

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND NUANCE COMMUNICATIONS, INC.

This Agreement is entered into this _____ day of _____ 2019, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Nuance Communications, Inc., 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 transcription services.

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

1. Exhibits and Attachments

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

Appendix 1 – Initial List of Subcontractors
Exhibit A—Additional Terms and Conditions
Exhibit B—Description of Services, including Service Level commitments
Exhibit C – Payments and Rates
Exhibit E—Corporate Compliance SMMC Code of Conduct
Schedule 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 C, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibits A and B.

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 C. In no event shall County's total fiscal obligation under this Agreement exceed SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$675,000). 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 (to the extent permitted by Section 5 of this Agreement) or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement. All invoices must be reviewed by the Director of Health Information Management 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 September 1, 2018, through August 31, 2021.

5. Termination

This Agreement may be terminated by Contractor or by the Chief of the Health System or his/her designee if (i) the other party commits a material breach of the Agreement and fails to cure such material breach within thirty (30) days after receipt of written notice of such breach; or (ii) the other party shall be or becomes insolvent. If Contractor fails to cure the breach within the cure period, County may immediately terminate this Agreement without further action.

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. Notwithstanding the foregoing, in no event shall County's unavailability of funds affect the County's payment obligations for Transcription Services previously provided by Contractor.

In the event that County provides notice of an alleged material breach pursuant to this section, County may, in extreme circumstances where the breach is not capable of being cured as determined by County in its discretion acting reasonably, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials, except confidential patient data or health information, if permitted by law. Neither the expiration nor termination of this Agreement shall affect the parties' respective payment obligations for Transcription Services previously provided. County shall have no further rights to further access and/or use the Transcription Services or any Hosted Services, and within ten (10) days of such termination County shall return or destroy all copies of the Hosted Software and Documentation in its possession.

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:

(A) all claims, suits, or actions of every name, kind, and description claiming bodily injury, including death, and/or tangible personal property damage resulting from negligent or intentionally wrongful actions of Contractor or a person employed by Contractor (i.e., as an employee or independent contractor) while performing services on County's premises, if such actions were not proximately

caused by the action or omission of the County or any third party; provided however, that (a) County notifies Contractor within thirty (30) days of the County's receipt of a lawsuit asserting such a claim; (b) Contractor has sole control of the defense and all related settlement negotiations; and (c) County provides Contractor with the assistance, information and authority reasonably necessary to perform the above. As used in this Section, the term "tangible personal property" shall not include software, documentation, data or data files. Contractor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of the Hosted Services. This Section 8.a states Contractor's entire liability and the County's exclusive remedy for bodily injury and property damage.

(B) any sanctions, penalties, or third party 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, up to a maximum liability of One Million Dollars (\$1,000,000); or

Without limiting the foregoing provisions of this Section 8.a, the duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor, at its expense, shall defend, indemnify, and hold harmless County from and against any claim or suit made or brought by an unaffiliated third party (a "Claim") that County's use of the Hosted Software or Hosted Services within the scope of this Agreement infringes or violates any third-party's patent, trademark, trade secret, or copyright rights ("IP Rights"), provided any such right is enforceable in the United States, and indemnify County from any resulting judgment of the Claim finally awarded against County by a court of competent jurisdiction, or settlement of the Claim agreed to by Contractor. 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 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). In the event that a court of competent jurisdiction makes a determination that the Hosted Software or Hosted Service infringes, or if Contractor determines that the Hosted Software or Hosted Service likely infringes, Contractor shall, at Contractor's option and expense, either: (i) modify the infringing portion of the Hosted Software or Hosted Service so as to make it non-infringing; (ii) procure for County the right to continue using the Hosted Software or Hosted Service (or the infringing portion thereof) without infringement; (iii) replace the services so that they become non-infringing but remain substantially functionally equivalent; or (iv) refund the County the Fees paid for the affected Services during the period of infringement, prorated over a three-year period from the delivery date.

