

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
PRINS WILLIAMS ANALYTICS, LLC**

This Agreement is entered into this _____ day of _____, 20____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and PRINS WILLIAMS ANALYTICS, LLC, 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 the professional services hereinafter described for the Health System Behavioral Health and Recovery Division.

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

Attachment H—HIPAA Business Associate Requirements

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.

2. 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 ONE HUNDRED THIRTY THOUSAND DOLLARS (\$130,000). In the event that the County makes any advance payments,

Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2020 through June 30, 2021.

4. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Chief of the Health System or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

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

5. 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.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

a. General Hold Harmless

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

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

8. 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.

9. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor

shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

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

c. Liability Insurance

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

- | | |
|--|-------------|
| <input checked="" type="checkbox"/> Comprehensive General Liability... | \$1,000,000 |
| (Applies to all agreements) | |
| <input type="checkbox"/> Motor Vehicle Liability Insurance... | \$1,000,000 |
| (To be checked if motor vehicle used in performing services) | |
| <input type="checkbox"/> Professional Liability..... | \$1,000,000 |
| (To be checked if Contractor is a licensed professional) | |

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

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

10. 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.

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.

11. 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

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

- ☐ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.

- ☒ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

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

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 10, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

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

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

12. 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 Section 2, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

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.

13. 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.

14. 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.

15. 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: Scott Gruendl
Address: 20000 Alameda De Las Pulgas, San Mateo, CA 94403
Telephone: 650-573-2491
Facsimile: 650-573-2841
Email: SGruendl@smcgov.org

In the case of Contractor, to:

Name/Title: David Williams, PhD
Address: PO Box 653, Fox Island, WA 98333
Telephone: 408-445-0473
Cell Phone: 408-394-4705
Email: David@pwdac.com

16. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

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

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

* * *

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

COUNTY OF SAN MATEO

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

Date: _____

ATTEST:

By: _____
Clerk of Said Board

PRINS WILLIAMS ANALYTICS, LLC

David M. Williams
Contractor's Signature *MEMBER/MANAGER*

Date: *8/12/20*

(April 1, 2015 CCC issued contract template version)

**EXHIBIT A – SERVICES
PRINS, WILLIAMS ANALYTICS, LLC
FY2020-21**

In consideration of the payments set forth in Exhibit B, Contractor shall provide the “Services and Deliverables” identified in Section I below, subject to the “Conditions of Service” identified in Section II below.

I. Services and Deliverables:

- A. Contractor will manage the maintenance, improvement and development of the D2 and R3 performance monitoring databases. Contractor will provide consultation to the Performance Monitoring Work Group (PMWG) for the development of new reports and updates to existing reports generated from the D2 database. Contractor will attend bi-monthly meetings of the PMWG. These meetings will provide the forum for identifying and developing specifications for additional reports as well as for revising existing reports.
- B. Contractor will manage the maintenance, improvement and further development of the Utilization Management (UM) report. Future developments of the UM report will be identified in consultation with the PMWG.
- C. Contractor will manage the maintenance, improvement and development of the San Mateo Analysis (SMA) database. Contractor will prepare and maintain a data dictionary of all tables and fields contained within the SMA database. This data dictionary will include field and table properties as well as source data for each field.
- D. Contractor will manage the collection and analysis of data for the semi-annual state-mandated Performance Outcome and Quality Improvement (POQI) surveys in English and Spanish Languages. Contractor will submit a report of these data to CIBHS within the CIBHS timelines and reporting format. Costs associated with materials required for survey distribution and data collection will be borne by County.
- E. Contractor will use data obtained from the POQI surveys to prepare an annual report, matching the specification of previously submitted reports, to the County Manager’s Office.
- F. Contractor will research and evaluate client progress tools used for determining level of care, such as Locus, CANS and ANSA and formulate recommendations for the County to consider.
- G. As may be requested by County and agreed by Contractor, Contractor may provide services in addition to those specifically identified in Exhibit A.

- H. Contractor will communicate with County through meetings, telephone and conference calls, and emails, on mutually agreed dates and times, in order to achieve the exchange of information necessary for providing the services described in Exhibit A.

II. Conditions of Service:

- A. Contractor acknowledges that County owns any data, database, queries, report specifications and documentation, and any associated interfaces (e.g., reporting tables, forms, Scantron) created by Contractor for the fulfillment of the "Services and Deliverables" described above, and provided to County. Excluded here is any software (e.g., SPSS, Crystal Reports, etc.) that was not purchased by County but used by Contractor in the performance of the "Services and Deliverables" provided to County.
- B. County is responsible for maintaining County's network, servers and all computers using D2, R3, SMA or other databases that may be developed by the Contractor for the County. Additionally, County is responsible for the installation and maintenance of Microsoft Access software and the associated Microsoft JET database engine installed on all computers using the D2, R3, SMA or other databases developed by the Contractor for the County. The resolution of any and all network or computer performance issues observed on computers using the Contractor-developed databases is the responsibility of the County.
- C. County acknowledges that Contractor provides services as a "Contractor," not only nominally, but functionally as well. Therefore County may not "assign" work tasks or require Contractor to perform any services not included in Exhibit A, except by consent of Contractor. Moreover, all services and deliverables will be produced according to negotiated timelines agreeable to both County and Contractor, excepting the services performed in paragraph D above, and for which specific dates are identified herein. Finally, County acknowledges that it exerts no "Behavioral Control" over Contractor or Contractor's employees.
- D. Recognizing that Contractor is expected to provide services and deliverables within identified and negotiated timelines, County acknowledges that Contractor's performance is dependent upon the provision of accurate and timely information from County staff regarding AVATAR and/or other data sources (e.g., CJIS) or report specifications that may be required by the Contractor in the production of "Services and Deliverables." Therefore, County will provide accurate and timely responses to any and all Contractor inquiries that may be necessary for the production of services in Exhibit A. For the purposes of this Agreement a timely response is defined as occurring within seven days of the Contractor's initial inquiry. If County's timely response takes longer than seven days, County and Contractor agree to renegotiate project

