

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND KaiNexus, 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 KaiNexus, Inc., a Delaware Corporation, hereinafter called "Contractor."

\* \* \*

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing a software-as-a-service platform that facilitates, supports, tracks, and reports on San Mateo County Health's improvement work (the "Service").

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

**1. Exhibits and Attachments**

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

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit C—KaiNexus Service Exhibit
- Exhibit E – Enhancement Request Process
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance
- Attachment IP – Intellectual Property
- Exhibit S—Service Level Agreement (SLA)

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A and all other incorporated exhibits and attachments.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed THREE HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$316,800). 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 a contract termination for cause. Contractor is not entitled to payment for work not performed as required by this agreement.

#### **4. Term**

Subject to compliance with all terms and conditions, unless earlier terminated, the term of this Agreement shall be from the Effective Date December 10, 2019, through Effective End Date December 09, 2022 unless terminated earlier in accordance with this Agreement.

#### **5. Termination**

This Agreement may be terminated by Contractor or by the Chief of Health or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party, a "**Termination for Convenience**". In the event of a Termination for Convenience, no refunds for prepaid and unused services will be given to the County. However, the County will not be obligated to pay any yet to be paid amounts under the terms of the agreement.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of fifteen calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination

Upon termination of the Agreement, County shall immediately cease all use of and all access to the Service. The "Reservation of Rights", "Restriction On the Use of the Service", , "Export and Other Restrictions", "Reference", "Amendments", "Waiver of Jury Trial", "Force Majeur", and "Miscellaneous" sections in Exhibit C, the "Fees and Payment" section in Exhibit B (as to amounts due as of termination), and the "Content", "Data Ownership, License and Access", "Confidentiality", "Warranty", "Limitation of Liability", "Hold Harmless", Disentanglement", "Notices", and "Controlling Law; Venue" sections of this Agreement shall survive any termination or expiration. All other rights and obligations shall be of no further force or effect.

#### **6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law. No "contract materials" or "Work Products", as defined in Exhibit IP, will be created under this agreement unless agreed upon and identified in writing by both Parties.

#### **7. Data Ownership, License and Access.**

County shall own all right, title, and interest in and to any data that is collected by KaiNexus from County or Authorized Users in connection with their use of the Service ("**Data**"). To the fullest extent permissible under applicable law, County grants and agrees to grant to Contractor permission to use such Data in order to provide the Service to County and as necessary to monitor and improve the Service. Additionally, County agrees that Contractor may use the Data to collect, develop, create, extract or otherwise generate statistics and other

information and to otherwise compile, synthesize and analyze such Data ("**Blind Data**"). Blind Data will have any and all characteristics removed that could in any way be used to identify any person or organization from which it came. Blind Data will be summarized and aggregated with other customer's Blind Data for statistical analysis. Notwithstanding anything in this Agreement to the contrary, to the extent that Contractor collects or generates Blind Data, such Blind Data will be owned solely by Contractor and may be used for any lawful business purpose without a duty of accounting to County, provided that such Data is not personally identifiable and does not identify the source of such Data.

**Content.** By uploading text, files, images, photos, video, sounds, links, works of authorship, or any other materials (collectively, "**Content**") to or through the Service, County hereby grants Contractor and our third-party partners a license under any of County's applicable intellectual property or other rights protecting the Content for the purpose of transmitting them through the Service. County represents and warrant to us that (a) County has the right to share the Content via the Service, and (b) the collection, use, posting and sharing of the Content via the Service does not violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person or entity or any applicable law.

## **9. Disentanglement**

Providing County has no unpaid invoices outstanding, 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 Excel, which is the standard KaiNexus platform export format, to facilitate archiving or loading into a replacement application. Files uploaded into the KaiNexus platform will be exported and provided to the County in their original file format.

Providing County has no unpaid invoices outstanding, upon any termination of the Agreement, regardless of the nature or timing of the termination, County shall have the right to enter into a final twelve (12) month term (the "Transition Period") at County's option and request to continue to receive from Contractor all maintenance and support services, at the then-applicable rates, and receive from Contractor all services reasonably necessary to effectuate an orderly transition to such new system or software solution ("Transition Services).

