

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
BAYSPORT, INC.**

THIS AGREEMENT, entered into this 29th day of January, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Baysport, Inc., hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of conducting Wellness Screenings for County employees;

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

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 herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed One hundred and twenty five thousand dollars, \$125,000.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2013 through December 31, 2013.

This Agreement may be terminated by Contractor, the Human Resources Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the 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 the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

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

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap 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 State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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
- i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person 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 of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:

In the case of Contractor, to:

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Baysport, Inc.



Contractor's Signature

Date: 1/16/13

Exhibit "A"

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

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

COUNTY OF SAN MATEO

AGREEMENT WITH INDEPENDENT CONTRACTOR

Exhibit "A"
Agreement No. _____

Agreement between the County of San Mateo and BAYSPORT, INC.

I. Description of Services to be Performed by the Contractor

1) Contractor provides trained staff and all necessary equipment and materials to conduct coordinated, cost-effective clinic screening services. The testing protocols and equipment used shall adhere to nationally recognized guidelines and standards. Testing components include but are not limited to determination of an individual's:

- cardiac risk blood profile (total cholesterol, HDL, LDL, glucose and triglycerides)
- hemoglobin A1C (according to criteria as set forth by County)
- body mass index (height, weight)
- body composition (waist & hip measurements)
- resting pulse & blood pressure

1a) Contractor provides individualized health counseling at the conclusion of the clinic screening to ensure participant's understanding of health results, to answer questions, discuss next steps and work with participant to set at least one short-term goal. Contractor will utilize principles of Stages of Change theory and Motivational Interviewing to ensure that each participant is ready to make a healthy change.

1b) At least four weeks prior to first screening date, Contractor will provide a list of standard counseling questions to County for review.

1c) Contractor will keep a tally of participant goals, using broad categories as mutually agreed upon by County and Contractor.

1d) As feasible, Contractor will provide previous clinical testing results to participants

2) County provides a conference room or similar space to safely and adequately accommodate the Wellness Screening program at each worksite location which meets the Contractor's requirements. County will provide logistical information about the rooms at least two weeks prior to the first screening date. The Contractor will set-up room and test equipment, assure the accuracy and functions; will assure equipment is in excellent working order and calibrated for accuracy (or test checked) at the beginning of each testing date; and will ensure an acceptable level of privacy for participants.

4) Contractor provides an off-site location for clinical screening services at its offices at Pacific Athletic Club in Redwood City. The time frame for when clinic screening services are offered at this location will be determined by the County. County acknowledges that clinic screening services at this off-site location are conducted during normal business hours.

5) Contractor provides an online registration system for employees to schedule individual appointments, customizing to County's needs. Online registration system will include electronic confirmation and reminders, and text reminders, according to a notification schedule as determined by the county.

6) At County's request, Contractor provides follow-up outreach, educational intervention(s) and/or triage to high-risk County employees as identified by the health-screening program within three weeks of appointment. Intervention may include but is not limited to triage for medical evaluation, problem solving and motivation, resource and referral, and/or recommendation to enroll in the County's health coaching program.

7) Contractor assists in the development and implementation of marketing activities for the clinic screening program, as mutually agreed upon between the County and the Contractor. This may include attendance at department meetings and other onsite outreach.

8) Contractor agrees to customize screening forms and documents, (i.e. waiver, registration questions, lifestyle based questions, consent forms, participant results sheets, informational pamphlets) to meet County's needs.

8a) All registration and results documents will include two unique identifiers for each participant (Date of Birth and Employee ID)

9) Contractor provides an aggregate report of findings and recommendations to the County within one month of the end of the testing cycle, following criteria as outlined by the County. Contractor provides ad hoc reports to County within one week of request.

9a) County may request ad hoc aggregate reports on clinical information of participants screened during this contract period for a period of ten years beyond the expiration of this contract.

9b) County and Contractor will develop a process for transfer of data to an independent third party, should continuation of the working relationship cease.

10) Contractor and the County will mutually develop program development and implementation timetables for testing cycle. After each testing cycle, Contractor and the County will evaluate program effectiveness and participant satisfaction and modify program elements accordingly.

10a) On a weekly basis, Contractor shall notify County of status of registrations at remaining clinics.

Contractor and County can decide to cancel or consolidate a clinic, if registration is below 15 at least one week prior to the clinic screening date, without penalty.

11) Contractor provides a fully-functioning Cholestech machine for the County's Health Coaching Program at no charge to the County.

12) Contractor shall assign a Project Coordinator and shall assure that the staff and/or sub-contractors assigned to this project have appropriate professional background and/or training and/or certification to administer health screenings. County reserves the right to reject Contractor staff and/or sub-contractor assignment with cause.

13) Contractor shall comply with all federal, state, and local laws regarding disposal of hazardous waste. Contractor shall comply with all federal, state, and local laws regarding needle safety. Contractor is requested to register clinic screening dates with Health Department.