deadlines. Contractor is not liable for any missed deadlines that arise from County's failure to provide information and/or data files in a timely manner.

- E. Contractor requires robust and reliable access to County's network resources and data sources (e.g., AVATAR). County acknowledges responsibility for providing and maintaining reliable network access and ODBC and VPN connectivity to County's network and data sources sufficient to the purposes of the Contractor.

Goal and Objective

Goal: To provide timely research and evaluation services to BHRS.

Objective: 95% percent of specific products will be produced in a time frame mutually agreed upon by County and Contractor.

EXHIBIT B - RATES
PRINS, WILLIAMS ANALYTICS, LLC
FY 2020-21

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

- A. The maximum amount County shall pay or be obligated to pay for services rendered under this Agreement shall not exceed ONE HUNDRED THIRTY THOUSAND DOLLARS, (\$130,000) for the term of this Agreement, July 1, 2020 through June 30, 2021.
- B. County shall pay Contractor for services as described in Exhibit A at the rate of ONE HUNDRED SIXTY DOLLARS (\$160.00) per hour for Company Principals, EIGHTY-FIVE DOLLARS (\$85.00) per hour for Company Associates, and SIXTY-FIVE DOLLARS (65.00) per hour for Company Assistants. These hourly rates apply to services described in Paragraphs A, B, C, E, F, G and H of Exhibit A.
- C. County shall pay Contractor a fixed fee for the services and deliverables described in Paragraphs D of Exhibit A.
- D. The fee for services and deliverables described in Paragraph D of Exhibit A is FIFTEEN THOUSAND DOLLARS (\$15,000) for each semi-annual survey period. This fee is payable in two equal installments of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500). Contractor shall invoice for the first installment upon delivery to the County of the portable document format (.pdf) files containing client surveys. Said delivery is to be accomplished, as in the past, by copying these files to a folder on the County's computer network. Contractor shall invoice for the second installment upon the upload of the resulting data files to the ITWS website.
- E. With the exception of those items noted in Paragraph D of Exhibit A, and the provision by the County of HIPAA training to employees hired by the Contractor and who provide services under this Agreement, Contractor is expected to be responsible for all other expenses incurred during the performance of services rendered under this Agreement.
- F. Payment by County to Contractor shall be monthly. Contractor shall submit an invoice to County on or before the tenth (10th) working day of each month for services provided the prior month. The invoice shall include the number of hours worked and the hourly rate of pay per staff position. Payment shall be made no later than the tenth (10th) calendar day following receipt of invoice.

G. Invoice Certification and Program Integrity

Anytime Contractor submits an invoice to the County for reimbursement for services provided under Exhibit A of this Agreement, Contractor shall certify by signature that the invoice is true and accurate by stating the invoice is submitted under the penalty of perjury under the laws of the State of California.

The invoice must include the following language and signature line at the bottom of the form(s) and/or cover letter used to report the invoice:

“Under the penalty of perjury under the laws of the State of California, I hereby certify that this invoice for services complies with all terms and conditions referenced in the Agreement with San Mateo County.

Executed at _____ California, on _____, 20__

Signed _____ Title _____

Agency _____”

- H. Each payment to Contractor shall be conditioned on the performance of the services described in Exhibit A of this Agreement to the full satisfaction of the Chief of the Health System or designee. County shall have the right to withhold payment if county determines that the quantity or quality of the work performed is unacceptable.
- I. If County or Contractor finds that performance is inadequate, at the County’s discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 4 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.
- J. In the event this Agreement is terminated prior to June 30, 2021, the Contractor shall be paid for services already provided pursuant to this Agreement.
- K. The Chief of the Health System or designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

- L. County anticipates revenues from various sources to be used to fund services provided by Contractor through this Agreement. Should actual revenues be less than the amounts anticipated for any period of this Agreement, the maximum payment obligation and/or payment obligations for specific services may be reduced at the discretion of the Chief of the Health System or designee.

Attachment H

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

DEFINITIONS

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

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

OBLIGATIONS AND ACTIVITES OF CONTRACTOR

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County, or at the request of the County to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

OBLIGATIONS OF COUNTY

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

PERMISSABLE REQUESTS BY COUNTY

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

DUTIES UPON TERMINATION OF AGREEMENT

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

MISCELLANEOUS

- a. Regulatory References. A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- b. Amendment. The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. Survival. The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. Interpretation. Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. Reservation of Right to Monitor Activities. County reserves the right to monitor the security policies and procedures of Contractor