

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND MOSS ADAMS LLP

This Agreement is entered into this _____ day of _____, 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Moss Adams LLP, 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 consulting services related to the County's current accounting for certain supplemental revenue programs and annual cost reporting.

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 H—HIPAA Business Associate Requirements

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 NINE HUNDRED THOUSAND DOLLARS (\$900,000). 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 SMMC Controller or their designee and paid within 30 days of receipt of the invoice. Invoices must be sent to: SMMC-Accounts-Payable@smcgov.org. Processing time may be delayed if invoices are not submitted electronically.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from November 1, 2018, through October 31, 2021.

5. Termination

This Agreement may be terminated by Contractor or by County or its Chief of the County Health System or 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 or Contractor may terminate this Agreement for cause. In order to terminate for cause, the party desiring to terminate (the "Terminating Party") must first give the other party ("Recipient") notice of the alleged breach. Recipient 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 Recipient fails to cure the breach within this period, the Terminating Party 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, excluding any "Contractor IP" (defined below) (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 unless prohibited by law. Contractor shall own its working papers and any engagement documentation and any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property or information which may have been discovered, created, received, developed or derived by Contractor either prior to or as a result of providing services under this Agreement ("Contractor IP"). County shall have a non-exclusive, non-transferable license to use Contractor IP for County's own internal use and only for the purposes for which they are delivered to the extent that they form part of the work product. Notwithstanding anything to the contrary in this Agreement, Contractor and its personnel are free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of County.

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.

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. In the event of a claim for which the County may seek indemnification hereunder, the County shall provide Contractor with prompt written notice of such claim and cooperate with Contractor in handling the claim. The Contractor shall be entitled to control the handling of such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing. Without the County's prior written consent, Contractor will not consent to the entry of any judgment or enter into any settlement that (a) would require the County to make any payment, (b) contains any admission of guilt or wrongdoing by the County, (c) would impose any equitable remedy upon the County, (d) purports to release any claims belonging to an the County, or (e) does not include an unconditional release of the County from all liability with respect to claims that are the subject matter of such proceeding.

b. Intellectual Property Indemnification

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

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all

negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

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

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

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. Contractor shall provide thirty (30) days' notice, in writing, to County of any pending decrease 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

Except for the Professional Liability policy, County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance (blanket endorsement acceptable), 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 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 notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged.

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.

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 Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors 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 including but not limited to closing of all appeals in relation to reports and other records produced from services provided under this Agreement, 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 information, including records and documents, 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, provided that such information does not constitute Contractor's proprietary or confidential information, including, without limitation, information regarding Contractor's partners, principals, employees and clients.

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. Disentanglement

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

18. 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: Moss Adams LLP
Attn: Chris Pritchard
101 Second St, Suite 900
San Francisco, CA 94105
Telephone: (415) 956-1500

19. 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.

20. 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.

21. No Third Party Beneficiaries

All services shall be solely for County's informational purposes and internal use, and this Agreement creates no privity between Contractor and any person or party other than County ("third party"). None of Contractor's services are intended for the express or implied benefit of any third party, and no third party is entitled to rely on Contractor's services, including without limitation, any advice, opinions, or reports. Notwithstanding County's provision of Contractor's report to regulatory or governmental bodies, in the event County desires to provide Contractor's report to a third party, County shall obtain Contractor's prior written approval and Contractor shall require that any such third party execute an access letter as prepared by Contractor.

22. Limitation

. Each party's total liability to the other party for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability, negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed (A) for claims against Contractor, the amount of one million dollars (\$1,000,000); and (B) for claims against County, the amount of five hundred thousand dollars (\$500,000). In no event will either party be liable to the other for any special, indirect, incidental, exemplary, punitive or consequential damages in connection with or otherwise arising out of this Agreement even if advised of the possibility of such damages.

* * *

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

For Contractor: MOSS ADAMS LLP



Contractor Signature

October 5, 2018
Date

Chris Pritchard
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

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

PROJECT APPROACH

Contractor will provide the necessary experienced resources to complete the scope of work as described beginning on the following pages in order to meet SMMC's requested timelines.

