

1 AGREEMENT

2 THIS AGREEMENT is made and entered into this first day of October, 2015, by and between
3 the COUNTY OF TULARE, a Political Subdivision of the State of California, hereinafter referred to
4 as "COUNTY", and each medical provider listed in EXHIBIT A, attached hereto and, incorporated
5 herein by reference, hereinafter, collectively, referred to as "CONTRACTORS", and individually
6 referred to as "CONTRACTOR."

7 WITNESSETH:

8 WHEREAS, COUNTY, through its Department of Public Health, will provide
9 CONTRACTORS with equipment, supplies, funding and/or benefit included in the U.S. Department
10 of Health and Human Services, (USDHHS) Office of the Assistant Secretary for Preparedness and
11 Response (ASPR) Hospital Preparedness Program (HPP) Grant Agreement, effective upon execution
12 through June 30, 2018, pursuant to a Federal pass-through grant to the State of California Department
13 of Public Health (CDPH) to COUNTY to enhance COUNTY's capabilities to respond to terrorist and
14 other medical and public health threats; and

15 WHEREAS, this Agreement is subject to the requirements of the HPP Local Funding
16 Agreements between COUNTY and CDPH for the budget period October 1, 2015 thru June 30, 2018
17 ("Local Funding Agreement"); and

18 WHEREAS, CONTRACTORS are required to comply with all applicable requirements of the
19 Local Funding Agreement, whose terms or conditions, which requires COUNTY to impose on its
20 subcontractors, are hereby imposed on CONTRACTORS; and

21 WHEREAS, if there is any conflict between this Agreement and the Local Funding Agreement,
22 the requirements of the Local Funding Agreement shall control.

23 NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties
24 hereto agree as follows:

25 **1. COUNTY RESPONSIBILITIES**

- 26 A. Maintain an inventory of equipment and supplies which includes:
- 27 1) Description of equipment with manufacturer's model and serial numbers.
- 28 2) Location and condition of equipment.

1 3) Conducting an annual inspection of inventory and supply a report of
2 findings to CONTRACTORS described in this Agreement.

3 B. Be prohibited from selling, transferring, or otherwise disposing of any equipment
4 or supplies granted under this Agreement without prior notification to
5 CONTRACTOR.

6 C. Participate in competency based education and training program, as specified in
7 the HPP Local Funding Agreement to assist in preparing Pre-Hospitals/EMS
8 Agency/Medical Providers and outpatient healthcare personnel responding to
9 terrorist acts, and other medical or public health emergencies.

10 2. CONTRACTORS RESPONSIBILITIES

11 A. Store and maintain surge capacity equipment and supplies purchased through
12 HPP grants.

13 B. Keep current an inventory list of all HPP purchased equipment and supplied

14 C. Maintain and administer a sound business program for ensuring the proper use,
15 protection, insurance, and preservation of the equipment granted under this
16 Agreement.

17 D. Be prohibited from selling, transferring, or otherwise disposing of any equipment
18 or supplies granted under this Agreement without prior written approval of
19 COUNTY.

20 E. Submit an annual inventory of all HPP funded equipment and/or supplies to the
21 COUNTY HPP Coordinator using a form designated by COUNTY.

22 F. Take reasonable steps to ensure that all equipment and supplies granted under
23 this Agreement are made available for use pursuant to a bona fide request for
24 mutual aid or inter-agency disaster assistance.

25 G. Provide twenty-four (24) hour, seven (7) days-a-week accessibility to the
26 equipment and supplies for COUNTY staff or designees for an immediate
27 response to an event, should it occur.

28 H. Report in writing any irreparable damage, loss or lack of availability of

1 equipment and supplies to COUNTY.

2 I. Follow all applicable laws, regulations, ordinances, policies, and procedures
3 when utilizing the equipment.

4 J. Submit to COUNTY a point of contact person responsible for receipt and
5 maintenance of surge capacity supplies and equipment. K. Be prepared to
6 provide necessary gasoline to run generator(s) and propane to fuel forced air
7 heaters.

8 L. Properly store, maintain equipment and supplies according to manufacturer's
9 specifications.

10 M. Maintain responsibility for monthly service fees for satellite telephones, cell
11 phones, radios, Internet connection, etc.