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); (b) any aspects of the services under this Agreement which have been used by County other than in accordance with this Agreement; (c)

County's continued use of the infringing Hosted Software or Hosted Services after receipt of notice from Contractor of a Claim or after receipt of the remedy required of Contractor under this Section; or (d) combination or use of the Hosted Software or Hosted Services with other products, processes, or materials not provided by Contractor or specified by the applicable Documentation.

Contractor's indemnity obligations set forth in this Section 8.b shall constitute the sole liability of Contractor, and the sole remedy of County, with regard to Claims that County's use of the Hosted Software or Hosted Services infringe such third party's IP Rights. Without limiting the foregoing provisions of this Section 8.b, 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. Notwithstanding the foregoing, either party may assign this Agreement to an entity that acquires all or substantially all of a party's assets (by merger, asset acquisition, or otherwise) upon written notice to the other party; provided, however, Contractor retains the right to prohibit any assignment by County to a direct competitor of Contractor, and any successor shall assume all obligations including but not limited to HIPAA obligations. Subcontracting. Contractor shall limit its use of third party subcontractors with access to County's PHI to only those listed in Appendix 1 hereto. If Contractor requires additional subcontractors to access County's PHI, prior to providing such access, Contractor shall seek in writing County's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event that County fails to approve or reject a proposed subcontractor within 20 days, County shall automatically be deemed to approve the proposed subcontractor. Contractor remains responsible and liable for its obligations under this Agreement and for the performance of its subcontractors, and the acts or omissions of Contractor's subcontractors shall be deemed to be the acts or omissions of Contractor.

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. Upon request 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. In the event of any pending cancellation or modification in amounts or coverage of the policy below the minimum coverage amounts set forth in Section 10.c, Contractor shall promptly give County written notice thereof.

b. Workers' Compensation and Employer's Liability Insurance

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

provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

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

- (a) Comprehensive General Liability... \$1,000,000
- (b) Professional Liability..... \$1,000,000

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

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished below the minimum coverage amounts 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.

Further, Contractor certifies that it 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. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

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

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

Upon request from County or the County Manager from time to time during the Term, Contractor shall report to the County Manager in writing the filing in California 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", including the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection, unless within such 30 days such entity did not notify Contractor that such charges were dismissed or otherwise unfounded. Such report shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

- i. termination of this Agreement; and/or
- 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, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

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

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

15. Merger Clause; Amendments

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

16. Controlling Law; Venue

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

17. Disentanglement

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

Upon any termination of the Agreement, regardless of the nature or timing of the termination except for termination for cause by Contractor, County shall have the right, for up to six (6) months (the "Transition Period"), at County's option and request, to continue to receive from Contractor the Hosted Services including all associated maintenance and support services, at the then-applicable rates, and the amount of such support and maintenance fee shall remain subject to the limitations set forth in the Agreement (if any) regarding any increase in such fee.

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: Nuance Communications, Inc.
Attn: Healthcare Legal Dept.
Address: 1 Wayside Rd
Burlington, MA 01803
Email: hlegal@nuance.com Facsimile: (781) 565-5001

19. Software License

Contractor grants to County a non-exclusive, non-transferable, non-sublicensable, limited license to access and use the Hosted Software (as defined in "Exhibit A" and as described in Exhibit "B") through Contractor's Internet website. The license granted shall not be deemed to authorize County

to change or modify the Hosted Software in any way. Nothing herein grants any rights to County to resell, remarket, or sublicense the Hosted Software or access to Contractor's website to any third party.

20. Ownership

County acknowledges that the structure, organization, and code (both source code and object code) of the Software are proprietary to Contractor and that Contractor retains exclusive ownership of the Hosted Software, Hosted Services, Documentation, trademarks, and any other intellectual Property Rights relating to the Hosted Software and Hosted Services, including all modifications, enhancements, derivatives, and other software and materials developed hereunder by Contractor, and all copies thereof. County shall not sell, transfer, publish, disclose, display or otherwise make available the Hosted Software or Hosted Services, including any modifications, enhancements, derivatives and other software and materials developed hereunder by Contractor, or copies thereof to others in violation of this Agreement. Further, Hosted Software and Hosted Services will be deemed to be Confidential Information, and any such confidentiality restrictions shall apply accordingly. Except as otherwise expressly permitted hereunder, County agrees not to copy or otherwise reproduce the Hosted Software or Hosted Services including any modifications, enhancements, derivatives, and other software and materials developed hereunder by Contractor in whole or in part. County shall not remove any proprietary, copyright, trademark, or service mark legend from any Hosted Software or Hosted Services.