## **10. Confidentiality.**

County acknowledges that any proprietary or confidential information marked as such provided to County by Contractor ("**KaiNexus Confidential Information**") constitutes valuable proprietary information and trade secrets of Contractor. Contractor acknowledges that the Data provided to Contractor by County ("**County Confidential Information**") constitutes valuable proprietary information and trade secrets of County. Each party agrees, to the extent permitted or required by law, to preserve the confidential nature of the other party's Confidential Information by retaining and using the Confidential Information in trust and confidence, solely for its internal use except as provided herein, and by using the same degree of protection that such party uses to protect its own proprietary and confidential information, but in no event less than reasonable care. Each party shall have the right to obtain an injunction (without having to post a bond) to prevent any breach or continued breach of this section.

## **11. 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.

## **12. Hold Harmless**

### **a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or any other applicable law; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

### **b. Intellectual Property Indemnification**

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

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable

in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

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

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

**c. Mutual Indemnification.**

Each party (Indemnifying Party) shall indemnify, defend, and hold harmless the other party (Indemnified Party) and its directors, employees, agents, and distributors from and against all claims, damages and liabilities that arise from (a) unauthorized or illegal use of the services by the Indemnifying Party, or any Authorized User of the Indemnifying Party, (b) Indemnifying Party's Content or Indemnifying Party's Data, (c) Indemnifying Party's failure to comply with applicable law, (including without limitation the Children's Online Privacy Protection Act (COPPA) and the Health Insurance Portability and Accountability Act (HIPAA), together with all rules, regulations and guides promulgated under any such laws and any directives issued by any governmental authority), or (d) Indemnifying Party's failure to comply with any privacy policy or other agreement under which Content was obtained, Indemnifying Party's provision of personally identifiable information, protected health information and/or financial information, or Indemnifying Party's failure to comply with employer or other policies that may be applicable to Indemnifying Party.

Indemnifying Party's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) Indemnified Party notifies Indemnifying Party promptly in writing of any notice of any such third-party claim; (b) Indemnified Party cooperates with Indemnifying Party, at Indemnifying Party's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Indemnifying Party retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Indemnifying Party shall not have the right to settle any criminal action, suit, or proceeding without Indemnifying Party'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 Indemnified

Party, impair any right of Indemnified Party, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of Indemnified Party without Indemnified Party's prior written consent, not to be unreasonably withheld).

The duty of Indemnifying Party 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.

### **13. Assignability and Subcontracting**

If the Contractor is part of a merger or acquisition, then Contractor may assign this Agreement to the surviving entity. Otherwise, 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.

### **14. Limitation of Liability**

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR COUNTY'S USE OF OR INABILITY TO USE THE SERVICE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE LIABILITY TO THE OTHER PARTY FOR DAMAGES IN EXCESS OF THE AMOUNT OF TOTAL FEES COUNTY PAID IN CONNECTION WITH THE SERVICE IN THE SIX (6) MONTHS PRECEDING THE CLAIM. THE FORGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY OR EXCLUSION OF CERTAIN DAMAGES, SO THIS LIMITATION MAY NOT APPLY.

### **15. Warranty**

This Software is subject to a warranty. Licensor warrants to Licensee that the Software will perform according to the Software's documentation at the time of the implementation and that, to the best of Licensor's knowledge, Licensee's use of this Software according to the documentation is not an infringement of any third party's intellectual property rights. If the Software is subsequently upgraded, repaired or otherwise changed by Licensor, Licensor warrants to Licensee that the Software will continue to perform according to its original documentation as well as according to updated documentation to the extent new features are added. To the extent permitted by law, the above-stated warranty replaces all other warranties, express or implied, and Licensor disclaims all implied warranties including any implied warranty of title, merchantability, or of fitness for a particular purpose. No agent of Licensor is authorized to make any other warranties or to modify this warranty. Licensee is required to inform Licensor of any potential breach of this warranty within one year of identifying any performance defect in the Software that contradicts the expected performance as outlined in the original and/or updated documentation. Licensee will document any such potential breach of warranty by utilizing the Support Procedure outlined in the Exhibit <X> of this agreement. In the event of a breach of this warranty, Licensee's remedies include the following, to be selected at Licensee's sole discretion: if Licensee agrees that the Software's functionality is still partially acceptable despite the area related to the breach of warranty, Licensor shall provide a refund for the full amount Licensee reasonably attributes to the partial breach of warranty; if Licensee determines that the Software is materially in breach of warranty, Licensor shall issue a full refund,

including for amounts already paid and in relation to which the Software was non-functional; and/or any other remedy available at law.