14) Contractor will perform related tasks and responsibilities as mutually agreed upon by Contractor and the County.

15) County is responsible for all photocopy services and publicity to employees, logistics, securing appropriate rooms, and overall program management activities.

II. Amount and Method of Payment


Contractor may bill on the 30th of each month for services rendered and expenses incurred during that month, according to the current Fee Schedule on file with the Human Resources Department (Exhibit B). Invoices should be itemized and submitted in writing. Contractor shall submit a complete listing of program participants with each invoice.

For the purposes of this contract, the primary work location is designated to be the County Government Center in Redwood City. Contractor acknowledges receipt of one County Government Center parking garage pass, and agrees to pay County the prevailing charge if it is lost or not returned at the end of the contract period.

Reasonable and necessary expenses for items related to the completion of this contract will be reimbursed with an appropriate receipt. Any expenses totaling more than \$50 should receive prior approval from County. The Contractor shall not bill for telephone expenses, mileage or travel time provided under this contract.

Awarding of this contract does not ensure that County will spend the total amount of the agreement. The County is not obligated to purchase any specific amount of services.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

 _____ Contractor's Signature	<u>1/16/13</u> _____ Date	<u>Don Emery</u> _____ Contractor's Name (Please Print)	<u>1/16/13</u> _____ Date
_____ President, Board of Supervisors	_____ Date	<u>Don Horsley</u> _____ Board of Supervisors (Please Print)	_____ Date
_____ Purchasing Agent, County of San Mateo	_____ Date		<u>17210</u> _____ Budget Unit

**COUNTY OF SAN MATEO
AGREEMENT WITH INDEPENDENT CONTRACTOR**

Exhibit "B"

Agreement No. _____

Agreement between the County of San Mateo and BAYSPORT, INC.

**Health Screening Service Fees for San Mateo County
(effective January 1- December 31, 2013)**

1. Health Screening Services

Tests will include Height/Weight for Body Mass Index (BMI); Waist and Hip measurements for Waist/Hip ratio; Blood Pressure check; fingerstick blood test using the Cholestech units for either a fasting or a non-fasting lipid profile; and an individual consultation reviewing the clinical results.

Fasting Lipid Profile	\$46.00
Non-Fasting Profile	\$43.00

If a clinic has less than 11 participants, there is a flat \$500 fee.

2. HbA1c Testing. \$16.75

BaySport provides HbA1c testing for participants who meet the testing criteria as established by BaySport and San Mateo County representatives.

3. Follow-up Counseling for High Risk/ Intervention Participants (upon County request only)

Upon request of County, for those participants meeting specific high-risk criteria, BaySport will conduct a telephonic follow-up counseling program at the request of San Mateo County.

Follow-Up Counseling \$37pp

These follow-up counseling sessions will be an average of 10 minutes in length and will be performed via telephone. The pricing information is per person and based upon 20 minutes of BaySport staff physiologist time at \$111/hr: 5 minutes for preparation; 10 minutes for the consultation; and 5 minutes for summary notes and a follow-up email to the participant after the discussion.

4. Additional expenses in support of Clinic Screening Services

Direct set-up costs associated with online appointment system	\$300.00
Fully-functioning Cholestech machine for Health Coaching Program	no charge
End of Program Aggregate Reporting	no charge
Custom, Ad hoc reports	no charge

BaySport will provide a written invoice to the County of San Mateo for services provided as part of this contract on the 30th of each month during which services were provided in support of this contract. Baysport will attach the list of employees who participated by date of service.

This Exhibit will be valid from January 1, 2013 through December 31, 2013.

It is agreed that any subsequent exhibits will not measurably change the scope of work or the amount and method of payment for a period of up to three years.

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 section 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. *Designated Record Set*. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- b. *Electronic Protected Health Information*. "Electronic Protected Health Information" ("EPHI") means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual*. "Individual" shall have the same meaning as the term "individual" in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information*. "Protected Health Information" 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 Contractor from or on behalf of County.
- f. *Required By Law*. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- g. *Secretary*. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *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, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule*. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of Contractor

- a. Contractor 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. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor 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.
- g. If Contractor has protected health information in a designated record set, Contractor 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.
- h. Contractor 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 Contractor on behalf of, County available to the County or to 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.
- i. Contractor 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.

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- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, 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.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor 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 Contractor 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 Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

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Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor 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, Contractor 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 Contractor maintains such Protected Health Information.

Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the 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 Contractor 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 Contractor

(rev. 8/08)

Handwritten signature: Kunda Eung
1/17/2013

ATTACHMENT

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

The undersigned (hereinafter called the "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.

Linda Emery
Name of 504 Person - Type or Print

BAYSPORT INC.
Name of Contractor(s) - Type or Print

987 University Ave, Suite 12
Street Address or P.O. Box

Los Gatos CA 95032
City, State, Zip Code

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

Linda Emery
Signature

VP / CFO
Title of Authorized Official

1/17/13
Date

*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."