Contractor represents that it has title to and the unrestricted right to license its proprietary Hosted Software and Hosted Services.

"Nuance Communications, Inc.", "eScription", and any other trademarks and service marks adopted by Contractor, to identify the Hosted Software and other Contractor products and services belong to Contractor. County has no rights in such marks except as specified in writing between the parties. County agrees not to use the "Nuance Communications Inc." trademark or any other mark likely to cause confusion with such trademarks as any portion of County's trade name, trademark for County's services, trademark for any other products of County, or trademark for any portion of County's Internet addresses or domain names.

County agrees not to decompile, disassemble, reverse engineer, transfer electronically, modify, enhance, or create any derivative works of the Hosted Software, Hosted Services, or any Contractor proprietary or confidential information. County agrees not to rent, electronically distribute, timeshare or market the Hosted Software or Hosted Services by interactive cable, internet or remote processing services or otherwise distribute them other than as specified in this Agreement. Contractor agrees that County's patient data shall be and remain County's Proprietary Information. Contractor understands and agrees that County's patient data is subject to applicable state and federal laws and regulations pertaining to confidentiality of patient data and information and prohibiting its disclosure, and Contractor agrees to comply with all applicable confidentiality and patient privacy laws and regulations.

21. 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.

22. 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, subject to Contractor's right to cure any such default within thirty (30) days.

23. Limitation of Liability

UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS, COSTS OF COVER, COSTS OF DELAY, DAMAGES TO BUSINESS REPUTATION, OR LOSS OR DESTRUCTION OF DATA), REGARDLESS OF HOW SUCH DAMAGES ARISE, WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE, OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

EXCEPT FOR COUNTY'S BREACH OF THE LICENSE GRANT AND ITS RESTRICTIONS, CONTRACTOR'S BREACH OF ITS BUSINESS ASSOCIATE OBLIGATIONS, AND EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS, THE MAXIMUM LIABILITY FOR EITHER PARTY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES COUNTY PAID CONTRACTOR UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM COUNTY'S USE OF SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES COUNTY PAID CONTRACTOR FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY. NOTWITHSTANDING THE FOREGOING, CONTRACTOR'S AGGREGATE OBLIGATION AND/OR LIABILITY TO COUNTY FOR ITS INDEMNIFICATION/HOLD HARMLESS OBLIGATIONS OTHER THAN IN CONNECTION WITH ITS BUSINESS ASSOCIATE OBLIGATIONS SHALL IN NO EVENT EXCEED THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000).

24. Data Use

County is solely responsible for obtaining all necessary consents under applicable laws and regulations in order to allow Contractor to use the Data (as defined in Exhibit "A") in accordance with this Section 24. County gives Contractor the right, and Contractor has permission to use, the Data in accordance with this Section 24, and to de-identify the Data in accordance with 45 C.F.R. § 164.514. Contractor and third parties acting under the direction of Contractor may use, compile (including creating statistical and other models), annotate and otherwise analyze the Data to develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of its Hosted Services. Contractor shall own all intellectual property rights in all enhancements and improvements to the Hosted Services that result from such use of the Data. The parties acknowledge and agree that Contractor shall not be responsible for maintaining the official medical record or health record for any patient.

25. Speech Recognition

COUNTY ACKNOWLEDGES THAT SPEECH RECOGNITION IS A STATISTICAL PROCESS, ERRORS ARE INHERENT IN SUCH PROCESS, AND APPLICATIONS EMPLOYING SUCH PROCESS ARE DESIGNED TO ALLOW FOR SUCH ERRORS. CUSTOMER ACKNOWLEDGES

THAT SUCH ERRORS ARE INEVITABLE AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COUNTY TO IDENTIFY AND CORRECT ANY SUCH ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SPEECH RECOGNITION SOFTWARE PROGRAM LICENSED OR SERVICES PROCURED HEREUNDER. COUNTY ACKNOWLEDGES AND AGREES THAT CONTRACTOR DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND THAT COUNTY'S USE OF THE SERVICES DOES NOT ABSOLVE COUNTY OF ITS OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. COUNTY ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICES LIES SOLELY WITH COUNTY. COUNTY AGREES THAT ANY RELIANCE UPON THE SERVICES SHALL NOT DIMINISH COUNTY'S RESPONSIBILITY FOR PATIENT CARE.