Service Description	Proposed Timing
ENGAGEMENT PLANNING	
Meet with management for pre-engagement planning and to obtain an understanding of systems, internal controls, and current year issues; provide management with a detailed listing of items needed to perform the engagement, including the timing of when items are needed.	Beginning September 2018 with bi-weekly meetings throughout the year
ENGAGEMENT FIELDWORK	
Provide ongoing guidance and assist in the preparation of all filings mentioned in the RFP. To the extent audit assistance is needed, Contractor will develop clear lines of communication with the auditors and thoroughly review all proposed audit adjustments ensuring they comport with Medicare and Medi-Cal regulations. Contractor will communicate all audit findings to management and provide a summary of the results of the audit with regulatory support.	Ongoing throughout the contract period
REPORT PREPARATION AND COMMUNICATIONS	
Present final drafts of reports and findings; meet with management and those charged with governance to review results of each engagement, provide reports and observations; prepare and issue final reports.	Ongoing throughout the contract period

After a sufficient on-site start-up period, Contractor anticipate most of the tasks at hand can be handled off-site with the movement of data being securely transferred by electronic means. Contractor will utilize the following systems in conjunction with Contractor's work product:

ProSystem fx Engagement

ProSystem fx Engagement is Contractor's trial balance and paperless audit documentation software.

This software electronically links all efforts Contractor use in the audit process. After obtaining County's data and importing or scanning it into the system, Contractor's auditors can access the full working paper files from any location with internet access—or synchronize documents ahead of time to Contractor's fully encrypted hard drives when working without internet access. Contractor then document Contractor's audit procedures using custom templates in Microsoft Excel and Word, and Adobe Acrobat.

Client Portal for File Transfer

Contractor's client portal is a secure web-based tool Contractor use to easily transfer and temporarily store sensitive documents related to County's engagement.

The portal can accommodate extremely large data files, and because it's a private portal, it's also vastly more secure than email or physical media. The portal stores data files on Contractor servers located at Contractor's off-site commercial data center. This portal is designed to be user-friendly and accommodate the way County's team works, while simultaneously streamlining the file sharing process and accelerating the transfer of your files.

At the termination of the contract, as request by SMMC, contractor will provide a copy of all workpaper support prepared by Contractor to SMMC. It will be SMMC's responsibility to communicate and provide this information to a new vendor.

MEETING THE SCOPE OF WORK

Management Services

1. Annual AB915 Cost Filing – In advance (approximately one month prior) of the AB915 filing, Contractor will expect to review SMMC's draft AB915 report and offer a list of recommendations setting forth any review concerns. Contractor will review the AB915 report a second time immediately prior to its filing to verify all recommended improvements are implemented. Contractor will make sure the filing of the AB915 is compliant with Department of Health Care Services (DHCS) regulations in its initial filing so it won't have to be amended in the future.
2. DSH Eligibility Filing (Medicare) Support – Due to the State of CA final Medi-Cal eligibility restrictions, not earlier than 13 months following the end of the cost reporting period, Contractor will review the DSH Medicaid eligibility list(s) prepared by SMMC to make sure it's accurately stated and compliant with Medicare regulations. If there are any inaccuracies, errors, or issues identified, Contractor will bring them to SMMC's attention and communicate Contractor's recommendation for a solution. If Contractor find improvements, Contractor will communicate these to SMMC. Contractor will also assist SMMC by reviewing proposed audit adjustments to prior-year DSH eligible day lists, communicating any disagreements to the auditors and providing general audit support, as needed.
3. FQHC Annual PPS Payment Reconciliation – In advance (approximately one month prior) of the annual FQHC payment reconciliation form filings, Contractor will expect to review SMMC's draft FQHC reconciliation reports and supporting documentation. Contractor will offer a list of recommendations as a result of Contractor's review. Contractor will review the FQHC reconciliation reports a second time immediately prior to their filing to make sure all recommended improvements are implemented. Contractor will make sure the filing of the FQHC payment reconciliation reports is compliant with DHCS regulations in their initial filings so they won't have to be amended in the future.
4. P-14 Workbook and Audit Support – Contractor will work closely with SMMC staff to make sure the current year P-14 workbook is prepared in an accurate, robust, and compliant manner. Contractor will also work with SMMC staff and the P-14 auditors to establish a communication protocol that is intended to resolve any P-14 audit issues on the front end of the audit so costly P-14 appeals can be avoided on the back end of the audit process. Contractor will provide attention to the auditors while they're present in the field and establish good working relationships to ensure that SMMC avoids long and costly protracted appeals. Contractor will be engaged in preparation for the audit, review of the filed P-14 workpaper support, facilitating the transmission of audit support, following up on any audit discrepancies that may be discovered, summarizing issues, and recommending correction plans, if necessary.