**16. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County’s Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor’s coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. 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:

- i. Comprehensive General Liability..... \$1,000,000
- ii. Motor Vehicle Liability Insurance..... \$1,000,000
- iii. Professional Liability..... \$1,000,000

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

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**17. 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.

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

## **18. Non-Discrimination and Other Requirements**

### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

### **c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

### **d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

### **e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative

action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

**23. County and Contractor Representations.**

County represents and warrants to Contractor that it has the power and authority to enter into this Agreement, and that the information that it provides to Contractor about County or its account in connection with the Service will be current, true, accurate, supportable and complete. Contractor represents and warrants to County that it has the power and authority to enter into this Agreement, and that the information that it provides to County about Contractor in connection with the Service will be current, true, accurate, supportable and complete.

**24. 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: County of San Mateo – Health IT  
Address: 225 37<sup>th</sup> Ave, San Mateo, CA 94403  
Telephone: 650-573-3528  
Email: [HS\\_HIT\\_AccountsPayable@SMCgov.org](mailto:HS_HIT_AccountsPayable@SMCgov.org)

In the case of Contractor, to:

Name/Title: General Council  
Address: 4225 Wingren Dr. # 115 Irving, TX 75062  
Telephone: 512-522-3940  
Facsimile: 206-495-0879  
Email: [billing@kainexus.com](mailto:billing@kainexus.com)

**25. 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.

\* \* \*

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

For Contractor: KaiNexus, Inc.



Contractor Signature

2019/11/04

Date

Matthew P Paliulis

Contractor Name (please print)

---

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

*Template Version November 16, 2016*

**Exhibit A – Services**

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

KaiNexus SaaS Platform	
KNX1001	<p>KaiNexus Annual License – Enterprise 1000 Full Access Users (FAUs) &amp; 1200 Frontline Users (FLUs):</p> <p>Full Access (FAUs) users are fully functional within KaiNexus.</p> <ul style="list-style-type: none"> <li>• They can Receive notifications</li> <li>• They can log in and have full access as determined by their Role(s)</li> <li>• They can work on (and be assigned to work on) any item in the system</li> </ul> <p>Frontline (FLUs) users have a simpler KaiNexus experience.</p> <ul style="list-style-type: none"> <li>• Their left navigation bar is removed, but they can still use the search bar to look for any items they have permission to access.</li> <li>• When they do access such items, they are able to interact with them as any Full Access user with their same permissions could.</li> <li>• They can also be added to the team of any item in any role.</li> <li>• They can create any items for which they have the correct Roles.</li> <li>• They cannot create or own Boards and cannot edit or clone Cards.</li> <li>• They cannot save custom lists.</li> <li>• They can only be granted certain Roles - your Customer Experience Lead will work with you to get this set up the way you want.</li> <li>• They can only access certain Boards - your Customer Experience Lead will work with you on this as well.</li> </ul>
	<ul style="list-style-type: none"> <li>☑ Includes access into KaiNexus Core application modules               <ul style="list-style-type: none"> <li>☑ Capture, Implement, Measure, Share</li> <li>☑ Boards, Lists, Charts, Reports, Search, and Smart Notifications</li> <li>☑ Standard People and Admin functions</li> </ul> </li> <li>☑ Includes Annual KaiNexus Customer Experience Services               <ul style="list-style-type: none"> <li>☑ Onboarding &amp; Configuration Services                   <ul style="list-style-type: none"> <li>■ Up to 30 Onboarding Work Sessions</li> <li>■ Access to Onboarding Project Plan</li> <li>■ Go Live "Readiness Report"</li> </ul> </li> <li>☑ Training &amp; Enablement Services                   <ul style="list-style-type: none"> <li>■ KaiNexus Enablement</li> <li>■ 10 Customized Training Sessions</li> <li>■ Premium KaiNexus Certification</li> <li>■ Access to On-Demand Training Videos</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>☐ Account Management &amp; Sustainment Services <ul style="list-style-type: none"> <li>■ Named Account Manager</li> <li>■ Monthly Product Update Communication</li> <li>■ Monthly Status Calls</li> <li>■ Bi-Annual Business Review</li> <li>■ Annual Improvement Strategy Session</li> </ul> </li> <li>☐ Up to 1,200 Authorized Front Line Users (FLUs)</li> </ul>
KNX1008	KaiNexus Badges Module
	☐ Custom framework to track badges and reward engagement
KNX1010	KaiNexus Milestones Module
	☐ Customized workflows, approvals, and project toll-gates
KNX1011	KaiNexus Advanced ROI Module
	☐ Multiple Currencies
	☐ Schedule and Range Impact
	☐ Products and Resources Impact Types
KNX1016	KaiNexus API Access
	☐ Access to KaiNexus standard API
KNX1015	Single-Sign On
	☐ Utilize SAML 2.0 to integrate identity providers to KaiNexus
KNX1012	KaiNexus Compliance Module Add-On for more than 1,000 users
	☐ Includes IP Whitelisting, Audit Logs, Password Configuration, Content Restricted Emails
	☐ Required for BAA & GDPR Compliance
KNX6001	KaiNexus User Conference Pass (x2) – Optional
	☐ KaiNexus Annual User Conference Tickets
KaiNexus Support	
KNX3001	Standard Technical Support
	☐ Available via phone at 512-522-3940 Business Hours M-F 9-5 CST
	☐ Available via email at support@kainexus.com