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

For Contractor: NUANCE COMMUNICATIONS, INC.

Simon J. Senior
Contractor Signature

12/18/2018
Date

SIMON J. SENIOR
Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Appendix 1 to Agreement

Initial List of Subcontractors with Potential Access to PHI

1. Akamai Technologies – Traffic monitoring of eScripton platform for Intrusion Detection System.
2. Transcription Subcontractors

<u>Domestic</u>
The Transcription Center
Integrity HD
QMedET Solutions
Precision Transcription
Lynne Dalbeck Medical Transcription Service

<u>Offshore</u>
Sam Tech Datasys Pvt. Ltd. (STD)
IDS Infotech Ltd (IDS)
ieIMPACT Microsystems Private Limited (IEM)
Vishwa Transcription Services Pvt. Ltd. (VTS)
GF Infotech Transcription (GFI)

Exhibit A – Additional Terms and Conditions

1. **Definitions.** As used in this Exhibit, the following defined terms have the meanings indicated below.

"Authorized User(s)" are those employees and contractors of County who are permitted to access the Hosted Services subject to the terms and restrictions contained in this Exhibit.

"Contract Month" means a calendar month or the period beginning on the same calendar day of the month as the Go-Live Date and ending at the end of the calendar month.

"Contracting Period" shall be from September 1, 2018, through August 31, 2021.

"Data" means the audio, image, and/or text data input, all data elements output (e.g. interpretation of clinical contents in xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from County under the Agreement, or any other clinical information received by Contractor from County under the Agreement.

"Documentation" means the administrative guide and/or user's guide provided by Contractor to County to facilitate use of the Hosted Services.

"Draft Text" means text created from Voice Files utilizing speech recognition software.

"Editing Services" means the minor formatting and editing of Draft Text for mistakes in translation, punctuation, or grammar consistency and any other possible errors.

"Go-Live Date" means the date upon which Transcription Services are first provided by Contractor to the County.

"Hosted Services" means Contractor's proprietary eScription product, or other hosted solution as set forth in a subsequent Exhibit or Order Form, delivered to County as a software as a service offering.

"Hosted Software" means Contractor's proprietary software product or Third Party Software loaded on a Contractor or Contractor controlled server by Contractor and accessed by County under a license granted in this Exhibit or, for Third Party Software, licensed under a separate license if provided to County.

"Medical Report" means an electronic report dictated by County, transcribed or edited (as applicable) by Contractor, and delivered to County.

"Provider" means Contractor and/or a third party medical transcription provider.

"Transcribing Services" means the recording and typing of Draft Text.

"Transcription Services" means the comprehensive set of Contractor services available from Contractor that can accomplish the complete transcription of Voice Files, including the transcription and formatting of medical records dictated by medical providers, into data. County may purchase the entire comprehensive set of services from Contractor, or a subset, as mutually agreed. Contractor may as necessary and at its discretion utilize various hardware, Hosted Services and labor to implement the Transcription Services procured by County.

"Voice Files" means electronic copies of voice dictation.

"Work Type(s)" means the type of Medical Report.

2. **Scope of Exhibit.**

a. **Scope.** Subject to the terms and conditions of this Exhibit and the Agreement, Contractor agrees to provide to the County Transcription Services and/or Professional Services. County shall dictate the Medical Report into the Hosted Services, make

Voice Files and Draft Text available for transcription and/or editing and Contractor shall supply Medical Reports to County in accordance with this Exhibit and the Agreement.

- i. Contractor will provide corrections to Reports where errors in transcription are made by Contractor's transcriptionists at no charge to the County.
- ii. Amendments and addenda to Reports ("Report Modifications") can be made by providers from time to time. Report Modifications will be charged at the same rate as the original report. SMMC will only be charged for the lines modified.