To the extent an appeal of the P-14 report is deemed necessary, Contractor shall use qualified staff that are adept at filing P-14 appeals and handling the appeal process through the hearing process. Contractor expect SMMC will be an active participant in any appeal activity and will have an adequate opportunity to provide input and review all appeal documents before they are furnished to the opposing party(ies).

5. Global Payment Pool (GPP) – In advance (approximately one month prior) of the GPP filing, Contractor will expect to and will review SMMC's draft GPP data and offer a list of recommendations setting forth any review concerns. Contractor will review the GPP information a second time immediately prior to its filing to verify all recommended improvements are implemented. Contractor will make sure the filing of the GPP is compliant with DHCS regulations in its initial filing so it won't have to be amended in the future.
6. Enhanced Payment Program (EPP) – The EPP creates a funding pool that supplements the base rates public health care systems receive through Medi-Cal managed care contracts. Contractor will expect to review SMMC's draft EPP information and offer a list of recommendations setting forth any review concerns. Contractor will review this information a second time immediately prior to its filing to make sure all recommended improvements are implemented. Contractor will make sure the filing of the EPP information is compliant with DHCS regulations in its initial filing so it won't have to be amended in the future.
7. Quality Incentive Program (QIP) – The QIP represents a new pay-for-performance program for California's public health care systems that converts funding from previously existing supplemental payments into a value-based structure. It's intended to align structurally with PRIME however the QIP measures do not directly overlap with PRIME's measures. Contractor will work with SMMC's staff to make sure QIP measures are being reported accurately and in compliance with DHCS requirements.
8. AB85 Realignment – Contractor will review in a timely manner AB85 realignment reports furnished by SMMC staff and conduct a peer review to verify they're accurate, complete, and compliant with all DHCS regulations. Contractor will offer a list of recommendations setting forth any review concerns and will review this information a second time immediately prior to its filing and/or amendment to make sure all recommended improvements are implemented.
9. OSHPD Filing – In advance (approximately one month prior) of the OSHPD annual report filing deadline, Contractor will expect to and will review SMMC's draft OSHPD report and offer a list of recommendations setting forth any review concerns. Contractor will review this report a second time immediately prior to its filing to verify all recommended improvements are implemented. Contractor will make sure the filing of the cost reports is compliant with OSHPD annual report filing instructions in its initial filing so it won't have to be amended in the future. If Contractor finds internal improvements can be made to the information used to prepare the OSHPD annual report, Contractor will communicate Contractor's recommendation to SMMC. Contractor will also review prior period OSHPD reports to assess whether any errors exist. To the extent Contractor identifies errors and SMMC concurs with the findings, Contractor will seek to amend the OSHPD report(s).
10. Medicare Cost Report Preparation and Review – Contractor's specialty is cost report preparation, and Contractor has extensive experience working with all sizes and types of hospitals and health systems. Each year, Contractor prepares cost reports for many of Contractor's reimbursement clients. Contractor also review many cost reports prepared internally by Contractor's clients prior to filing with the respective agency. During the preparation phase, Contractor will work with staff to prepare sections of the Medicare cost report as mutually agreed. These sections may include IRIS, IME/GME, Bad Debt, DSH, Worksheet S-10, and Wage Index. Contractor's work will be available for SMMC staff to review and will also be subjected to Contractor's internal peer review process.

In advance (approximately one month prior) of the Medicare cost report filing, Contractor will expect to and will review SMMC's draft Medicare cost report in its entirety and offer a list of recommendations setting forth any review concerns. Contractor will review the draft Medicare cost report a second time immediately prior to its filing to verify all recommended improvements are implemented. Contractor will make sure the filing of the Medicare cost report is compliant with CMS regulations in its initial filing so it won't have to be amended in the future.

11. Medi-Cal Cost Report Preparation and Review – In conjunction with the Medicare cost report preparation and review stated in No. 10 above, Contractor will apply the same preparation and review standards and timeline to the Medi-Cal cost report filing. To the extent there are differences between the Medicare and Medi-Cal cost report filings, Contractor will make sure

these differences are reported accurately in the Medi-Cal cost report and in full compliance with DHCS requirements.