12 N. Provide documentation to COUNTY on the use of any supplies and equipment,
13 using a form designated by COUNTY

14 O. Provide COUNTY with a written policy regarding maintenance schedule and
15 specific location of equipment and supplies within (60) sixty days of receipt of
16 the equipment and supplies

17 P. Participate in competency-based education and training program, as specified in
18 the Local Funding Agreement to assist in preparing Pre-Hospital/EMS
19 Agency/Medical Providers and outpatient health care personnel responding to
20 terrorist acts, and other medical or public health emergencies.

21 **3. TERM**

22 This Agreement shall become effective upon execution and shall terminate on the 30th
23 day of June, 2018. This Agreement may be extended by CONTRACTORS for two (2) additional
24 twelve (12) month periods upon the same terms and conditions set forth herein, upon providing to
25 COUNTY written notice no later than thirty (30) days prior to the expiration of this Agreement.

26 **4. TERMINATION**

27 (a) Without Cause: County will have the right to terminate this Agreement without
28 cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision,

1 specifying the date of termination. County will pay to the CONTRACTOR the compensation earned
2 for work performed and not previously paid for to the date of termination. County will not pay lost
3 anticipated profits or other economic loss. The payment of such compensation is subject to the
4 restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned
5 upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other
6 documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be
7 imposed.
8

9
10 (b) With Cause: This Agreement may be terminated by either party should the other party:

- 11 (1) be adjudged a bankrupt, or
12 (2) become insolvent or have a receiver appointed, or
13 (3) make a general assignment for the benefit of creditors, or
14 (4) suffer any judgment which remains unsatisfied for 30 days, and which would
15 substantively impair the ability of the judgment debtor to perform under this
16 Agreement, or
17 (5) materially breach this Agreement.

18 In addition, COUNTY may terminate this Agreement based on:

- 19 (6) material misrepresentation, either by CONTRACTOR or anyone acting on
20 CONTRACTOR's behalf, as to any matter related in any way to COUNTY's
21 retention of CONTRACTOR, or
22 (7) other misconduct or circumstances which, in the sole discretion of the
23 COUNTY, either impair the ability of CONTRACTOR to competently provide the
24 services under this Agreement, or expose the COUNTY to an unreasonable risk of
25 liability.

26 COUNTY will pay to the CONTRACTOR the compensation earned for work performed and
27 not previously paid for to the date of termination. The payment of such compensation is subject to the
28 restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned

1 upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other
2 documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement.
3 County will not pay lost anticipated profits or other economic loss, nor will the County pay
4 compensation or make reimbursement to cure a breach arising out of or resulting from such
5 termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope
6 of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to
7 the County. Sanctions taken will be possible rejection of future proposals based on specific causes of
8 non performance.

9 (c) Effects of Termination: Expiration or termination of this Agreement shall not terminate
10 any obligations to indemnify, to maintain and make available any records pertaining to the Agreement,
11 to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract
12 activities. Where CONTRACTOR's services have been terminated by the County, said termination will
13 not affect any rights of the County to recover damages against the CONTRACTOR.

14 (d) Suspension of Performance: Independent of any right to terminate this Agreement, the
15 authorized representative of COUNTY for which CONTRACTOR's services are to be performed,
16 may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health,
17 safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the
18 provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of
19 termination becomes effective.

20 5. NO MONETARY COMPENSATION

21 This Agreement, pursuant to the terms and conditions herein, shall be performed without
22 the payment of any monetary consideration by CONTRACTOR or COUNTY, one to the other.

23 6. LOSS OF FUNDING

24 It is understood and agreed that if the funding is either discontinued or reduced for this
25 project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement.
26 In such event, the affected party shall provide the other party with at least thirty (30) days prior
27 written notice of such termination.

28 7. INDEPENDENT CONTRACTOR

1 In performance of the work, duties, and obligations assumed by CONTRACTORS under
2 this Agreement, it is mutually understood and agreed that CONTRACTORS, including any and all of
3 CONTRACTORS' officers, agents, and employees will at all times be acting and performing as an
4 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
5 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have
6 no right to control or supervise or direct the manner or method by which CONTRACTORS shall
7 perform its work and function. However, COUNTY shall retain the right to administer this
8 Agreement so as to verify that CONTRACTORS is performing its obligations in accordance with the
9 terms and conditions thereof. CONTRACTOR and COUNTY shall comply with all applicable
10 provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction
11 over matters which are directly or indirectly the subject of this Agreement.