3. Contractor Obligations.

a. *Transcription Equipment.* Contractor shall maintain the transcription hardware and Hosted Services necessary for Contractor to fulfill its obligations and duties under this Exhibit and the Agreement.

b. *Emergency Support.* During the Contracting Period, Contractor agrees to provide support for the Transcription Services twenty four (24) hours per day, seven (7) days per week and three hundred and sixty five (365) days per year. Contractor shall provide County with a listing of contact personnel and a manager assigned to County to facilitate County's access to support for resolution of Contractor Transcription Services issues.

4. County Obligations

a. *Facilities.* County at its sole cost and expense shall procure and maintain the Internet connections and other telecommunications facilities County requires in the performance of this Exhibit, including without limitation, all data circuits and/or telephone lines required to transmit dictation to Contractor.

b. *Location.* County understands and agrees that the Transcription Services may be provided from (i) North America (onshore), (ii) Canada or (iii) either or both United States and outside of the United States (multishore).

c. *User Administration.* County shall make available to Contractor the ability to create and manage users and security groups for the purposes of transcription, quality control (both pre-delivery and retrospective), statistical reporting, payroll, invoicing and management of services provided to County.

d. *Workflow.* Contractor will not agree to any Authorized Users (i.e. physicians, radiologists) request for a Provider's employee or agent to copy from a historical patient document into a current Medical Report while delivering the Transcription Services.

e. *Work Types.* All work types shall follow standard workflow. The physician is responsible for entering the Work Type during dictation that will be used by the medical transcriptionist for transcription/editing services. All Work Types shall be dedicated to Contractor and shall not be shared with the County's in-house medical transcriptionists or a third party provider.

f. *Hosted Services Updates.* The implementation of the Transcription Services requires that the County be on the then-current version of the Hosted Software prior to the Go-Live Date. Additionally, County agrees that updates and/or upgrades for the Hosted Services will be implemented within three (3) months of the release date.

5. County Site Equipment. Contractor may sell/license certain hardware to County under Contractor's standard terms and conditions of sale under a contract separate from this Exhibit. Under certain circumstances, Contractor may provide County with hardware to be located on County's premises on a no charge lease basis to facilitate the Transcription Services ("County Site Equipment"). This County Site Equipment shall be furnished under the terms of this Exhibit, remain the property of Contractor, and be returned to Contractor at the termination or expiration of this Exhibit in the same condition as it was received, normal wear and tear excepted.

6. License Grant – Hosted Services.

a. Any Hosted Service ordered by County and/or provided by Contractor is provided under the terms of the Limited License and the License Restrictions below.

b. *Limited License*. Subject to the terms and conditions of this Exhibit and the Agreement, Contractor hereby grants County a revocable, non-exclusive, non-transferable, non-sublicensable limited license to allow County, during the Contracting Period, to use the Hosted Services provided by Contractor in a manner commensurate with its intended use, as prescribed herein and in the Documentation, and solely for County's internal business purposes.

7. License Grant – Hosted Software.

a. Any Hosted Software accessed and or utilized by County will be accessed or utilized under the terms of the Limited License below and the Agreement.

b. *Limited License*. Subject to the terms and conditions of this Exhibit, Contractor hereby grants County, a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to allow County to access the Hosted Software, during the Contracting Period, for the sole and limited purpose of using the Hosted Software as part of the Transcription Services in a manner commensurate with the intended use of the Hosted Software as prescribed herein and solely for County's internal business purposes. County may only access and use the Hosted Software to translate and edit documents internally if such process is expressly permitted.

8. Transcription Services License. Subject to the terms of this Exhibit and the Agreement, Contractor grants County a limited, non- transferrable non-exclusive license to use the Transcription Services as purchased by County during the Contracting Period. County is granted no rights to the Transcription Services except those rights specified in this Exhibit and/or the Agreement. County agrees that Contractor or other third parties own all legal right, title and interest in and to the Transcription Services, including any Intellectual Property Rights therein. "Intellectual Property Rights" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any other proprietary rights. Contractor reserves all rights not expressly granted to County. Except as expressly permitted in this Exhibit, County shall not attempt to disable or circumvent any security mechanisms used by the Transcription Services or any applications running on the Transcription Services, nor re-sell, re-distribute or re-package the Transcription Services to a third-party.

