

AGREEMENT

THIS AGREEMENT is entered into effective upon signature by the Tulare County Board of Supervisors, **COUNTY OF TULARE**, referred to as **COUNTY**, and **THE GREELEY COMPANY, LLC**, formed under the laws of the State of Delaware, referred to as **CONTRACTOR** or **GREELEY**, with reference to the following:

- A. **COUNTY** wishes to have certain services performed by **CONTRACTOR** in accordance with the terms and provisions of this agreement; and
- B. **CONTRACTOR** has the experience to perform these services for **COUNTY** under the terms and conditions set forth in this Agreement; and
- C. **CONTRACTOR** is willing to enter into this Agreement with **COUNTY** upon the terms and conditions set forth herein.

ACCORDINGLY, IT IS AGREED:

1. **TERM:** The term of this Agreement will be effective upon signatures by the Tulare County Board of Supervisors through December 18, 2021.
2. **SERVICES TO BE PERFORMED:** The Services to be performed by **CONTRACTOR** under this Agreement include all services generally performed by **CONTRACTOR** in its usual line of business, described with particularity in the Proposal (See attached Exhibit A, Scope of Work), which is attached hereto and incorporated herein. Services that are excluded from this agreement are any services related to any action, claim or request for further services arising out of the outcome of those Services provided under this Agreement and the Proposal.
3. **PAYMENT FOR SERVICES:** The total fees for the services performed under this Agreement are outlined in EXHIBIT A and EXHIBIT B, which are attached hereto and incorporated herein. Upon execution of each Peer Review Arrangement Letter associated with this Agreement, **COUNTY** shall pay to **CONTRACTOR** the full professional fee invoiced of which 50% of the fee paid will be considered a non-refundable deposit, unless contracted services are not performed or completed by **CONTRACTOR** through no fault of **COUNTY** in which case the full amount of any fees paid in advance shall be refunded to **COUNTY**. The invoice is payable upon receipt and must be received prior to the release of any deliverable. Invoices will be sent on an interim basis for professional fees, expenses, applicable sales or like-kind taxes and associated fees including but not limited to registration or certification fees. Expenses may be invoiced separately. Such invoice is payable upon receipt and must be received prior to the commencement of any services. **CONTRACTOR** shall obtain prior approval from County for any fee, expense, or cost that is over \$100 and not expressly stated in the Peer Review Arrangement Letter, prior to invoicing **COUNTY** for same. All invoices are due upon receipt. Payments can be made by check, electronic fund transfer (EFT/ACH) or by credit card (fees apply). Please note that credit card payments are subject to a 3% processing fee. Balances outstanding in excess of 45 days are subject to a late payment charge of 1.5% per month.

Such interest shall accrue from the dates on which such amounts were due. In addition, COUNTY shall reimburse Greeley for all costs incurred by Greeley (including, but not limited to, reasonable attorneys' fees) in collecting such overdue amounts from COUNTY.

Billing Contact: <u>Lorraine Gibbs</u>	<u>EPR Coordinator</u>
Name	Title
<u>lgibbs@greeley.com</u>	<u>978-406-4702</u>
Email	Phone Number

4. INDEPENDENT CONTRACTOR STATUS:

(a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

5. **NON-SOLICITATION:** During the term of this Agreement and for a period of one year following the termination of this Agreement (the "Restricted Period"), COUNTY shall not: (i) employ, retain or engage (as an employee, consultant, or independent contractor), or induce or attempt to induce to be employed, retained or engaged, any person who is or was during the Restricted Period an employee, consultant or independent contractor of Greeley; (ii) induce or attempt to induce any person or entity who is an employee, consultant, or independent contractor of Greeley at any time during the Restricted Period to terminate his or her employment or other relationship with Greeley.

6. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

7. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

8. **FORCE MAJEURE:** Anything to the contrary notwithstanding, neither of the parties hereto shall be liable to the other party for any loss, injury, delay, damages or other casualty suffered or incurred by such other party due to strikes, riots, storms, fires, explosions, acts of God, war, regional or national telecommunications failures, governmental action or any other cause similar thereto, which is beyond the reasonable control of such party. Upon this circumstance arising, the non-performing party shall promptly notify the other party in writing. The non-performing party will not be liable for this delay or failure to perform its obligations, except there will be a pro rata reduction in the consideration that would otherwise be due. If the period of nonperformance exceeds thirty (30) calendar days from the receipt of notice of the force majeure event, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice. A refund of any advance payment of fees for services not performed or delivered to COUNTY resulting from the occurrences described in this section shall be remitted.

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

10. CONFLICT OF INTEREST:

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raises any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY designated representative and provides all information needed for resolution of this question.

(c) Each party represents and warrants that it has full power and authority to undertake the obligations set forth in this Agreement and that it has not entered into any other agreements that would render it incapable of satisfactorily performing its obligations hereunder, or that would place it in a position of conflict of interest or be inconsistent or in conflict with its obligations hereunder.

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

12. INDEMNIFICATION:

- a. Each party shall indemnify, defend and hold harmless the other party and its affiliates and their respective officers, directors, employees, agents and subcontractors (collectively, "Indemnitees") from any and all third party claims, demands, actions, causes of action, losses, judgments, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and costs of settlement) (collectively, "Losses") that any of the Indemnitees may suffer as a result of (i) the negligence or willful misconduct of the indemnifying

party, or (ii) any breach by the indemnifying party of any of its representations, warranties, covenants or agreements contained in this Agreement.

- b. COUNTY shall defend, indemnify and hold harmless Greeley and its shareholders, officers, directors, employees, agents, consultants and others from any and all liability, loss or damage Greeley may suffer or incur as a result of claims, demands, costs or judgments against it arising out of external peer review services to be performed under the Proposal dated March 1, 2018 between the COUNTY and Greeley where COUNTY gives Greeley the privilege of inspecting and receiving information about COUNTY's medical staff as well as the responsibility of making an independent study and audit of said medical staff and findings and/or recommendations resulting therefrom, where such claims are rightfully or wrongfully filed and such claims are not due to Greeley's own negligence or misconduct.
- c. The party seeking to be indemnified shall promptly notify the other party within ten (10) days of any event or occurrence which could reasonably lead to a demand for money or any other remedy. The failure to provide such notice will not relieve the indemnifying party from its liability under this Agreement with respect to such claim, except to the extent the indemnifying party is prejudiced thereby. The indemnified party will have the right at its own expense to participate jointly with the indemnifying Party in the defense of any claim, demand, lawsuit or other proceeding.
- d. With respect to any claim for which the indemnifying party has acknowledged in writing its obligation to indemnify the other party, the indemnifying party will control the right to select counsel, settle, try or otherwise dispose of such claim, subject to the reasonable objection of the indemnified party.

13. TERMINATION:

- a. If either party shall fail to perform any of the terms, conditions, provisions or covenants in this Agreement and such default shall continue uncured for a period of thirty (30) business days after the non-defaulting party provides the defaulting party with written notice thereof, the non-defaulting party may terminate this Agreement.
- b. Upon the termination of this Agreement as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination; and (ii) obligations, promises, and/or covenants contained herein, which are expressly made to extend beyond the term, including without limitation, indemnities and confidentiality provisions.
- c. COUNTY will have the right to terminate this Agreement without cause by giving (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such

compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to

the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination.

14. WARRANTY / LIMITATION OF LIABILITY: CONTRACTOR warrants that it will perform the services under the Agreement with reasonable skill and care by a licensed physician with the proper qualifications and credentials for the Services being provided, and under the direction of the CONTRACTOR physician/Medic al Director. This express warranty extends only to COUNTY and not to any third parties. This express warranty is in lieu of all other warranties, either express or implied, including warranties of merchant ability, non-infringement and fitness for a particular purpose not otherwise warranted within this Agreement and Proposal. CONTRACTOR, its employees, officers , and/or directors will not be liable for any consequential, special, in direct, incidental, punitive or exemplary damages, costs, expenses or losses regardless of the form of action, damage, claim , liability, cost, or expense. Notwithstanding the above, CONTRACTOR's liability to COUNTY in connection with the provision of the services shall not be greater than the amount paid to CONTRACTOR pursuant to this Agreement. This provision shall not apply to the indemnification obligations set forth in Paragraph 12.