Other Reimbursement Filings

To the extent SMMC requires assistance with any additional reimbursement tasks not listed above, Contractor will furnish these services to SMMC upon request. Additional services may include, but are not limited to the following:

- Annual PIP Payment Survey Review
- Bi-Annual CRRP Cost Filing
- Ongoing CMS and DHCS Time Study Questions
- Quarterly LT Supplemental Claims
- Annual MUR and LIUR DSH Eligibility Filing
- OBRA Limit, CAP Day and Managed Care Day Filing
- Occupational Mix
- SB1115 Waiver Requests
- Wage Index
- Prime
- IME/GME
- EPP/GPP/QIP

Other Management Services

On an ongoing basis, Contractor will monitor and evaluate SMMC's internal accounting and patient financial systems to make sure all revenue San Mateo is entitled to receive is properly captured and reported in the appropriate report. To the extent any deficiencies are noted, Contractor will bring these items to SMMC's attention and work with the Medical Center to develop a plan of corrective action.

Contractor also offers a wage index improvement service that will enhance the SMMC's inpatient and outpatient Medicare reimbursement. Contractor has a consistent track record of improving Medicare reimbursement rates in every Core Based Statistical Area where we've been engaged to perform this service. Contractor's wage index improvement plan would be utilized in conjunction with the evaluation of the hospital's occupational mix survey review.

Contractor represents that it has a proven track record of identifying operational efficiencies that can be achieved and working with clients to implement these efficiencies. Contractor will work with County staff to gather the appropriate documentation on the front end of each report filing so the inefficiency of filing multiple amended reports will not occur in the future.

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:

The fee schedules below are based on an estimated annual cost.

Service Description	Estimated Fee Per Report / Filing Unless Otherwise Noted
Management Services	
Review Annual AB915 Report Prepared by SMMC	\$4,000
Review Medicare DSH Eligible Days Listing Prepared by SMMC	\$12,000
Review FQHC Annual PPS Payment Reconciliations Prepared by SMMC (Estimated 8 Report Filings @ \$2,000 Per Report)	\$16,000
Review P-14 Workbook Prepared by SMMC	\$16,000
Review of Global Payment Pool Prepared by SMMC	\$5,000
Review of Enhanced Payment Program Prepared by SMMC	\$5,000
Review of Quality Incentive Program Measures Prepared by SMMC	\$10,000
Review AB85 Realignment Report Prepared by SMMC	\$5,000
Review Annual OSHPD Report Prepared by SMMC	\$5,000
Medicare Cost Report Preparation Support and Review	\$25,000
Medi-Cal Cost Report Preparation Support and Review	\$5,000
Subtotal: Management Services	\$108,000

Service Description	Estimated Fee Per Report / Filing Unless Otherwise Noted
Other Reimbursement Filings	
Annual PIP payment survey	\$4,000
Bi-annual CRRP cost filing	\$5,000
CMS and DHCS time study support	\$10,000
Quarterly LTC supplemental claims (Estimated 4 Reports @ \$1,500 Per Report)	\$6,000

Service Description	Estimated Fee Per Report / Filing Unless Otherwise Noted
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Annual MUR and LIUR DSH eligibility filing	\$5,000
OBRA Limit, CAP Day, and Managed Care Day Filing	\$8,000
Occupational mix review	\$6,000
SB1115 Waiver requests	\$12,000
Wage index review	\$16,000
Prime	\$20,000
Other Reimbursement Filings Not Listed Above (including IME / GME / EPP / GPP / QIP)	\$15,000
Subtotal: Other Reimbursement Services	\$107,000

Service Description	Estimated Fee
Other Management Services, As Needed	30,000

TOTAL FEE

Service Description	Estimated Fee
Prepare and present the review to Administration	Included
Transition meetings, review of predecessor auditor's workpapers, and getting up to speed	Included
Grand Total for All Listed Services	\$245,000
Contingency Funds for additional services/expenses	\$55,000

Out-of-pocket expenses are in addition to the values set forth above and include amounts incurred for travel and other expenses, such as delivery fees, report processing and software charges. These amounts will be billed monthly as incurred. To the extent that this Agreement authorizes reimbursement to Contractor for travel, lodging, and related expenses, the following restrictions apply:

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.
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.
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.

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.