Exhibit B

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

Contractor shall provide the following Hosted Services: eScription

Contractor shall provide the following associated transcription services:

- Back-end speech recognition transcription
- Traditional transcription.
- Services shall be delivered according to Contractor's Quality Compliance Program, attached hereto as Attachment 1.

Report types shall include but not be limited to the following:

- Clinic Notes
- Consultation Reports
- Discharge Summaries
- Codicology Reports
- Echocardiography Reports
- Electroencephalograph Reports (EEGs)
- History and Physical
- Holter Monitor Reports
- Operative Reports
- Pathology Reports
- Physician Letters
- Psychiatric Reports (various)
- Pulmonary Function Reports
- Radiology Reports
- Treadmill Stress Test Reports

Patient types for which reports will be transcribed include:

- Acute care inpatient
- Ambulatory surgery
- Psychiatric inpatient
- Outpatient psychiatric
- Long term care
- Clinic
- Ancillary

Turnaround time performance requirements include:

- Stat reports: 3 hours
- History & Physicals, operative reports: 12 hours
- All other report types: 24 hours

Quality assurance:

- Vendor shall perform ongoing quality reviews of transcription.
- Reviews shall consist of proof listening and reading of reports for content, grammar, spelling and contextual accuracy.
- A transcription accuracy rate of 98% (the "Accuracy Rate") shall be maintained, as calculated pursuant to Attachment 1.

Penalties

The following sets forth Contractor's entire obligation, and County's sole and exclusive right and remedy, for failure to meet the Accuracy Rate: For any month during the Term in which less than 98% accuracy is achieved, the Fees due and payable to Contractor for such month shall be reduced by two percent (2%).

Service requirements:

- Vendor shall provide all dictation system equipment and software
- Phone line access to system via "800" number or equivalent
- Twenty-four (24) hour facility access to dictation system
- Twenty-four (24) hour support line
- Audio access to dictations for 90 days minimum
- Electronic transmission of transcribed reports in "xML" format to the Medical Center's Soarian electronic medical record system
- On-line access to transcription system database including by work type, dictator, and patient identifier
- Electronic archive of all transcribed reports for one year minimum
- Back-up system in the event of system failure
- Training and support of dictators as needed
- Training and support of HIM staff as needed

Nuance Transcription Services Quality Compliance

COMMITMENT TO EXCELLENCE

Nuance is committed to producing exceptional quality results, meeting 100% of our clients' quality expectations. The purpose of our Commitment to Excellence program is to enhance the skillset of our team members; provide quantifiable, credible, and measurable results; gain efficiencies within our team; and guarantee the integrity of healthcare documentation provided to the clients and patients we serve.

Timely and consistent quality feedback is provided to all team members through FIESA (Nuance's proprietary auditing and reporting software) and one-on-one communication with the Operations Manager (OM). Educational support includes feedback through FIESA or the platform as appropriate, quality reviews, online education modules, weekly quality tips, and access to real-time updated account specifics.

QUALITY SUPPORT TEAM

Quality Control (QC) (predelivery): Conducts concurrent review of work sent to the internal pending queue. This team is part of NTS Operations and therefore delivers live work to the customer and patient chart.

Quality Assurance (QA) Specialists (post delivery): Completes the retrospective quality reviews and provides feedback to the Medical Language Specialists (MLS) through FIESA.

PREDELIVERY VERSUS RETROSPECTIVE QUALITY

Concurrent Reviews

Concurrent reviews are performed by QC team members on documents before they are delivered to the customer. Educational redirection is provided via FIESA review and/or FIESA reporting. The QC team provides feedback within the FIESA software. Critical and noncritical errors generate automated email alerts immediately upon recording errors in FIESA. MLS/QCs are required to review FIESA feedback on a daily basis to avoid repeat errors and ensure ongoing education.