12 Because of its status as an independent contractor, CONTRACTORS shall have
13 absolutely no right to employment rights and benefits available to COUNTY employees.
14 CONTRACTORS shall be solely liable and responsible for providing to, or on behalf of, its
15 employees all legally-required employee benefits. In addition, CONTRACTORS shall be solely
16 responsible and save COUNTY harmless from all matters relating to payment of CONTRACTORS'
17 employees, including compliance with Social Security, withholding, and all other regulations
18 governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTORS
19 may be providing services to others unrelated to the COUNTY or to this Agreement.

20 **8. MODIFICATION**

21 Any matters of this Agreement may be modified from time to time by the written
22 consent of all the parties without, in any way, affecting the remainder.

23 **9. NON-ASSIGNMENT**

24 No party shall assign, transfer or subcontract this Agreement nor their rights or duties
25 under this Agreement without the prior written consent of the other party.

26 **10. HOLD-HARMLESS**

27 Each CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's
28 request, defend the COUNTY, its officers, agents and employees from any and all costs and expenses.

1 including attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to
2 COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers,
3 agents or employees under this Agreement, and from any and all costs and expenses, including
4 attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to any
5 person, firm or corporation who may be injured or damaged by the performance, or failure to perform,
6 of CONTRACTOR, its officers, agents or employees under this Agreement

7 **11. INSURANCE**

8 Prior to approval of this Agreement by COUNTY, CONTRACTOR(S) shall file with
9 the Clerk of the Board of Supervisors evidence of insurance as set forth in EXHIBIT B attached, which
10 outlines the minimum scope, specifications, and limits of insurance required under this Agreement.
11 Additional insured endorsements required as outlined in EXHIBIT B shall not be used to reduce limits
12 available to COUNTY as an additional insured from the CONTRACTOR'S full policy limits.
13 Insurance policies shall not be used to limit liability or to limit the indemnification provisions and
14 requirements of this Agreement or act in any way to reduce the policy coverage and limits available
15 from the insurer(s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be
16 considered a material breach of this Agreement.

17
18 **12. CONFIDENTIALITY**

19 All services performed by CONTRACTOR under this Agreement shall be in strict
20 conformance with all applicable Federal, State of California and/or local laws and regulations relating
21 to confidentiality.

22 **13. DATA SECURITY**

23 For the purpose of preventing the potential loss, misappropriation or inadvertent access,
24 viewing, use or disclosure of COUNTY data including sensitive or personal client information; abuse
25 of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies that
26 enter into a contractual relationship with the COUNTY for the purpose of providing services under
27 this Agreement must employ adequate data security measures to protect the confidential information
28 provided to CONTRACTOR(S) by the COUNTY, including but not limited to the following:

1 A. CONTRACTOR(S)-Owned Mobile, Wireless, or Handheld Devices

2 CONTRACTOR(S) may not connect to COUNTY networks via personally-
3 owned mobile, wireless or handheld devices, unless the following conditions are met:

- 4 1) CONTRACTOR(S) has received authorization by COUNTY for
5 telecommuting purposes;
- 6 2) Current virus protection software is in place;
- 7 3) Mobile device has the remote wipe feature enabled; and
- 8 4) A secure connection is used.

9 B. CONTRACTOR(S)-Owned Computers or Computer Peripherals

10 CONTRACTOR(S) may not bring CONTRACTOR-owned computers or
11 computer peripherals into the COUNTY for use without prior authorization from the COUNTY's
12 Chief Information Officer, and/or designee(s), including but not limited to mobile storage devices. If
13 data is approved to be transferred, data must be stored on a secure server approved by the COUNTY
14 and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure
15 connection. Said data must be encrypted.

16 C. COUNTY-Owned Computer Equipment

17 CONTRACTORS or anyone having an employment relationship with the
18 COUNTY, may not use COUNTY computers or computer peripherals on non-COUNTY premises
19 without prior authorization from the COUNTY's Chief Information Officer, and/or designee(s).