**Exhibit B – Payments and Rates**

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

<b>Current Proposal</b>	
<b>KaiNexus Enterprise including 1,000 Full Access Users (FAUs)</b>	\$80,000
<b>1200 Front Line Users (FLUs)</b>	\$20,000
<b>Compliance</b>	\$12,000
<b>Sub Total</b>	\$112,000
<b>Discount (20%)</b>	-\$22,400
<b>Total Annual Fees</b>	\$89,600

Options may be elected by departmental amendment to the contract indication that the option is being exercised and do not require Board of Supervisor approval unless they exceed the established Not to Exceed (NTE) value for this contract. If options are elected during a contract year the amount to be charged for the current year will be prorated based on the percentage of time left in that contract year and remaining contract years will be charged the full annual amount.

<b>Option Details</b>	
<b>1. Additional 500 FLUs (with 20% discount)</b>	\$8,000
<b>2. Additional 500 FLUs (with 20% discount)</b>	\$8,000

Any charges that cause the costs of this contract to exceed the NTE Amount will require an amendment approved by the County Board of Supervisors. The NTE Amount for this Agreement is calculated as follows:

<b>With Maximum Options Selected</b>	
<b>Annual Fees</b>	\$268,800
<b>Options</b>	
<b>Additional 1,000 FLUs (with 20% discount)</b>	\$48,000
<b>3-year Contract NTE</b>	\$316,800

## **Fees & Payment**

**1. Fees.** Applicable fees and pricing for the Service (the “**Subscription Fees**”), set-up, installation and implementation fees (“**Set-up Fees**”), fees for support services (“**Support Fees**”) and fees for Professional Services (the “**Professional Service Fees**”) (collectively, “**Fees**”) are set forth here. Unless otherwise stated in this Agreement, all Fees for services rendered in compliance with this Agreement are non-refundable, except as provided otherwise herein, and are payable in U.S. dollars and are exclusive of applicable sales, excise, use or similar taxes. County shall pay all such taxes directly or to Contractor, as required by applicable law.

**2. Payment.** Contractor will invoice County on the Effective Date and on the annual anniversary of the Effective Date for the additional years of the Agreement, unless the County terminates the contract. Unless otherwise set forth on Order Form, all annual Subscription Fees and Fees for the initial Professional Services are payable within thirty (45) days of the date of invoice. If any Subscription Fees or Professional Service Fees are forty-five (45) or more days overdue, after reasonable notice to County, Contractor may (at its discretion and in addition to other remedies it may have) suspend County’s and its Authorized Users’ access to the Service and suspend Professional Services.