Retrospective Reviews

Objective audits are performed by the Quality Compliance team after delivery to the customer as a measurement of the quality of Nuance's product, i.e., the medicolegal documents created by our transcription team, utilizing the parameters outlined in the NTS Quality Guidelines. Monthly sample size is based on contractual requirements. Each ID is also audited as part of the random sampling at a minimum of 1% of their total volume. Documents audited retrospectively are captured under the Post Audit category in FIESA.

Customer Feedback

Customer feedback regarding document quality is recorded under the Client Feedback category in FIESA.

The data is analyzed and monitored by NTS production management teams to assist with improving performance, eliminating repeat errors and identifying areas for additional education.

ACCURACY CALCULATION

Document accuracy is derived by assigning point values to errors, then subtracting the sum of error points from 100.
Example: If the sum of error points is 2, then $100 - 2 = 98\%$.

Overall accuracy is derived using the following calculation:

Total documents reviewed x 100 – total error points/total documents reviewed.

Example: 56 documents were reviewed with a total of 26 error points. $(56 \times 100) - 26 / 56 = 99.54\%$.

QUALITY COMPLIANCE PROCESS

- The Quality Compliance Team (QA) engages upon go-live in order to perform retrospective quality audits.
- Audits are performed daily throughout the month, while ensuring the contractual sample size or $\geq 1\%$.
- Documents are selected randomly via an automated scripting process, then assigned to the QA team.
- Pertinent information for each document is entered into FIESA, to include job ID, dictator, MLS/QC ID, and worktype. The error text and correction text are captured in the software and are immediately available to the end user upon submission.
- The auditor selects the appropriate error category and the system assigns a point value for each error (see error classifications and categories listed below). The system then calculates the total lines, total points, and accuracy score for each individual job. When a Critical or Major error is recorded by the auditor, an automated email is generated to the MLS/QC and OM for immediate feedback/education.

QUALITY ASSESSMENT ERROR CLASSIFICATIONS AND CATEGORIES

The NTS Quality Guidelines consist of six error categories: Critical, Risk Management, Noncritical, Minor, Educational and Blank. This error classification facilitates analysis, quality improvement recommendations, and performance management as needed.

- 1) **Critical Errors** have the potential to impact patient safety, care/treatment or privacy. Examples include, but are not limited to, incorrect laboratory data or vitals, medication dosages and/or names, incorrect terminology or verbiage ("history of" vs. "no history of") and patient identification errors. This does not include minor misspelling of a medication; i.e., capitalization of a generic drug.
- 2) **Risk Management Errors** are incurred when an MLS does not recognize and flag a dictation error within the document. Examples include, but are not limited to, incorrect medication dosages, left vs. right, discrepancies or contradictions.
- 3) **Noncritical Errors** have an impact on document integrity but do not have the potential to affect patient care or safety. Examples include, but are not limited to, incorrect verbiage, addition/omission of noncritical words, misspellings, protocol errors, and missing carbon copy.
- 4) **Minor/Educational Errors** warrant educational opportunities and are provided as feedback; they do not change meaning or have the potential to affect patient care. Examples include, but are not limited to, grammar, punctuation, inconsequential typos and omissions/additions, capitalization of drug names, and incorrect word forms (femur/femoral).
- 5) **Blanks** are recorded and are categorized as follows:
 - **Blanks Resolved:** Reviewer was able to fill blank with reasonable effort.
 - **Valid Blanks:** Reviewer was unable to resolve the blank. Also used for discrepancy/possible dictation error or blanks that are placed at the request of the dictator.

FIESA REPORTING

For every institution served by Nuance Transcription Services, a monthly report is generated, containing all data entered throughout the month. This also includes 3-month performance trending, details of all errors found, as well as a summary of error count and overall accuracy.

Monthly audits are delivered to the Operations Manager (OM) no later than the 15th day of the next month. Results are reviewed by the OM and shared with customers on a monthly basis. Analysis and trending are generated to proactively improve quality.

THIRD-LEVEL QUALITY REVIEW

Random reviews are conducted on all QA staff performing retrospective audits on a regular basis.

Inconsistencies or inaccuracies in scoring are recorded and addressed immediately with the individual(s). This process ensures auditor accountability and integrity.