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

16. NOTICES:

(a) Except as may be otherwise required by law. any notice to be given shall be written and shall be either personally delivered , sent by facsimile transmission or sent by first class mail . postage prepaid and addressed as follows:

COUNTY:
CONTRACT UNIT
TULARE COUNTY HEALTH & HUMAN SERVICES AGENCY
5957 S. Mooney Boulevard
Visalia, CA 93277
Fax No.: 559-737-4059
Phone No.: 559-624-8000

CONTRACTOR:
THE GREELEY COMPANY, LLC
5 Cherry Hill Drive
Suite 200
Danvers, MA 01923

Fax No.: 978-531-5601
Phone No.: 888-749-3054

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

17. **ASSIGNMENT/SUBCONTRACTING:** Neither party may assign its rights or obligations under this Agreement without the express written consent of the other party, except that either party may assign this Agreement in connection with the transfer of all or substantially all of its assets, whether by sale, merger or otherwise. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of their respective successors or assigns. " If CONTRACTOR assigns this Agreement in connection with the transfer of all or substantially all of its assets, whether by sale, merger or otherwise, CONTRACTOR shall immediately notify COUNTY of such assignment. Failure to do so will result in a material breach of this agreement by CONTRACTOR."

18. **FURTHER ASSURANCES :** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

19. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

20. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings .

21. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

22. NON WAIVERS: The waiver, express or implied, by either of the parties hereto of any right hereunder or for any failure to perform or breach hereof by the other party shall not constitute or be deemed as a waiver of any other right hereunder or of any other failure to perform or breach hereof by such other party whether of a similar or dissimilar nature thereto.

23. EXHIBITS AND RECITALS: The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

24. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY : This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

25. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

26. ASSURANCES OF NON-DISCRIMINATION: CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and COUNTY from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or COUNTY may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

27. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):

- a. CONTRACTOR shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in **EXHIBIT D** attached.
- b. At termination of this Agreement, CONTRACTOR shall, if feasible, return or destroy all protected health information received from, or created or received by, CONTRACTOR on behalf of the COUNTY that CONTRACTOR still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.
- c. COUNTY may immediately terminate this Agreement if COUNTY determines that CONTRACTOR has violated a material term of this provision.

28. CONFIDENTIAL INFORMATION: Information supplied by each party in the course of performing the services under this Agreement shall constitute Confidential Information. Confidential Information which is disclosed by either party to the other for the purpose of performing under this Agreement shall be protected by the receiving party and shall not be disseminated, disclosed or used for any purpose except in connection with the performance of this Agreement. Information supplied to CONTRACTOR in the course of performing external peer review services, including but not limited to information concerning members of the COUNTY's medical staff and patients shall constitute confidential information. CONTRACTOR acknowledges that such information, including any report prepared by CONTRACTOR based on its independent review of the information may be considered medical review and peer review records under applicable law. However, neither party shall be required to keep confidential any information which: (a) is or becomes publicly available, (b) is already in that party's possession at the time of disclosure by the other party, (c) is independently developed by that party outside of the term or scope of this Agreement, (d) is rightfully obtained from third parties or (e) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

29. PATIENT RECORDS: If the services to be provided under this Agreement include exposure to Patient Records, CONTRACTOR shall execute the appropriate Business Associate Agreement as provided by COUNTY.

30. INTELLECTUAL PROPERTY: Each party shall retain rights and ownership of all intellectual property, including without limitation all know-how, trade secrets, copyrights, and patentable inventions relating thereto, including materials, notes, designs, technical data, ideas, know-how, research, reports, documentation and other information related thereto ("Intellectual Property"), that was developed and/or purchased prior to this Agreement. CONTRACTOR shall retain ownership of all Intellectual Property made or conceived or reduced to practice or developed by CONTRACTOR during the term of this Agreement. COUNTY shall have no rights to sell, license, or distribute the work products (including future modifications) to any outside party without the prior

written permission of CONTRACTOR.

31. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____ BY _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

THE GREELEY COMPANY, LLC

Date: _____ By _____
Steven W. Bryant
TITLE President and CEO

Date: _____ By _____
Mark Solitro
TITLE Chief Financial Officer

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By 
Deputy

Date 11/29/18

20161466



EXHIBIT A
SCOPE OF WORK

External Peer Review

Presented to:

**Tulare County Health & Human Services Agency
Visalia, CA**

March 1, 2018

**The Greeley Company LLC
5 Cherry Hill Drive, Suite 200
Danvers, MA 01923**

Our Understanding of the Situation

We understand that you would like to use The Greeley Company's ("Greeley") external peer review services for the Tulare County Public Health Department clinic's medical staff.

Engagement Goals

The primary goal of this Scope of Work is to provide objective peer review services when circumstances within your clinics require an external resource.

Scope and Approach

Based upon your request, Greeley will provide the following scope and approach to our services:

- Greeley will conduct independent peer review of medical records and associated studies as requested by Tulare County Public Health Department clinics using our panel of clinically active, board certified physicians with the appropriate clinical expertise to match your requests.
- In general, the reviewer will evaluate the quality and appropriateness of physician care as described in the methodology section. Upon request, we will conduct focused studies for medical necessity. This type of review will be arranged in a separate statement of work to reflect specific issues or concerns.
- Individual Tulare County Public Health Department clinics will coordinate their requests for peer review directly with Greeley.
- Incentives to Tulare County Public Health Department clinics to use Greeley's system-wide peer review contracted services are:
 - An individual clinic tiered-pricing schedule based on case volume.
 - A system-wide additional tiered discount based upon the aggregate amount of the professional fees billed to Tulare County Public Health Department clinics during the contract year.
 - Engagement approval simplification through a Master Scope of Work and brief arrangement letters for each review request.
 - Engagement billing simplification by issuing a single invoice for requests less than \$10,000.

Process for Requesting External Peer Review

Once a need for an external peer review has been identified, Tulare County Public Health Department clinics will contact Greeley at 888 -749-3054 to confirm the intention to request services and receive further instructions for secure and confidential information exchange. Additionally, the "Initiation of Peer Review" form (Attachment 1) will be completed and submitted to Greeley's EPR staff.

Methods

Case Definition

This proposal assumes that the medical records provided may involve inpatient and outpatient cases. To establish the professional fees, case types are defined as follows:

- **Inpatient Admission:** An admission with a length of stay of 10 days or less including associated emergency department records will be counted as one case review. A readmission within seven days discharge for an inpatient stay of less than 48 hours will be counted as part of the original inpatient review. Readmission stays longer the 48 hours will be counted as one case review.

For obstetrical care, the delivery admission and associated prenatal records for the mother and infant up to the maternal discharge date will be counted as one review.

- **Outpatient/Same Day Procedure:** The procedure, including a contiguous admission for up to 48 hours and any related medical imaging will be counted as one outpatient procedure case review.
- **Ambulatory Care Encounters:** An initial ambulatory care visit and up to three follow-up visits related to the same condition or symptoms without a contiguous admission will be counted as one ambulatory case review
- **Emergency Department Only Encounter:** An emergency department initial visit and up to two return visits for the same condition or symptoms will be counted as one case review.
- **Interpretation of Study(ies) Only:** Studies requiring review solely for professional interpretation to determine accuracy will be arranged in a separate statement of work to reflect specific issues or concerns. Professional fees will be determined by the number and modality of the studies needing review.
- **Patient with longer lengths of stay:** For any patient with a length of stay greater than described above, each additional day will be counted as 5% of an inpatient review.
- **Multiple Reviewers:** If more than one reviewer is requested, each reviewer's evaluation will be counted as a separate review for that type of case.

Record Management

Each clinic will identify the specific medical records for review and deliver to Greeley within one week of contract execution. If requested, the Greeley EPR Medical Director is available to assist in defining the appropriate record sample at no additional fee. For each request, the clinic will identify the record format prior to delivery to Greeley:

- o **GreeleySecure:** *GreeleySecure* is the preferred method for timely medical record delivery as it accelerates Greeley's access to the medical record. This method also enhances HIPAA compliance and reduces your costs associated with shipping and processing paper records. The review will begin once Greeley's reviewer has successfully accessed the medical records. All medical records uploaded to *GreeleySecure* will be purged 90 days after the report is issued.
- o **Encrypted CD Rom:** Medical records received in encrypted CD format will be uploaded to *GreeleySecure* and the review will begin once Greeley's reviewer has successfully accessed the medical records. All CDs will be confidentially destroyed 90 days after the final report is issued.
- Greeley requires that the clinic organize and submit each medical record to be reviewed to Greeley clearly tagged, indexed or otherwise highlighted in the following sections so as to not delay the initiation of the review. An hourly record processing fee, stated in Exhibit B, will be applied if records are provided to Greeley that are not organized or indexed:
 1. Admission history and physical
 2. Consent Forms
 3. Operative reports (all)
 4. Consultations (all)
 5. Physician/practitioner progress notes (all)
 6. Discharge summary
 7. Procedure recordings (e.g. cath images and/or cine)
 8. Blood tests (all)
 9. Imaging Study Final Interpretations (all, including pre- and postoperative studies, and any outpatient imaging studies relevant to the case under review).
 10. Pathology reports (all)
 11. Outpatient pre-procedure evaluation, prior treatment(s), and treatment results (as applicable to the procedure under review)
 12. other outpatient or inpatient studies relevant to the case(s) under review (e.g. EKGs, stress test report for cardiac procedure)
 13. Anesthesia record (when appropriate to the review)

- Each clinic will securely submit through encryption the case review list prior to sending any records with the following information. PHI must be limited to the minimum information necessary for the permitted purpose:
 - o Patient Information: patient initials, medical record number, age, sex, date of admission/date of discharge.
 - o Clinical Information: physician(s)/specialty(ies) under review, reviewer specialty(ies) requested and specific questions or issues for reviewer consideration.

};,, Radiographic images in film or electronic formats will be confidentially destroyed unless the COUNTY formally requests their return.

Evaluation and Report

- **Case Ratings and Comments:** The reviewer will evaluate the available documentation in the medical record and associated studies. The cases will be scored using a categorical rating system . For each case, the reviewer will dictate a brief clinical summary, observations and conclusions.
- **Reports:** The findings will be incorporated into a final report by Greeley's EPR staff and medical director.
 - o **Non-expedited reports** will be provided typically within 30 - 45 days from our Reviewer's receipt of records barring any extenuating circumstances and after receiving the required upfront payment.
 - o **Expedited reports** can be provided upon request for an additional 15% fee and will be delivered within 21 days from our Reviewer's receipt of records barring any extenuating circumstances and after receiving the required upfront payment.
- These delivery timeframes are based upon the successful access to the organized and indexed medical records. After receiving the report, if COUNTY identifies additional concerns, the Greeley EPR Medical Director will work with the reviewer to resolve the concerns and determine if direct discussion with the reviewer is warranted.
- All final reports provided under this proposal shall be an un-editable format and provided to COUNTY solely for internal use related to the Services under this proposal.

Involvement in Potential Corrective Action

Requests for this service will be provided in a separate scope of work.

Engagement Deliverables

We will complete the following deliverables during the course of this engagement:

NO.	DELIVERABLE	DESCRIPTION
1	Written Report of Findings from Peer Review of Individual Cases	Categorical rating, descriptive clinical summary and comments by the appropriate specialist
2	Post Report Conference call	A conference call of up to 60-minutes with Greeley's Medical Director to discuss findings

Project Timeline

The term of this Master Services Agreement will be for 12 months commencing on the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, this Agreement will automatically renew for additional one (1) year periods, unless either party gives notice to the other of its intent not to renew at least 30 days before the expiration of the then-current term.

Resource Requirements

- Tulare County Public Health Department will provide Greeley with a list of participating clinics authorized to request external peer review services within the scope of this Agreement. Each individual clinic will make their requests directly to Greeley EPR staff.
- The arrangement letter confirming the scope of work must be signed and returned to Greeley prior to the submission of the records to the reviewer (see sample letter in Attachment 2). Until the signed arrangement letter is received, there is no obligation to the clinic for the specific engagement.

Engagement Staffing

Reviewers will be actively practicing, board certified physicians for the specialty or specific clinical privilege relevant to the cases under review. Greeley will recommend a reviewer from its panel. If the clinic wishes an alternative reviewer, additional suggestions will be provided.

EXHIBIT B - Professional Fees and Expenses

Medical Records:

The professional fees for the terms of this Agreement will be calculated primarily based on the fee schedule below and the case definitions outlined in the methods section. This fee schedule will be applied each time a request is received for case reviews and is not cumulative over multiple requests.

# of Cases Submitted	Fee/Case
1-2	\$1,200
3-10	\$895
>10	\$825

Additional Days:

If a case has a length of stay exceeding the case definition, there will be an additional fee applied to the case fee above.

Additional Documentation:

If you request to have documentation reviewed that is not considered part of the standard medical records (i.e., rebuttals, articles, meeting minutes, etc.) that will be performed at a professional fee of **\$750 per hour**.

Record Processing:

If paper or electronic records are received which require Greeley to scan, index, bookmark, etc. there is an additional fee of **\$80 per hour** to process the records and upload to our secure platform, *GreeleySecure*.

System Volume Incentive

To further incentivize Tulare County Public Health Department to promote the Greeley EPR services to its clinics, we will apply an additional volume discount to the fee schedule based on the aggregate amount of External Peer Review professional fees billed to Tulare County Public Health Department clinics during the contract year-to-date. For example, once the aggregated billing amount for all Tulare County Public Health Department clinics reaches \$50,000, all requests thereafter will receive an additional 5% discount until the next discount threshold is met. The discount will be determined by the following formula:

Total Fee Billed/Contract Year	Discount
>\$100,000	10%
>\$75,000	7.5%
>\$50,000	5%

Billing

We will bill and expect payment for our professional fees and our associated out-of-pocket expenses in accordance with the Paragraph 3 of the Agreement and the billing payment structure below. Any expense not specifically provided for in the Peer Review Arrangement Letter shall require approval of the County if over \$100. Each clinic requesting external peer review will be directly invoiced for each engagement completed under this Agreement. These invoices will reflect any volume discount to be applied at the time of the signed arrangement letter. Payments

can be made by check, credit card or wire transfer. The quote for this professional fee is valid for 45 days from the date of this proposal.

BILLING STRUCTURE >\$10,000	PAYMENT AMOUNT
Upon engagement execution	50% of Total Fee
Upon delivery of final written report	Balance of Professional Fees

If the individual engagement is \$10,000 or less, one invoice will be issued at the time the contract is executed and payment in full will be required prior to the release of the final report.

**Attachment 1
Initiation of External Peer Review**

- o **Formal Acceptance:** Please sign, date and return all pages of this agreement to my attention via fax to(978/531-5601).
- o **Case Information:** To assist us in the timely delivery of the final report, the clinic will be provided with an electronic spreadsheet requiring case specific data (including medical record number, age, sex, date of admission/date of discharge, and any specific questions on individual cases). The clinic must confidentially and securely return the completed spreadsheet to the Associate Director of External Peer Review prior to forwarding any medical records. Please contact Greeley at 978-406-4724 or 978-406-4702 for further instructions.
- o **Physician Identification:** For confidentiality purposes, please provide us with your clinic physician peer review identification number assigned to the practitioner(s) being reviewed so that he/she may be referenced anonymously by ID number when we refer to this physician in our final report to the clinic. We would also like to know the name of the physician under review to assure that our consultant has no prior association or knowledge of this individual.

Phys ician I D #	Physician Name	Specialty	Subspecialty

- o Expedited Review Required (Three Week Turnaround) **Yes**___ **No**
- o Please designate the name and title of the person to whom the final report is to be sent. This person should be authorized under peer review protection.

Name _____ Title- _____

Email Address - _____

Medical Record Delivery Instructions
Please Read and Follow Instructions Carefully

- O **Please Specify Medical Record Delivery Format**
 - o Encrypted CD-Rom* see additional requirements below
 - o Upload to *GreeleySecure* Website* see additional requirements below
- O **Medical Record Content Requirements:** To enhance the turnaround time of the deliverable and the quality of the review, Greeley requires that the clinic organize and submit each medical record clearly tagged, indexed or otherwise highlighted in the following sections so as to not delay the initiation of the review. COUNTY shall deliver medical records to Greeley within one week of contract execution:
 1. Admission history and physical
 2. Consent Forms
 3. Operative reports (all)
 4. Consultations (all)
 5. Physician/practitioner progress notes (all)
 6. Discharge summary
 7. Procedure recordings (e.g. cath images and/or cine)
 8. Blood tests (all)
 9. Imaging Study Final Interpretations (all, including pre- and postoperative studies, and any outpatient imaging studies relevant to the case under review, e.g. MRI for spine surgery, echocardiogram for cardiac procedure)
 10. Pathology reports (all)
 11. Other outpatient or inpatient studies relevant to the case(s) under review (e.g. EKGs, stress test report for cardiac procedure)
 12. Anesthesia record (when appropriate to the review)
- O **Medical Record Format for CD- ROM Delivery or *GreeleySecure* Upload:** If medical records will be submitted by encrypted CD-ROM or by upload to the *GreeleySecure* website, the records will be provided in easy to identify folders with one folder for each of the applicable categories of information identified above.

If imaging studies will be provided for review (in addition to the formal interpretation of the imaging studies), these will be submitted on a separate CD with any accompanying software needed to view the images included and shipped to The Greeley Company.

- O **Ship Cases:** Please send hard copies or CDs of the complete patient record(s) (with relevant follow-up visit documentation if available) and any relevant associated films, marked as "**Confidential, Peer Review Information,**" to the attention

Attn: EPR Practice Coordinator

The Greeley Company
5 Cherry Hill Drive
Suite 200
Danvers, MA 01923
Telephone: 888- 749- 3054 ext. 4702

We require that records and associated studies be forwarded to us via Fed Ex, or other courier service providing overnight service and tracking abilities to assure prompt arrival.

- O Radiology films/studies, CD Rom, VHS tapes will be confidentially destroyed unless the COUNTY formally requests their return.

Do you require the return of these items? Yes___ No

**Attachment 2
Sample Arrangement Letter**

DATE
CONTACT
TITLE
CLINIC
ADDRESS
CITY STATE ZIP

Email:

SUBJECT: External Peer Review Arrangement Letter - [Specialty]

Dear Contact:

The purpose of this arrangement letter is to confirm your request of [DATE] for an external peer review (EPR) of [number] [physician specialty] on your medical staff. The specific contract terms for this scope of work are reflected in the Master Services Agreement Effective on February 4, 2014.

Engagement Goals

The primary goal of the review is to provide the organization with the information required to evaluate [number] [physician specialty] under review to determine quality and appropriateness of care provided for [number] patients.

Scope and Approach

Based upon your needs, the following scope and approach were identified:

- Your medical staff desires an external peer review evaluation of [number] [physician specialty] on your medical staff.
- The review will address quality and appropriateness of care with a focus on _____
- The review will be performed on [number] patients and will include [number] [inpatient] [outpatient] [emergency medicine] medical records and associated studies to be reviewed.
- You would like the reviewer to be a [physician specialty].

Professional Fees and Expenses

The professional fee for this engagement is \$. If an expedited review is required, there will be an additional 15% fee applied. If you request to have documentation reviewed that is not considered part of the standard medical record (i.e., rebuttals, articles, meeting minutes, etc.) that will be performed at a professional fee of \$750 per hour.

Additionally, if paper records are received there is an additional fee of \$50 per hour to scan and upload to *GreeleySecure*.

The quote for this professional fee is valid for 45 days from the date of this proposal.

Billing

In accordance with the Master Services Agreement for individual engagements less than \$10,000, we will issue one invoice at the time the engagement is executed and payment in full for our professional fees and associated out-of-pocket expenses will be required prior to the release of the final report. Payments can be made by check, credit card or wire transfer.

MILESTONE	PAYMENT AMOUNT (Non-Expedited)	PAYMENT AMOUNT (Expedited)
Upon contract execution *	\$	\$
Upon contract completion	\$ If applicable, hourly fees incurred	\$ _____ If applicable, hourly fees incurred
Upon contract completion - Medical Record Processing Fee (if applicable)	\$SO/hour	\$SO/hour

* All final reports will be held until payment of the professional fee invoice is received.

Next steps

To initiate the external evaluation, please sign in the appropriate area indicating your acceptance of the engagement and fees described above. Please fax a signed copy to my attention at 978-531 - 5601. Upon receiving the signed Agreement, I will begin scheduling the engagement.

If you have any questions, please do not hesitate to contact me at 888/749-3054, ext. 3249.

Sincerely,



Robin L. Jones
Associate Director
External Peer Review Services

On behalf of Tulare County Public Health Department and CLINIC, I agree to the above scope of work and professional fees.

Signature

Date

PROFESSIONAL SERVICES CONTRACTS(EXHIBIT C)
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. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 0 1 , with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 0 1 covering Automobile Liability of \$ 1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. 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.
5. Technology Professional Liability and Cyber Liability sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR, with limit no less than \$ 1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall include, but not limited to, claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, credit monitoring expenses.

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 three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General 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 including material, parts, or equipment furnished in connection with such work or operations.*
 - 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. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*
- d. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after 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. 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

Self-insured retentions must be declared and 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-:V II 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 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 anytime.

SMF /3/14 /20 18 / RISK-2018622 / 11 49680

Rev. 3/3/17

EXHIBIT D

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information {"PHI"} that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

1. **Purpose.** This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

2. **Regulatory Reference s.** All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

EXHIBIT D

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

- breach, along with the names and contact information, when available, of all individuals whose PHI was involved. *(See Section 6 of this Exhibit for further detail.)* 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.
- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. *(See Section 11 of this Exhibit for further detail.)*
- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule. *(See Section 12 of this Exhibit for further detail.)*
1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.
5. Permitted Uses and Disclosures by Business Associate.
- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).
Unless otherwise limited in this Exhibit, Business Associate may:
 - b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as necessary to perform the services described in Exhibit A to the Agreement, or as otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).
6. Reporting Unauthorized Uses and Disclosures.
- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

EXHIBIT D

HIPAA BUSINESS ASSOCIATE AGREEMENT
(Form revision approved 4/ 18/ 18)

information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe .
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate , to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers , subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a

breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to :

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit .
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as " Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any

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Indemnified Party shall survive the expiration or termination of the Agreement.

9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

10. Obligations of Covered Entity.

Covered Entity shall :

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any

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unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

Associate has violated a material term of this Exhibit.

13. **Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

15. **Amendment.** The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

14. **Term and Termination.**

16. **Lost Revenues; Penalties/Fines.**

a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.

a. **Lost Revenues.** Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

b. **Penalties/Fines for Failure to Comply with HIPAA.** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

c. Covered Entity may immediately terminate the Agreement if it determines that Business

c. **Penalties/Fines (other).** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. **Entire Agreement.** This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

Revised 6/29/16 / S DF/ 2015418/ 930874_2