BILLING RATES

Experience Level	Rate
Partners/Directors	\$500–\$600
Senior Managers	\$425–\$475
Manager	\$300–\$350
Staff/Seniors	\$145–\$270

FEE DETAILS

Subject	The Details
Client Acceptance Procedures	The scope of work and fee quotes are subject to our client acceptance process, which 1) verifies that all parties understand the specific services we’re being asked to perform, 2) ensures contract terms are acceptable to both parties and in agreement with professional standards, and 3) confirms we’ve staffed the engagement with individuals qualified with the necessary experience to fulfill our commitments to our prospective client. We’ll also need to complete our inquiries of your former auditor as required by our professional audit standards.
Cost Overruns	During the course of the audit, we’ll measure our progress against our planned budget. If situations arise that are significantly different than our expectations, we’ll bring them to your attention immediately and discuss various options before we proceed. We’ll meet weekly during the course of fieldwork with the appropriate parties to ensure there are open lines of communication between our organizations.
Progress Billing	Progress billings are based on hours and expenses completed at the time of billing. Bills are due upon receipt. We reserve the right to charge interest on accounts over 30 days past due.

<p>Routine Phone Calls and Emails</p>	<p>Contractor will not charge for short telephone calls seeking miscellaneous advice unless those consultations require significant additional work or research. If a matter requires further follow-up, Contractor will discuss a fee estimate with County before incurring</p>
<p>Minor Research and Consultation</p>	<p>If Contractor is requested to provide minor research or consultation service, Contractor will estimate the number of hours necessary to provide the requested services. We'll then provide a fee quote for County approval before commencing any work. Contractor fees for these services are generally at our standard billing rates.</p>
<p>Future New Audit, Review, and Accounting Standards</p>	<p>Our fees as set forth herein are based on accounting and professional standards that exist and are applicable as of the date of this proposal. To the extent that future rulemaking activities require modification to our audit approach, procedures, scope of work, etc., we'll advise you of such changes and the impact on our fee proposal. If we're unable to agree on the additional fees, if any, that may be required to implement any new accounting, auditing, and review standards that are required to be adopted and applied as part of our engagement, we reserve the right to withdraw from the engagement, regardless of the stage of completion.</p>

Exhibit C

Performance Metrics

County will measure Contractor performance of the services in accordance with the procedures set forth by the performance indicators below. Contractor acknowledges that the performance indicators are a reasonable minimum standard by which to measure Contractor performance of the services.

Delivery Performance – Meeting requested deadlines for reports and work

Product Conformance – Reports are done accurately with the information available at the time of filing and meeting all regulatory standards.

Contract-partnership – Consultants partner with SMMC to assure the best quality and accurate reports and information is sent.

Customer Service – Timely respond to SMMC requests.

Punctuality - Reports are filed on time and reviews are done timely so that SMMC can respond to auditor inquires.

Reliability and Responsiveness - Reports are filed on time and reviews are done timely so that SMMC can respond to auditor inquires.

Quality and Consistency – Reports are done accurately with the information available at the time of filing and meeting all regulatory standards.

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.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

***TO REPORT VIOLATIONS,
CALL THE COMPLIANCE HOT LINE: (800) 965-9775***

Contractor, in executing this Agreement, certifies that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and has committed Contractor to comply with this Code of Conduct.

Attachment H

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

DEFINITIONS

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

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received

by Business Associate on behalf of County, agrees to adhere to substantially and substantively 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 within 30 days of such request 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, and within 30 days of such request 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 Secretary, within 30 days of a request by 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 within 30 days of a request 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. Notwithstanding the foregoing, the parties acknowledge that probes and reconnaissance scans are commonplace in the industry and, as such, the parties

acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this section constitutes notice by Business Associate to County of the ongoing existence and occurrence of such Security Incidents for which no additional notice shall be required. Probes and reconnaissance scans include, without limitation, pings and other broadcast attacks on firewalls, port scans, and unsuccessful log-on attempts, as long as such probes and reconnaissance scans do not result in unauthorized use or disclosure of PHI, or otherwise violate HIPAA or other legal requirements for patient confidentiality.

Business Associate understands that it is directly liable for making uses and disclosures of Protected Health Information that are not authorized by law, this Schedule, the underlying Agreement. **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. Notwithstanding the foregoing, the parties agree that it is infeasible for Business Associate to return or destroy Protected Health Information to the extent incorporated into its working papers supporting its professional services for Covered Entity, and no further notice shall be required as to such working papers.

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. Amendments must be in writing and be signed by both parties.
- 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 request and receive from Business Associate, within a reasonable time of such request, information regarding the security policies and procedures of Business Associate.