## Exhibit C – KaiNexus Service Exhibit

- 1. Provision of Service.** Subject to the terms and conditions of this Agreement, including without limitation County’s timely payment of all of the fees set forth in Exhibit B, Contractor will, during the Term, provide County with access to the Service. County agrees to cooperate with Contractor as may be reasonably required to enable the provision of the Service hereunder. Contractor shall use commercially reasonable efforts to maintain the service levels contemplated in the Service Level Agreement (SLA), attached to the agreement as Exhibit S.
- 2. Authorized Users.** County may allow County’s employees, independent contractors or representatives to use the Service on behalf of County (“Authorized Users”). As a condition to such use, Authorized Users shall abide by the terms set forth herein and to any terms applicable to Authorized Users presented by Contractor (“User Terms”). An Authorized User will represent a single person. Each Authorized User must have their own account created in KaiNexus. Sharing of accounts or using a single account to represent multiple people is not permitted. Any customizable attribute in KaiNexus cannot be used to associate a person or group with an idea, project, task, or any other data in KaiNexus. County will be responsible for the security and confidentiality of the user names and passwords associated with each Authorized User account. County and Authorized Users shall immediately notify us in the event that County or an Authorized User becomes aware of any violation of the terms of this Agreement or any User Terms. County shall be liable for any breach of the Agreement or any User Terms by any Authorized User.
- 3. Reservation of Rights.** “KAINEXUS,” and all associated logos displayed within the Service are our trademarks (unless otherwise noted). We reserve all rights in and to the Service and all related intellectual property not expressly granted under this Agreement. Without limiting the generality of the foregoing, subject to the limited rights granted hereunder, County acknowledges and agrees that, as between County and KaiNexus, all right, title and interest, including all copyright, trademark, patent, trade secret (including all modifications, improvements, upgrades, and derivative works thereof) and other intellectual property or proprietary rights, related to the Service belong exclusively to Contractor. County shall honor and comply with any and all contractual, statutory or common law rights of Contractor, as well as any applicable third parties, arising out of or relating to the provision or use of the Service. If County or any of its Authorized Users submit comments, suggestions, or other feedback regarding the Service (“Feedback”), County agrees that we will be free to use such Feedback for any purpose except that any public use of any Feedback (i.e. a quote on our website, a blog post, or mention in any public forum) must be pre-approved by County in writing.
- 4. Restrictions On Use Of The Service.** County and the Authorized Users may use the Service and the data generated thereby solely for its intended purpose in accordance with this Agreement. County may not rent, lease, lend, sell, redistribute, reproduce or sublicense the Service. County may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Service, or any part thereof, or integrate the Service with other technology, other than as is expressly contemplated by our pertinent documentation. If for some reason these restrictions are prohibited by applicable law or by an agreement we have with one of our licensors, then the activities are permitted only to the extent necessary to comply with such law or license(s). County shall not use the Service in any unauthorized way whatsoever, including, but not limited to, (i) by trespass, (ii) by burdening network capacity or consuming a disproportionate share of the resources on which the Service relies (e.g. compute time, disk storage, and network bandwidth), (iii) by utilizing the Service in a way that unnecessarily interferes with the normal operation thereof.
- 5. Limitations on Availability; Third Party Providers.** The Service or some aspects thereof may not be available in all languages or in all countries. We make no representation that the Service is available or permitted in any particular location. Use of the Service is void where prohibited. County uses the Service at its own initiative and is responsible for compliance with any applicable laws, including without limitation the Children’s Online Privacy Protection Act (COPPA) and the Health Insurance Portability and Accountability Act (HIPAA), together with all rules, regulations and guides promulgated under any such laws and any directives issued by any governmental authority. We may also impose limits on the use or access to the Service as required by law. Further, County acknowledges that elements of the platform that make the Service possible are provided by third parties.

**6. Support and Maintenance.** During the Term of this Agreement and subject to County's payment of any applicable Support Fees, Contractor will provide support to County for the Service as set forth in Exhibit A and Exhibit S. Scheduled system maintenance shall take place from time to time, and during such time, the Service may be unavailable. Emergency maintenance may be required in our discretion at other times in the event of system failure. Updates to the Service will be provided at Contractor discretion, at no charge to County.

**7. Export and Other Restrictions.** County may not use or otherwise export or re-export the Service or elements thereof except as authorized by United States law and the laws of the jurisdiction in which the Service was accessed or obtained. In particular, but without limitation, the Service may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Service, County represents and warrants that it is not located in any such country or on any such list. County also agrees that it will not use the Service for any purposes prohibited by applicable law. The Service and related documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

**8. Reference.** During the Term, and with express written approval of County, Contractor may include County's name on Contractor's website, and in its promotional and sales literature and lists of Customers, in each case accordance with County's policies.

