

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install	2775	2775	2775	2775	1120
Tier 3 support	0	0	0	0	6670

Participant Project #6 - Add 1st Cerner Hospital

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install	34050	34050	34050	480
Tier 3 support	0	0	0	68580

Participant Project #7 - Add 1st PICIS

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install	34050	34050	34050	320
---------	-------	-------	-------	-----

Tier 3 support

0 0 0 0 0 0 0 0 0 0 0 0 0 34050 0 34050 0 320 68420

Participant Project #8 - Add 2nd PICIS Hospital

Revenue (MILESTONE 1a, 1b, 2, 3, 4)

SDHC

Install

2775 2775 320

Tier 3 support

0 0 0 0 0 0 0 0 0 0 0 0 0 2775 2775 0 320 5870

Total 376380

Attachment H

Health Insurance Portability and Accountability Act (HIPAA)

Business Associate Requirements

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" (E PHI) 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 Protected 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

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:

Daniel J. Chavez

Name of Contractor(s):

San Diego Health Connect

Street Address or P.O. Box:

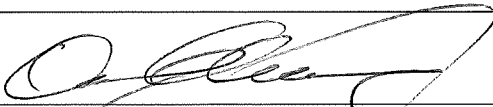
5575 Ruffin Road, Suite 240

City, State, Zip Code:

San Diego, CA 92123

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

Signature:



Title of Authorized Official:

Executive Director

Date:

2-6-2020

*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."