ERROR CATEGORIES AND POINT VALUES

Error Name	Point Value	Error Type
Addition/Omission Critical	3	Critical
Date of Service Critical	3	Critical
Inaccurate Verbiage Critical	3	Critical
Incorrect Values (Lab/Vitals/Other) Critical	3	Critical
Medication/Dosage Critical	3	Critical
Patient Identification Critical	3	Critical
Provider Identification Critical	3	Critical
Visit Encounter Critical	3	Critical
Wrong Worktype Critical	3	Critical
Critical FTF (Failure to Flag)	1.5	Risk Management
FTF (Failure to Flag) Noncritical	0.5	Risk Management
Added/Omitted Dictation Noncritical	1	Noncritical
Carbon Copy Missing Noncritical	1	Noncritical
Incorrect Verbiage Noncritical	1	Noncritical
Noncritical Date Error	1	Noncritical
Protocol Error Noncritical	1	Noncritical
Value/Numeric Error Noncritical	1	Noncritical
Account Specific/Formatting Minor	0.25	Minor
Grammar/Word Misuse/Typo*	0 / 0.25	Minor
Omission/Addition*	0 / 0.25	Minor
Blanks Resolved	0.25	Blank
Valid Blanks	0	Blank
Capitalization	0	Educational
Punctuation	0	Educational

*If 5 or more are captured by the auditor within the same document, FIESA will score each at 0.25.

Exhibit C

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

Fee schedule:

- Domestic Labor: Virtual Black Character ("VBC") \$0.00181, Virtual Line \$0.10
- Multi-shore Labor: VBC \$0.00145, Virtual Line \$0.08
- For headers and footers, a fixed 825 VBC's are counted for each document

Terms:

- A VBC means each character that is visible on the report and header/footer that can be seen with the naked eye. Spaces, carriage returns and hidden formatting instructions such as bolding, underlining, text boxes, printer configurations, or spell checking are not counted in the total character count. If the Hosted Services cannot calculate VBCs in headers/footers, a fixed number of VBCs will be added to each report for headers/footers.
- Definition of a Virtual (Net) Line: For each document, the number of ASCII characters in that document and header/footer (including spaces and black characters) are added and divided by 65. That number is rounded up to the nearest integer value. If the Hosted Services cannot calculate ASCII characters and spaces in headers/footers, a fixed number of lines will be added to each report for headers/footers. The default header/footer addition is fifteen (15) lines
- Contractor will submit invoices electronically to the County at SMMC-Accounts-Payable@smcgov.org. Processing may be delayed if invoices are not submitted electronically on the 1st and 16th of each month. The invoice shall cover the preceding two-week period for services rendered. Each billing period starts on Monday at 12:00 midnight and ends on the Sunday two weeks following at 11:59 p.m.
- Invoicing shall include total reports and lines by work type
- System should be able to produce reports by individual dictator, report type, patient identifier, date, and date range conditions of this Agreement.

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 its 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.

Schedule H

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

DEFINITIONS

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

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (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 Business Associate's minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the Secretary, in a time and manner designated 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 in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within five (5) business days of becoming aware of such incident. Notwithstanding the foregoing, this subsection constitutes notice from Business Associate to County that minor incidents occur on a daily basis, including without limitation scans, "pings" and unsuccessful random attempts to penetrate computer servers or networks maintained by Business Associate ("Unsuccessful Security Incidents"), and the parties acknowledge and agree that Business Associate shall not provide any further notice hereunder regarding such Unsuccessful Security Incidents.
- q. 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 the media of a qualifying Breach.

- r. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying Agreement as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

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

OBLIGATIONS OF COUNTY

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

PERMISSIBLE REQUESTS BY COUNTY

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

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate and County agree 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. Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information

to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate by meeting with Business Associate upon reasonable prior notice and not more than once per calendar year (except in the event of a security incident) to receive an overview of Business Associate's information security program and responses to Covered Entity's reasonable questions related thereto; and to provide Covered Entity with a summary of Business Associate's practices related to Business Associate's compliance with this Attachment and with HIPAA.