**9. Amendments.** Any amendments to this Agreement that exceed the NTE amount or change the scope of the contract shall only be valid if in writing and signed by an executive of Contractor and, in the case of County, reviewed, approved, and signed by the County Board of Supervisors. Any amendments to exercise predefined options that do not cause the contract value to exceed the NTE can be signed by an executive of the Contractor and the Chief of Health or his/her designee.

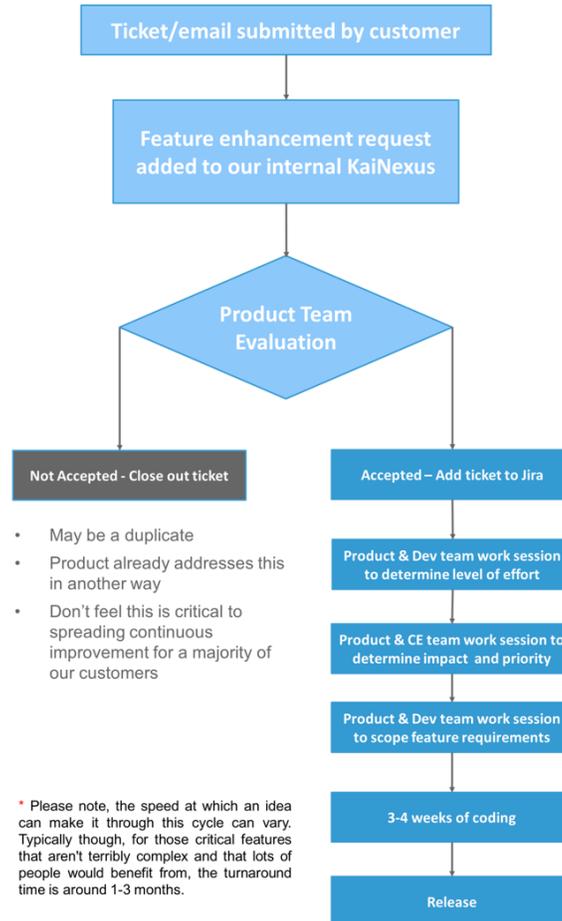
**10. Force Majeure.** Neither party shall be in default for failing to perform any obligation hereunder, other than the payment of monies, if such failure is caused solely by acts of God, civil commotion, strikes, terrorism, failure of third party networking equipment, illegal acts of third parties, failure of the public Internet or changes in the accessibility of third party websites, power outages, labor disputes, governmental demands or restrictions or any similar supervening conditions beyond the parties' respective control.

**11. Miscellaneous.** This Agreement constitutes the entire agreement between the parties regarding use of or access to the Service. There are no third-party beneficiaries to this Agreement. Failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. County may not transfer or assign this Agreement or any of its rights or obligations hereunder without Contractor's prior written consent, which consent will not be unreasonably withheld. Any attempted assignment in violation of this Section will be void. If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

**Exhibit E – Enhancement Request Process**

# KaiNexus

## Customer Feedback Channel



Once that feature enhancement request has been submitted, your customer experience lead, or support person, will submit the feature enhancement request in the internal KaiNexus instance. After it has been logged in the internal KaiNexus, the Product team will evaluate the feature enhancement requests. If the Product team needs further details or clarification, they may reach out to the CE or Support resource who initially submitted the feature enhancement request and if that person needs more information, they may reach back out to the customer. KaiNexus receives hundreds of product feature enhancement requests a month so we recommend being as detailed as possible when initially submitting your tickets to KaiNexus. Covering all the WH questions (who, what, why, when, where, and how) is an awesome starting point, for example what problem will the feature enhancement solve or what opportunity does the feature enhancement create?

If it is determined that the feature enhancement will not be accepted, the Product team will close the Improvement out in KaiNexus. This could be a duplicate that is already logged in our system, it could be that the product already addresses this in a different way, or it could be that we don't feel the feature enhancement request is critical to spreading continuous improvement for a majority of the customers.