20 D. CONTRACTORS may not store COUNTY's private, confidential or sensitive
21 data on any hard-disk drive, portable storage device, or remote storage installation unless encrypted.

22 E. CONTRACTORS shall be responsible to employ strict controls to ensure the
23 integrity and security of COUNTY's confidential information and to prevent unauthorized access,
24 viewing, use or disclosure of data maintained in computer files, program documentation, data
25 processing systems, data files and data processing equipment which stores or processes COUNTY
26 data internally and externally.

1 F. Confidential client information transmitted to one party by the other by means of
2 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of
3 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

4 G. CONTRACTOR is responsible to immediately notify COUNTY of any
5 violations, breaches or potential breaches of security related to COUNTY's confidential information,
6 data maintained in computer files, program documentation, data processing systems, data files and
7 data processing equipment which stores or processes COUNTY data internally or externally.

8 H. COUNTY shall provide oversight to CONTRACTORS' response to all incidents
9 arising from a possible breach of security related to COUNTY's confidential client information
10 provided to CONTRACTORS. CONTRACTORS will be responsible to issue any notification to
11 affected individuals as required by law or as deemed necessary by COUNTY in its sole discretion.
12 CONTRACTORS will be responsible for all costs incurred as a result of providing the required
13 notification.

14 **14. ASSURANCES OF NON-DISCRIMINATION:**

15 CONTRACTOR shall not discriminate in employment or in the provision of services
16 on the basis of any characteristic or condition upon which discrimination is prohibited by state or
17 federal law or regulation. It is recognized that both the Contractor and the County have the
18 responsibility to protect County employees and clients from unlawful activities, including
19 discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide
20 appropriate training to its employees regarding discrimination and sexual harassment issues, and to
21 promptly and appropriately investigate any allegations that any of its employees may have engaged in
22 improper discrimination or harassment activities. The County, in its sole discretion, has the right to
23 require Contractor to replace any employee who provides services of any kind to County pursuant to
24 this Agreement with other employees where County is concerned that its employees or clients may
25 have been or may be the subjects of discrimination or harassment by such employees. The right to
26
27
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1
2 require replacement of employees as aforesaid shall not preclude County from terminating this
3 Agreement with or without cause as provided for herein.

4 **15. AUDITS AND INSPECTIONS**

5 CONTRACTOR shall maintain complete and accurate records with respect to the
6 services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR
7 shall maintain complete and accurate records with respect to any payments to employees or
8 subcontractors. All such records shall be prepared in accordance with generally accepted
9 accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon
10 request, CONTRACTOR shall make such records available within Tulare County to the
11 Auditor of Tulare County and to his agents and representatives, for the purpose of auditing
12 and/or copying such records for a period of five (5) years from the date of final payment under
13 this Agreement.
14
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16 **16. NOTICES**

17 The persons and their addresses having authority to give and receive notices under this
18 Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTORS</u>
Director, County of Tulare Department of Health Services 5957 S. Mooney Blvd Visalia, CA 93277-9394	SEE EXHIBIT A

19
20
21
22
23 Any and all notices between the COUNTY and the CONTRACTORS provided for or
24 permitted under this Agreement or by law shall be in writing and shall be deemed duly served when
25 personally delivered to one of the parties, or in lieu of such personal service, when deposited in the
26 United States Mail, postage prepaid, addressed to such party.

27 **17. GOVERNING LAW**

28 The parties agree, that for the purposes of venue, performance under this Agreement is

1 to be in Tulare County, California. The rights and obligations of the parties and all interpretation and
2 performance of this Agreement shall be governed in all respects by the laws of the State of California.

3 **18. SEVERABILITY**

4 The provisions of this Agreement are severable. The invalidity or unenforceability of
5 any one provision in the Agreement shall not affect the other provisions.

6 **19. ENTIRE AGREEMENT**

7 This Agreement, including all Exhibits, constitutes the entire agreement between
8 CONTRACTORS and COUNTY with respect to the subject matter hereof and supersedes all previous
9 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
10 understanding of any nature whatsoever unless expressly included in this Agreement. No part of this
11 Agreement may be modified without the written consent of both parties.

12
13 **20. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**
14 **(HIPAA):**

15 (a) CONTRACTOR(S) shall comply with the Health Insurance Portability and
16 Accountability Act (HIPAA) Business Associate exhibit, as set forth in EXHIBIT C attached.

