

AGREEMENT

I. INTRODUCTION

THIS AGREEMENT is entered into as of _____, between the COUNTY OF TULARE, referred to as COUNTY, and **SIEMENS HEALTHCARE DIAGNOSTICS, INC.**, a California Corporation, referred to as CONTRACTOR, with reference to the following:

II. RECITALS

A. COUNTY wishes to retain the services of CONTRACTOR for equipment maintenance and support services; and

B. CONTRACTOR has the experience and qualifications to provide the required services; and

C. CONTRACTOR is willing to enter into this Agreement with COUNTY upon the terms and conditions set forth herein.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

1. **TERM:** This Agreement shall become effective as of July 1, 2012 and shall expire at 11:59 PM on June 30, 2013 unless otherwise terminated as provided in this Agreement.

2. **SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**

3. **PAYMENT FOR SERVICES:** See attached **EXHIBIT A**.

IV. GENERAL TERMS

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. **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.

6. **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.

7. **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.

8. **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 raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

9. **INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT C** attached. Insurance policies shall not be used to limit CONTRACTOR'S liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

10. **SOFTWARE WARRANTY:** CONTRACTOR warrants that any software furnished hereunder, or any software used by it to perform the services to be provided under this Agreement, that such items when used as provided in CONTRACTOR's documentation, will function properly and accurately for the term of this Agreement and any extension thereof and that the product will not abnormally end, malfunction, cause incorrect scheduling or reporting or provide invalid, inaccurate or improper operations or results. To the extent that the product is designed to manage and manipulate data involving dates, the product will perform functions, calculations, and other computing processes in a consistent and unambiguous manner regardless of the date and time performed and will accurately and correctly provide, receive, accept, calculate, compare, update, display, sort, extract, and otherwise process date data, date inputs, and date values in an unambiguous and consistent manner. The above warranty is expressly limited to the products supplied by CONTRACTOR to carry out its obligations under this Agreement.

11. **LIMITATION OF LIABILITY AND INDEMNIFICATION:**

(a) Limitation of Liability. In no event shall CONTRACTOR's liability hereunder exceed the actual loss or damage sustained by COUNTY, up to the purchase price paid to CONTRACTOR for the service giving rise to such loss or damage, however, liability for intentional misbehavior and personal injury will not be limited. CONTRACTOR shall not be liable to county for any loss of use, revenue or anticipated profits, or cost of substitute service (unless otherwise agreed to by Siemens). Neither party shall be liable to the other party for any indirect, incidental, unforeseen, special, punitive, exemplary, or consequential damages arising out of or in connection with this agreement. The limitations of CONTRACTOR's liability contained herein shall apply to CONTRACTOR and CONTRACTOR's employees, agents and subcontractors performing under this Agreement, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise. The limitations of COUNTY's liability set forth herein do not affect COUNTY'S

liability for claims arising out of the negligent or wrongful acts or omissions of COUNTY, its employees or agents in connection with this Agreement, to the extent set out in this Agreement. The limitations of CONTRACTOR's liability set forth herein do not affect CONTRACTOR's liability for Claims for personal injury arising as a result of CONTRACTOR's negligence or product defect, to the extent set out in this Agreement.

(b) General Indemnification. To the extent permitted by law, each party agrees to indemnify and hold the other party and its employees, directors, officers and agents (collectively, the "Indemnitees") harmless from and against any and all third party claims and associated liabilities, obligations, damages, judgments, penalties, or causes of action, imposed upon or incurred by or asserted against any of the Indemnitees ("Claims") for bodily injuries including death or damages to or loss of real or tangible personal property, to the extent that any such Claim arises out of the negligent or wrongful acts or omissions of the indemnifying party, its employees or agents in connection with this Agreement, provided that the Indemnitee provided the indemnifying party with the prompt notice of the Claim, reasonable cooperation in the defense and/or settlement of the Claim and is given all right and power to defend and/or settle such Claim.

The obligations to indemnify shall survive the expiration or termination of this Agreement.

12. **TERMINATION:**

(a) Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (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.

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

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

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or

- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

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. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

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

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

13. **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.

14. **FORM DE-542**: If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

15. 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:

Siemens Healthcare Diagnostics, Inc.

Attn: Anna Trujillo

1717 Deerfield Road

Deerfield, IL 60015

Phone No.: 847-607-3805

Fax No.: 847-607-4101

Email: anna.trujillo@siemens.com

(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.

16. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

17. DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

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. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

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 clients 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 clients 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.

26. 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 B** 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 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 protection 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.

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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: JEAN ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

SIEMENS HEALTHCARE DIAGNOSTICS, INC.

Date: 11-15-12

By _____
TITLE Sr Contract Specialist-1

Date: 11-15-12

By _____
TITLE Sr. Director Business Operations

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 J. Menaga
Deputy (20121225)

Date 11/26/12

EXHIBIT A

Service Agreement Quote

SIEMENS

Date Printed: 05/22/2012
Customer Number: 0000113082
Quote Number: 115760-3
Quote valid until: 06/25/2012

Return Address:
The Processing Center
Siemens Healthcare Diagnostics
1717 Deerfield Rd
Deerfield, IL 60015

Mail To Address:
Denise Lopez
HILLMAN HEALTH LAB
1062 S K ST
TULARE, CA 93274

Equipment Location Address:
LAB MANAGER
HILLMAN HEALTH LAB
1062 S K ST
TULARE, CA 93274

Dear Denise Lopez:

We are pleased to offer our "PLUS Performance Plan" quotation for the equipment listed below at the address listed above. This service agreement provides routine instrument maintenance and repair which assures ongoing performance to manufacturer's specifications. This agreement is also designed to assist you in complying with State and Federal regulations.

The following are provided in this agreement:

Feature/Benefit	Description
Coverage Options	9 hours (8am to 5pm), 5 days a week - excluding weekends and nationally observed holidays
Unscheduled Maintenance	Unscheduled corrective maintenance including all labor, travel and service parts during coverage hours
Preventive Maintenance	Scheduled PM's according to manufacturer's specifications
Technical Phone Support	24/7 Phone support, unlimited technical assistance and troubleshooting from Technical Support staff

Billing Frequency Annual billing

Additional exclusions may apply to this agreement as noted in the Terms and Conditions.

This is NOT an invoice. Please DO NOT send payment until you have received Siemens invoice, which will include any applicable taxes.

Product	Serial	Present Coverage Expires	Proposed Service Contract Plus (8am-5pm, M-F) Performance Plan			
			Catalog Number	Begins	Ends	Net Price (\$)
AS4/IBM	8400		10369522	07/01/2012	06/30/2013	3,200.00
LABPRO	1735503			07/01/2012	06/30/2013	0.00
Total Discounted Price (\$)						3,200.00

Please sign this Service Agreement Quote below and return it with your purchase order to the address noted above. If you have any questions or would like information regarding other service options which may be available please call 847-607-3805 to speak with ANNA TRUJILLO, your Siemens Service Contract Representative. You may FAX your Service Agreement Quote and purchase order to 847-607-4101, or EMAIL them to anna.trujillo@siemens.com.

Customer Signature: _____

Purchase Order Number: _____

Print Name: _____

Date of Purchase Order: _____

Service Agreement Terms and Conditions

Quote Number: 115760-3

SIEMENS

1. Initial Condition of Equipment

This service agreement ("Agreement") is entered into by Siemens Healthcare Diagnostics Inc. ("Siemens") on the premise that equipment covered by this Agreement ("Equipment") is presently operating in accordance with the manufacturer's specifications as of the date of this Agreement.

Where service has not been provided by Siemens under warranty or contract for greater than sixty (60) days preceding the date of this Agreement, Equipment condition is subject to verification by Siemens at Customer's expense.

Any and all repairs performed by Siemens to restore the Equipment performance to manufacturer's specifications or that are outside of the scope of this Agreement will be invoiced at Siemens then-current rates for labor, travel and parts.

Verification is waived by Siemens where Siemens service, or service by a Siemens-authorized service provider, has been provided under warranty or contract within sixty (60) days of the date of this Agreement.

2. Siemens Service

Subject to the terms of this Agreement and with reasonable promptness, Siemens or its authorized service provider will repair those Equipment malfunctions which occur notwithstanding that the Equipment is being operated in accordance with the instruction manual for such Equipment. A service call shall be considered complete when Siemens, or its authorized service provider, demonstrates by an appropriate test procedure that the Equipment is operating in accordance with the manufacturer's specifications for such Equipment. Siemens, or its authorized service provider, shall provide to Customer a copy of the "Field Service Report" detailing the work performed by Siemens' field service representative, or its authorized service provider. Siemens may require that the Equipment be returned to the repair facility for service.

As consideration for the service provided hereunder, Customer shall pay Siemens the specified fees. Customer is also responsible for the payment of any sales and use tax on the service and any replacement parts furnished hereunder.

3. Replacement Parts

Unless otherwise provided elsewhere in this Agreement, all replacement parts are furnished on an exchange basis and the parts removed become the property of Siemens.

4. Exclusions

Service does not include any work and related travel, labor and parts required to repair Equipment malfunctions resulting from Customer's failure to provide suitable operating conditions or to adequately furnish all facilities required by the manufacturer's installation manual.

In addition, service required to correct malfunctions resulting from the following is excluded from this Agreement:

- (a) Failure on the part of Customer to maintain the Equipment in accordance with the routine maintenance requirements set forth in any manuals for such Equipment;
- (b) Damage caused by Customer error, misuse, abuse, or operation outside of conditions prescribed in the Equipment instruction manual or damage caused by use for a purpose other than for which it was designed;
- (c) Improper use or storage or other external cause, including service or modifications not performed by Siemens or its authorized service provider;
- (d) Damage incurred during the transportation of the Equipment not supervised by Siemens or its authorized representative;
- (e) Damage caused by repair, service, or alteration made or attempted by any parties other than Siemens or Siemens' authorized service provider without Siemens' prior written consent;
- (f) Acts of God including flood, earthquake, tornado, hurricanes and other natural or man-made disasters;
- (g) Acts of war, vandalism, sabotage, arson and civil commotion;
- (h) Electrical surges and sprinkler damage, or;
- (i) Use of supplies, disposables, consumables or reagents not recommended in writing by the Equipment manufacturer, or accessories which the Equipment manufacturer has not specifically designated in writing as compatible with the Equipment.

Siemens service also excludes the following:

- (a) Furnishing of batteries, fuses, lamps, hoses, tubing, filters, disconnected fittings, electrodes, computer software, test patterns, calibration standards, report forms, printer paper, pen styli, ink pens, hollow cathode or any other parts listed in the operator's manual or instruction manual for the Equipment as replacement parts, sub-assemblies or accessories.
- (b) Service which is unreasonable for Siemens or its authorized service provider to render because of unauthorized alterations or attachments to the Equipment.

Service calls made by Siemens, or its authorized service provider, and any related travel, labor and parts required to correct Equipment malfunctions resulting from

causes set forth above shall be invoiced by Siemens to Customer at Siemens' then-current rates.

5. Warranty

Siemens warrants that Equipment service rendered by Siemens, or its authorized service provider, to the Customer hereunder shall be performed in a workmanlike manner, consistent with industry standards. If the service performed does not result in the Equipment performing in accordance with the manufacturer's specifications, Siemens shall repeat such service until the Equipment performs in accordance with the manufacturer's specifications. The foregoing express warranty and remedy are exclusive and there are no other warranties expressed or implied.

THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SIEMENS.

6. Equipment Retrofit

Siemens, or its authorized service provider, may make changes in the design or construction of Siemens equipment without incurring any obligation hereunder to make such changes to the Equipment covered by this Agreement. Customer shall, however, allow Siemens, or its authorized service provider, at Siemens' expense, to retrofit components or make design changes which improve Equipment reliability but do not adversely affect Equipment performance.

7. Key Operator

Customer shall designate a key operator who shall be made available to Siemens, or its authorized service provider, to describe Equipment malfunctions to Siemens representatives by telephone and who shall be qualified to perform simple adjustments and corrections as requested by Siemens representative. Failure to designate a key operator or to perform Customer maintenance as specified in the Equipment instruction manual may result, at Siemens option, in (i) cancellation of this Agreement, (ii) a service call invoiced by Siemens at its then-current standard rates for service, travel, labor and parts.

8. OSHA

Customer shall provide Siemens' field service representative, or its authorized service provider, with facilities at Customer's location which shall be adequate for Siemens or its authorized service provider to perform the services contemplated by this Agreement and comply with the regulations of the Secretary of Labor promulgated under the Occupational Safety and Health Act of 1970 as amended.

9. Access to Books and Records

The obligation under this Section 9 is undertaken pursuant to and to the extent required by Section 952 of the Omnibus Reconciliation Act of 1980 ("Act") which is applicable to parties furnishing services with a value or cost of \$10,000 or more over a twelve-month period. Upon written request any time during a four-year period after furnishing the services, Siemens shall make available to the Secretary of The Department of Health and Human Services, the U.S. Comptroller General, and their authorized representatives, this Agreement and all books, documents, and records necessary to verify the nature and extend of the cost of such services. If Siemens provides any service through a subcontract with a related organization, such subcontract shall contain a provision similar to this Section 9 required by the Act.

10. Payment Terms

Payment is due thirty (30) days from invoice date. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated immediately upon written notice by Siemens to Customer for nonpayment. Any service calls made after the date of such termination shall be invoiced at Siemens' then-current standard rates for service, travel, labor and parts.

11. Default and Termination

This Agreement may be terminated by either party on account of the default of any material obligation of this Agreement which default continues for fifteen (15) days after written notice has been given to the party in default. No course of dealing and no delay on the part of either party in asserting any right hereunder shall operate as a waiver of such right or otherwise prejudice the rights of either party hereunder.

Under no circumstances shall Siemens liability to Customer for default exceed the amount paid by Customer to Siemens hereunder.

12. Limitation of Liability and Indemnification

(a) **Limitation of Liability** In no event shall Siemens' liability hereunder exceed the actual loss or damage sustained by Customer, up to the purchase price paid to Siemens for the service giving rise to such loss or damage, however, liability for intentional misbehavior and personal injury will not be limited. SIEMENS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, COST OF SUBSTITUTE SERVICE (UNLESS OTHERWISE AGREED TO BY SIEMENS), OR LOSS OF STORED, TRANSMITTED OR RECORDED DATA. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. The limitations of Siemens' liability contained herein shall apply to Siemens and Siemens' employees, agents and subcontractors performing under this Agreement, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if Siemens or its employees, agents or subcontractors are advised of the likelihood of such damages.

Service Agreement Terms and Conditions

Quote Number: 115760-3

SIEMENS

The limitations of Customer's liability set forth herein do not affect Customer's liability for Claims (as defined herein) arising out of the negligent or wrongful acts or omissions of Customer, its employees or agents in connection with this Agreement, to the extent set out in this Agreement. The limitations of Siemens' liability set forth herein do not affect Siemens' liability for Claims for personal injury arising as a result of Siemens' negligence or product defect, to the extent set out in this Agreement.

THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT

13. Force Majeure

Neither party shall be responsible for delay or nonperformance caused by circumstances beyond such party's reasonable control.

14. Termination

This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party. In the event of such termination, Siemens will prorate any unused portion of the Agreement to the nearest month or charge for all parts, labor and travel used at the prevailing rates during the Agreement period, whichever is higher.

15. Additional Terms and Conditions for RealTime Solutions (if selected by Customer)

(a) System Monitoring. Siemens provides services for remote monitoring of certain Siemens Equipment used by Customer ("Applicable Equipment"). In connection with such services, Siemens uses certain Siemens RealTime Service software to monitor the performance of Applicable Equipment called "Siemens RealTime Solutions" (the "Software") to permit Customer monitoring of the performance of the Applicable Equipment anonymously against a base of other Siemens systems on which the Software has been installed ("Online Reports"). In connection with using the Software and continuing to provide these services and in order to provide OnLine Reports, Siemens will gain access to certain information from the Applicable Equipment. This information ("Information") is expected generally to consist of data measuring the performance of the specific processes performed by the Applicable Equipment, but may include data that is considered Protected Health Information as that term is defined in 45 CFR § 160.103 and used in the Health Insurance Portability and Accountability Act ("HIPAA"). In connection with the OnLine Reports, Customer hereby grants to Siemens, for no additional consideration, a worldwide license to Siemens to use Information from the Applicable Equipment for its purposes, including, without limitation, developing and providing peer comparisons (subject to the anonymity provisions in the next sentence), Customer support, product support and product development. ANY SUCH USE BY SIEMENS OF ANY SUCH INFORMATION OF CUSTOMER WILL SPECIFICALLY EXCLUDE (I) DISCLOSURE OF ANY SPECIFIC IDENTIFICATION OF INFORMATION OR RESULTS OF QC DATA COLLECTED AS ORIGINATING FROM A CUSTOMER SYSTEM AND (II) ANY USE OF INFORMATION BY SIEMENS IN VIOLATION OF APPLICABLE HIPAA PROVISIONS REGARDING PROTECTED HEALTH INFORMATION.

(b) Applicable Equipment Upkeep and Maintenance. The services provided by Siemens permit improvements in anticipating maintenance and other issues that may arise in connection with Applicable Equipment and, consequently, can improve scheduling of appropriate service. THE SERVICES THAT THE SOFTWARE PERMITS SIEMENS TO PROVIDE ARE NOT A SUBSTITUTE FOR, OR SERVE TO DIMINISH IN ANY WAY, CUSTOMER'S DUTY TO EXERCISE APPROPRIATE DILIGENCE AND CARE IN OPERATING AND MAINTAINING THE APPLICABLE EQUIPMENT(S). CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS RESPONSIBLE TO PERFORM ALL ROUTINE AND PERIODIC MAINTENANCE CHECKS AND PROCEDURES ON THE APPLICABLE EQUIPMENT(S) AND THAT CUSTOMER RETAINS THE DUTY TO FOLLOW ALL APPROPRIATE PROCEDURES AND SAFEGUARDS TO THE SAME EXTENT AS THOUGH THE SOFTWARE WERE NOT INSTALLED AND SIEMENS WERE NOT PROVIDING THE SERVICES

16. Remote Diagnostics

Customer should be aware that if they choose to use the Siemens remote diagnostic function (if available for use with the Applicable Equipment), it will likely provide access to "Protected Health Information" as defined in 45 CFR § 160.103 and as used in the Health Insurance Portability and Accountability Act ("HIPAA") to Siemens. Use of the remote diagnostics function by Customer is a conscious decision made by Customer when Customer chooses to provide an analogue line or internet connection ("Connectivity") for connection by Siemens to the Equipment, thereby granting access to Siemens to the Equipment software for troubleshooting. This access will not be available to Siemens if Customer does not provide to Siemens such Connectivity. Customer understands that the remote diagnostics function and use of the Software are completely separate and distinctly different remote monitoring support services for the Equipment provided by Siemens to Customer.

17. Miscellaneous

This Agreement sets forth the entire agreement and understanding between Siemens and Customer regarding service of the Equipment. Customer may not assign this Agreement, or any right or obligation arising out of this Agreement, without the express

written consent of Siemens, which shall not be unreasonably withheld. This Agreement shall not be modified except by a writing making reference hereto, expressing the plan or intention to modify same, and executed by duly authorized representatives of both parties. Any term or condition contained in a Customer purchase order relating to service supplied hereunder shall be null and void. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois without reference to conflicts of law provisions. Each party will send any required notices to the other party by registered or certified mail or by recognized overnight courier service. All notices will be sent to the applicable party at the address set forth herein. A party may designate an alternate address for notices by giving written notice thereof in accordance with the provisions of this Section.

California
7/5/12
(H)

EXHIBIT B

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between _____, (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).

1. **Purpose.** This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to "Protected Health Information" (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, and that 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").

2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in Sections 160.103, 164.304 and 164.501.

(a) **Business Associate.** "Business Associate" shall mean the party identified above as the "Business Associate".

(b) **Breach.** "Breach" shall have the same meaning as the term "breach" in Section 164.402.

(c) **Covered Entity.** "Covered Entity" shall mean the County of Tulare, a hybrid entity, and its designated covered components, which are subject to the Standards for Privacy and Security of Individually Identifiable Health Information set forth in Parts 160 and 164.

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

(e) **Electronic Protected Health Information.** "Electronic Protected Health Information" ("EPHI") is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

(f) **Individual.** "Individual" shall have the same meaning as the term "Individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(g) **Agreement.** "Agreement" shall mean the contract or other agreement to which this Exhibit is attached and made a part of.

(h) **Minimum Necessary.** "Minimum Necessary" shall mean the minimum amount of

Protected Health Information necessary for the intended purpose, as set forth at Section 164.514(d): *Standard: Minimum Necessary*.

(i) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.

(j) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(k) Required By Law. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

(l) Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his/her designee.

(m) Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

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

(o) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in Section 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

4. Compliance with the HIPAA Privacy and Security Rules.

(a) Business Associate acknowledges 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, and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Exhibit, or as required by law.

5. Permitted Uses and Disclosures.

(a) Except as otherwise limited in this Exhibit, Business Associate may use or disclose Protected Health Information 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.

(b) Except as otherwise limited in this Exhibit, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Exhibit, Business Associate may disclose Protected Health Information 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 Protected Health Information is being disclosed and the person to whom the Protected Health Information is disclosed provides

reasonable assurances that the Protected Health Information 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.

(d) Except as otherwise limited in this Exhibit, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

6. Appropriate Safeguards.

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Exhibit. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information 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.

(b) To the extent practicable, Business Associate will secure all Protected Health Information 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.

7. Reporting Unauthorized Uses and Disclosures.

(a) Business Associate agrees to notify Covered Entity of any breach, or security incident involving Unsecured Protected Health Information of which it becomes aware, including any access to, or use or disclosure of Protected Health Information not permitted by this Exhibit. Such notification will be made within five (5) business days after discovery and will include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health Information 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 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 promptly thereafter as the information becomes 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.

8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, 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 Unsecured Protected Health Information 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.

9. Indemnification.

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to 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) Business Associate agrees to 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 attorneys' 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 Indemnified Party shall survive the expiration or termination of the Agreement.

10. Individuals' Rights.

(a) Business Associate agrees to provide access, at the request of Covered Entity, and in

the time and manner designated by the Covered Entity, to Protected Health Information 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) Business Associate agrees to make any amendment(s) to Protected Health Information 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) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with Section 164.528.

(d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(e) Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

11. Obligations of Covered Entity.

(a) Covered Entity shall 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) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information 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 Protected Health Information.

12. Agents and Subcontractors of Business Associate.

(a) Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides Protected Health Information 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 Protected Health Information 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.

13. Audit, Inspection, and Enforcement.

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by

Business Associate on behalf of, 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 Protected Health Information 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 unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

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

15. **Term and Termination.**

(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 Protected Health Information 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 Protected Health Information.

(b) Upon termination of the Agreement, Business Associate shall recover any Protected Health Information 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 Protected Health Information, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so 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 Protected Health Information 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 Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(c) Covered entity may immediately terminate the Agreement if it determines that Business Associate has violated a material term of this Exhibit.

16. **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.

17. Lost Revenues; Penalties/Fines.

(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) 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) 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.

18. 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.

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 or subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence. If the annual aggregate applies it must be no less than \$2,000,000.
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence.
3. Workers' Compensation and Employer's Liability Insurance as required by law.
4. Professional Errors and Omissions Insurance of \$1,000,000.

B. Specific Provisions of the Certificate

1. The Certificate of Insurance for General Liability, Comprehensive Automobile Liability Insurance and Professional Errors and Omissions Insurance have to meet the following requirements:
 - a. *Name the COUNTY, Its officers, agents, employees and volunteers, individually and collectively, as additional insured by endorsement to the policy.*
 - b. *State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
 - c. *Provide that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.*
2. The Certificate of Insurance for Workers Compensation, should include the following:
 - a. *Waiver of Subrogation. Contractor waives all rights against the County and its agents, officers, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability by endorsement to the policy.*

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 (-) from a company admitted to do business in California, any waiver of these standards are subject to approval by the County Risk Manager or County Risk Manager's designee.

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. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/29/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07960-6454	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
100129-SHLTH--12/13 SHLTH TRUJIL	INSURER(S) AFFORDING COVERAGE INSURER A: HDI-Gerling America Insurance Company NAIC # 41343
INSURED SIEMENS CORPORATION INCLUDING: SIEMENS HEALTHCARE DIAGNOSTICS, INC 170 WOOD AVENUE SOUTH ISELIN, NJ 08830	INSURER B: Liberty Mutual Fire Ins Co 23035 INSURER C: LM Insurance Corporation 33600 INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:**

NYC-006536048-03

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		GLD1110104	10/01/2012	10/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 100,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 7,500,000 PRODUCTS - COMP/OP AGG \$ INCL. \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		AS2631004334212	10/01/2012	10/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ N/A BODILY INJURY (Per accident) \$ N/A PROPERTY DAMAGE (Per accident) \$ N/A \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>					EACH OCCURRENCE \$ AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	WA563D004334012 (AOS) WC5631004334022 (OR, WI)	10/01/2012 10/01/2012	10/01/2013 10/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

TULARE COUNTY HEALTH & HUMAN SERVICES IS HEREBY ADDITIONAL INSURED AS OBLIGATED UNDER CONTRACT.
WAIVER OF SUBROGATION IS EFFECTUAL.

CERTIFICATE HOLDER**CANCELLATION**

TULARE COUNTY HEALTH & HUMAN SERVICES ATTN: GAIL MCCANN 5957 S. MOONEY VISALIA, CA 93277	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION REQUIRED
BY WRITTEN CONTRACT

Issued by: LM Insurance Corporation

For attachment to Policy No WA5-63D-004334-012
\$

Effective Date 10/01/2012

Premium

Issued to: SIEMENS CORPORATION

HDI-GERLING AMERICA INSURANCE COMPANY

MANUSCRIPT ENDORSEMENT # 34

Policy Number
GLD11101-04

Named Insured
SIEMENS CORPORATION

Policy Period:	Inception (M-D-Y)	Expiration (M-D-Y)	Effective Date and Time of Endorsement
	10-01-12	10-01-13	10-01-12 12:01 a.m. Standard Time at Address of the Insured.

This Endorsement Changes The Policy. Please Read It Carefully.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Form

Who is an insured is amended to include as an insured any person whom you are required to add as an additional insured on this policy under a written agreement. The insurance coverage provided to such additional insured applies only to the extent required within the written agreement.

The insurance coverage provided to the additional insured person shall not provide any broader coverage than you are required to provide to the additional insured person in the written agreement and shall not provide limits of insurance that exceed the lower of the Limits of Insurance provided to you in this policy, or the limits of insurance you are required to provide in the written agreement.

The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent, or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the written agreement specifically requires that this insurance apply on a primary basis, this insurance is primary. If the written agreement specifically requires this insurance apply on a primary and non-contributory basis this insurance is primary to other insurance available to the additional insured and we will not share with that other insurance.

This endorsement shall prevail over additional insured endorsements that may apply under this policy unless required otherwise in the written agreement.

All terms and conditions of the policy remain unchanged.

THIS ENDORSEMENT MUST BE ATTACHED TO A CHANGE ENDORSEMENT WHEN ISSUED AFTER THE POLICY IS WRITTEN.

Exhibit "D"

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(e)(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.