If it is determined that the feature enhancement will be accepted, the Product team will complete the Improvement in KaiNexus and then add the details of that Improvement to a ticket in our JIRA software. JIRA is where the Product and Development team will work together to capture and organize all KaiNexus feature enhancement requests as well as manage the product release cycle.

Now that the feature enhancement has been added to JIRA, the Product team will hold a work session with the Development team to discuss the feature enhancements in more detail and determine the level of effort. After determining the level of effort required to develop those feature enhancements, the Product team will then hold a work session with the Customer Experience team to assess how much impact each of those feature enhancements would have on our customers. This allows us to begin to prioritize which feature enhancements we want to include as part of our next release.

Prioritization becomes a bit of a balancing act as there are many factors that are considered. For directly requested feature enhancements from customers, we must look at the level of effort to implement the feature, the number of customers that will be positively impacted, the size of those customers, and the severity of that impact. In addition, we also want to make sure we are making decisions based on the future direction of the product, improving performance, architectural maintenance, security, as well as the ability for further adoption and spread.

Ideally, we would like to scope our releases based on a theme, such as Reports for example. We would choose the highest impact Report feature enhancements to be included as part of that release. This helps minimize waste such as context switching for our Development team, as well as maximizes the functionality, efficiency and unification of design in that area of the product.

The final step from here is for our Product team to hold another work session with the Development team to properly scope out the feature requirements before allowing our amazing development team to get to work on making your enhancement requests a reality in KaiNexus. A KaiNexus release typically consists of between 50-75 feature enhancements, with an average of 1 release per month.

So, the speed at which an idea can make it through the cycle can be anywhere from a day to a year. Typically, though, for those critical features that aren't terribly complex and that lots of people would benefit from, the turnaround time is around 1-3 months. As the KaiNexus team continues to grow, we strive to tackle more and more complex product enhancements to help further support both our own, and your organization's mission to spread continuous improvement!

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

**DEFINITIONS**

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

**a. Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.

**b. Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.

**c. HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.

**d. Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

**e. Electronic Protected Health Information.** "Electronic Protected Health Information" (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.

**i. Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

**m. Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

**n. Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

#### **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

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

Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.

k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.

n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.

o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.

p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.

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

#### **PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE**

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

#### **OBLIGATIONS OF COUNTY**

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

#### **PERMISSIBLE REQUESTS BY COUNTY**

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

#### **DUTIES UPON TERMINATION OF AGREEMENT**

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such 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.

ATTACHMENT I

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

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The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R.

84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:	<b>Matthew P Paliulis</b>
Name of Contractor(s):	<b>KaiNexus, Inc.</b>
Street Address or P.O. Box:	<b>4225 Wingren Dr. #115</b>
City, State, Zip Code:	<b>Irving, TX 75062</b>

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

Signature:	
Title of Authorized Official:	<b>COO</b>
Date:	<b>2019/11/04</b>

\*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."

**Attachment IP**  
**Intellectual Property Rights**

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.

2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.

3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.

4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.

5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.

6. Contractor agrees that before commencement of any subcontract work it will incorporate this ATTACHMENT IP to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.

**Exhibit S**  
**Service Level Agreement (SLA)**

**1) PRODUCT AVAILABILITY**

- a) Contractor is committed to the goal of making the Product available 24 hours a day 7 days a week, with the exception of Planned Downtime, Force Majeure events and Internet service interruptions. Contractor will use commercially reasonable efforts to provide the County with average monthly availability that is equal to or greater than 99%. The Service will be deemed to be available when the County is able to transmit and receive information, notwithstanding that there may be a fault or omission of valid input from the County, its employees, agents or contractors. A Product will not be deemed to be unavailable if such unavailability arises from or is otherwise caused by
- i) the Product being modified or altered in any way at the County's request,
  - ii) a failure or fault of the County controlled equipment or applications,
  - iii) the County failing to operate the Product in accordance with the terms and conditions of the Agreement.
  - iv) County induced or attributed failure or outage as mutually agreed to by both parties.
- Contractor's records and data shall be the basis for all service availability calculations and determinations. In the event of an outage, County can request these records from Contractor.
- b) The percentage of Product availability will be calculated as follows:

$$A = ((\text{Mth Hrs} - \text{PDT} - U) / (\text{Mth Hrs} - \text{PDT})) * 100$$

Where:

A = % Availability, Mth Hrs = Number of hours in a month, PDT = Planned Downtime, as defined below, U = Total time of Service unavailability

The period when a Product was not available will be measured from the time such condition is reported to Contractor via written Notice from the County and shall end when Contractor resolves the issue and informs the County's Administrator that the Product is available.

**2) PLANNED DOWNTIME**

- a) Planned downtime occurs when County has no access to the Product due to scheduled maintenance by Contractor and is limited to 3% of total hours in a month unless agreed by County.
- b) Contractor will make commercially reasonable efforts to schedule Planned Downtime at a time and manner reasonably anticipated to minimize disruptions to all of its affected customers.
- c) Contractor will use commercially reasonable efforts to provide twenty-four (24) hours prior notice for scheduled Planned Downtime to exceed one (1) hour. Notice provided under this Section 2 of this SLA will be via email to the individual specified in Section 24 ("Notices") of the Agreement.

**3) CREDIT FOR BREACH OF SLA**

In the event that Contractor breaches its obligation under Section 1 of this SLA, Contractor shall issue to County a credit equal to 1/12th of the annual software subscription fees for the County multiplied by the difference between the guaranteed up time (99%) and the Product Availability Percentage for the month where the outage occurred as calculated in Section 1(b) of this SLA. In no event shall the amount of such credit exceed fifty percent (50%) of 1/12th of the annual software subscription fees in the month where such downtime occurred. Such credit shall be used to offset the annual software subscription fees for the next renewal term.

**4) Backup and disaster recovery**

As part of Maintenance Services, Contractor shall also be responsible for Disaster Recovery services. Contractor shall maintain and implement disaster recovery and avoidance procedures to ensure that the System is not interrupted during any disaster. All requirements of the Agreement, including those relating to security, personnel due diligence, and training, shall apply to the Contractor disaster recovery site.

Contractor or County may declare an event a Disaster. Upon occurrence of a Disaster, Contractor shall provide the services outlined in the Disaster Recovery Plan. Contractor shall be subject to the following service level requirements as part of Disaster Recovery, which shall be contained in and are incorporated into the Disaster Recovery Plan:

- A. Contractor shall have complete responsibility for restoration of the System.
- B. In the event of a Disaster declaration, Contractor shall be required to maintain regular and consistent communication with County about the outage and steps taken to restore the System.
- C. Contractor shall be required to make a declaration of a Disaster and invoke the Disaster Recovery Plan within four (4) hours from the disruption of the production environment or precipitating event.
- D. Contractor shall restore the System to a point no greater than twenty-four (24) hours prior to the declaration of the Disaster by County or Contractor.
- E. County shall be able to support portal within four (4) hours of the declaration of the Disaster by County or Contractor.
- F. Contractor shall have at a minimum 50% capacity within eight (8) hours and 100% capacity within twenty-four (24) hours of the declaration of the Disaster by County or Contractor.
- G. Contractor's failure to make a declaration of a Disaster within twelve (12) hours shall result in the incident and deemed **Unscheduled Downtime**.

#### 5) Corrective Action Plan:

In the event two (2) or more Critical Support Requests occur in any thirty (30) calendar day period during the term of the Agreement, Contractor shall promptly investigate the root causes of such support issues and shall provide to County within five (5) business days of the occurrence of the second Critical Support Request an analysis of such root causes and a proposed correction ("Corrective Action Plan"). The Corrective Action Plan shall include, at a minimum: (a) a commitment by Contractor to devote the appropriate time, skilled Contractor personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of Critical Support Request issues; and (b) time frames for implementation of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in this Agreement(s)) for Contractor's implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan

#### 6) Product Enhancement Request Procedure Overview

KaiNexus utilizes a development process based on the Agile methodology to prioritize and develop its Product Roadmap.

Product Enhancement Requests can be submitted via your KaiNexus Customer Experience lead, the KaiNexus support email [support@kainexus.com](mailto:support@kainexus.com), or by submitting a request through the Feedback option available in the User Menu drop-down within the KaiNexus app.

Product Enhancement Requests will be evaluated based on factors such as the level of effort, the demand and interest from customers, the benefit delivered to customers, and whether or not the Product Enhancement Request is aligned with the overall product strategy and vision.

Product Enhancement Requests that are selected to be implemented will be scheduled based on the criteria listed above, the then current roadmap, and the general development release schedule.