17 (b) At termination of this Agreement, CONTRACTOR(S) shall, if feasible, return or
18 destroy all protected health information received from, or created or received by,
19 CONTRACTOR(S) on behalf of COUNTY that CONTRACTOR(S) still maintains in any form, and
20 retain no copies of such information; or, if such return or destruction is not feasible, extend the
21 protection of this Agreement to the information and limit further uses and disclosures to those
22 purposes that make the return or destruction of the information feasible.

23
24
25 (c) COUNTY may immediately terminate this Agreement if COUNTY determines that
26 CONTRACTOR has violated a material term of this provision.

27
28 **21. SOFTWARE WARRANTY**

CONTRACTOR warrants that any software furnished hereunder, or any software used

1 by it to perform the services to be provided under this Agreement, that such items when used as
2 provided in CONTRACTOR's documentation, will function properly and accurately for the term of
3 this Agreement and any extension thereof and that the product will not abnormally end, malfunction,
4 cause incorrect scheduling or reporting or provide invalid, inaccurate or improper operations or
5 results.
6

7 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
8 first hereinabove written.

9
10 CONTRACTOR:

COUNTY OF TULARE:

11
12 SEE SIGNATURE PAGES ATTACHED

13 By _____

14
15 Date: _____

16
17 By _____

18
19 Date: _____

20
21
22
23
24 APPROVE AS TO FORM:
25 COUNTY COUNSEL
26 BY 12/2/15 11/9/15
27 DEPUTY
28

20151453

EXHIBIT A: CONTRACTORS

CONTRACTOR: TULARE REGIONAL MEDICAL CENTER

By: Alan S

Print Name: Alan Germainy

Title: CFO/COO

Chairman of Board, or President,
or any Vice President

Date: _____

By: [Signature]

Print Name: [Signature]

Title: [Signature]

Secretary (of Corporation), or any
Assistant Secretary, or Chief Financial
Officer, or any Assistant Treasurer

Date: _____

Corporation

Mailing Address:

869 North Cherry Street

Tulare, CA 93274-2207

Contact: Lionel Machado

Telephone: 559-688-0821 x 3334

EXHIBIT "B"
PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance:

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any sum) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate:

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.
 - a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the*

contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the County and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

Exhibit "C"
HIPAA REQUIREMENT

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

A. Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

1. *Business Associate*. "Business Associate" shall mean CONTRACTOR.
2. *Covered Entity*. "Covered Entity" shall mean COUNTY.
3. *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
4. *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.
5. *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
6. *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
7. *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

B. Obligations and Activities of CONTRACTOR

1. CONTRACTOR agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
2. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
3. 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.
4. CONTRACTOR agrees to report to COUNTY any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
5. 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. CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner requested 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 45 CFR 164.524

6. CONTRACTOR agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner requested by COUNTY
7. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by CONTRACTOR on behalf of COUNTY to the COUNTY, in a time and manner requested by COUNTY for purposes of determining CONTRACTOR'S and/or COUNTY'S compliance with the Privacy Rule.
8. 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 45 CFR 164.528
9. CONTRACTOR shall provide to COUNTY or an individual, in time and manner designated by COUNTY, information collected in accordance with Title 45, CFR, Section 164.528, to permit the Department to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528

C. General Use and Disclosure Provisions: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, COUNTY, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of the COUNTY.

D. Specific Use and Disclosure

1. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.
2. Except as otherwise limited in this Agreement, CONTRACTOR may disclose Protected Health Information for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information to provide Data Aggregation services to COUNTY as permitted by 42 CFR 164.504(c)(2)(i)(B)

4. CONTRACTOR may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1)

E. Obligations of COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR'S use or disclosure of Protected Health Information.
2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect CONTRACTOR'S use or disclosure of Protected Health Information.
3. COUNTY shall notify CONTRACTOR of any restrictions to the use or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of Protected Health Information.

F. Permissible Requests by COUNTY: Except as otherwise provided herein, 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

G. Miscellaneous

1. *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
2. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement 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 of 1996, Pub L. No. 104-191.
3. *Survival.* The respective rights and obligations of CONTRACTOR under this Exhibit shall survive the termination of this Agreement.
4. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule.