

**AMENDMENT TWO TO THE COUNTY OF SAN MATEO BUSINESS ASSOCIATE
AGREEMENT AND A FIRSTWATCH® SOFTWARE LICENSE AGREEMENT
BETWEEN THE
COUNTY OF SAN MATEO
AND
FIRSTWATCH SOLUTIONS, INC.**

THIS AMENDMENT TWO TO THE COUNTY OF SAN MATEO BUSINESS ASSOCIATE AGREEMENT AND A FIRSTWATCH® SOFTWARE LICENSE AGREEMENT, entered into this _____ day of _____, 2009, by and between the COUNTY OF SAN MATEO, hereinafter called "County," or "Licensee" or "Covered Entity" and FirstWatch Solutions, Inc. hereinafter called "Contractor" or "Licensor" or "Business Associate";

W I T N E S S E T H:

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

WHEREAS, on October 15, 2004 the parties entered into a County of San Mateo Business Associate Agreement and a FirstWatch® Software License Agreement for Contractor to monitor 911 calls and other key data sources for abnormalities that may indicate a public health threat, for the term September 27, 2004 through September 30, 2010, for a maximum obligation of \$64,252;

WHEREAS, both Agreements were amended on November 28, 2007, to add additional data triggers, provide annual maintenance and support for all work completed by Contractor, extend the term through November 15, 2010, and increase the maximum obligation by \$26,167.08 to \$90,419.08;

WHEREAS, the parties now wish to amend both Agreements to add additional data sources, provide annual maintenance and support for such additional data sources, and increase the maximum obligation by \$18,792 to a new maximum obligations of \$109,211.08.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. The following exhibits and attachments are added to the County of San Mateo Business Associate Agreement hereto and incorporated by reference herein:

Contractor's Declaration Form

2. Attachment A of the FirstWatch® Software License Agreement is hereby amended by the addition of Attachment A2.
3. The following paragraphs are hereby added to the County of San Mateo Business Associate Agreement:

Paragraph 9 **Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth in the County of San Mateo Business Associate Agreement and FirstWatch® Software License Agreement (collectively referred to herein as "Agreements"), County shall make payment to Contractor based on the rates and in the manner specified in Attachment A of the FirstWatch® Software License Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under both Agreements exceed ONE HUNDRED NINE THOUSAND TWO HUNDRED ELEVEN AND EIGHT CENTS (\$109,211.08).

Paragraph 10 **Availability of Funds**

The County may terminate any one or both of the Agreements or a portion of the services referenced in the Attachments based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding. In the event any one or both of the Agreements are terminated prior to November 15, 2010, Contractor shall be paid for services already provided pursuant to these Agreements.

Paragraph 11 **Insurance**

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of the Agreements Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing the Agreements, the Contractor certifies, as

required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of the Agreements.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of the Agreements such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by the Agreements from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under the Agreements, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000

- (b) Motor Vehicle Liability Insurance \$1,000,000

- (c) Professional Liability \$1,000,000

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

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

Paragraph 12 **Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to the Agreements shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in the County of San Mateo Business Associate Agreement and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," (*section 504 applies only to Contractors who are providing services to members of the public*) which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of the Agreements and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in the Agreements. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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

Paragraph 13 **Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of the Agreements.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under the Agreements.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under the Agreements. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of the Agreements shall be considered a breach of the Agreements and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- (i) termination of the Agreements;
 - (ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - (iii) liquidated damages of \$2,500 per violation;
 - (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Paragraph 14. **Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

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

Date: _____

ATTEST:

By: _____
Clerk of Said Board

FIRSTWATCH SOLUTIONS

Contractor's Signature

Date: _____

Long Form Agreement/Business Associate v 8/19/08

Attachment A2

1. All work outlined in the original Attachment A and Attachment A1 of the FirstWatch® Software License Agreement, as amended has been completed, and payments in the amounts of \$64,252 and \$26,167.08, respectively, have been made by Licensee to Licensor.
2. Additional work has been requested by Licensee as follows:
 - A. Licensor will integrate American Medical Response's (AMR) San Mateo County (SMC) Multi-Emergency–Medical-Services-Data-System (MEDS) electronic patient care record (ePCR) database via: 1) Text or XML file output for each incident from a Licensee-provided process (one or more files for each incident) that provides files, 2) AMR replicated data to the AMR (sequel query language) (SQL) Server where the FirstWatch system resides in Modesto, or 3) existing PC at Licensee site, using same process as is used for the prior two data sources purchased by SMC.
 - B. Licensor will use existing FirstWatch® Data Shuttle, remote connectivity and other software and processes which work together to reliably and securely transmit AMR MEDS ePCR data to the Licensor Data Center.
 - C. Licensor will modify FirstWatch® server-based processes, software and database as necessary to receive AMR San Mateo County MEDS ePCR data, import into Licensor database, and monitor for statistically-significant increases in volume or geographic clusters of calls which meet user-defined criteria supported by the data.
 - D. Licensor will provide Licensee-specific user login(s) and password(s) to allow up to six (6) simultaneous users (per original software license agreement) on the Licensor's subscriber Internet site, which doubles during an alert to twelve (12) simultaneous users (per original software license agreement).
 - E. Licensor will provide the ability for the Licensee to define up to five (5) distinct triggers for monitoring AMR MEDS ePCR data from San Mateo County by FirstWatch®. (Additional trigger sets may be purchased.)
 - F. Licensor will provide an ePCR All Calls trigger to demonstrate successful functionality of the data source flow from the beginning of the process at AMR's data output through its view-ability on the Licensor's subscriber web site.
 - G. Licensor will generate a test alert for user-defined personnel to demonstrate alerting functionality.
 - H. Licensor will provide Orientation to and ongoing support of third Data Source to Licensee personnel via remote, web-based methods. (Onsite orientation and/or training may be purchased, but is not necessary.)
3. Pricing for additional work as outlined in #2 above is as follows:

Quantity	Description	Unit Price	Item Total
1	System License Enhancement to ADD: 3 rd Data Source (DC3) to existing FirstWatch® System. DC3 to be AMR MEDS ePCR data for Licensee.	\$19,799	\$19,799
1	Annual Support & Maintenance for DS3 above	\$4,356	\$4,356
1	Data Source Integration for DS3 above	\$7,500	\$7,500
1	Credit from pre-paid County ProQA interface (previously planned DS3, see details below)	(\$12,863)	(\$12,863)
	System Enhancement Total		\$18,792

4. The System Enhancement includes up to five (5) Standard New FirstWatch® Triggers at no additional charge to Licensee.