

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
DATA SYSTEMS GROUP (DSG)**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County,"
and DATA SYSTEMS GROUP, hereinafter called "Contractor";

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, it is necessary and desirable that Contractor be retained for the purpose of software maintenance, upgrades and support services.

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

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment H—HIPAA Business Associate requirements

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." 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 this Agreement exceed TWO HUNDRED FIFTY NINE THOUSAND FOUR HUNDRED SIXTEEN DOLLARS (\$259,416).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from JULY 1, 2010 through JUNE 30, 2012.

This Agreement may be terminated by Contractor, the Chief Information Officer, Director of Information Services, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits 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.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement 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 this Agreement. 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 this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, 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 this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, 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 this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, 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 this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. 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.

11. 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 this Agreement.

- 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 this Agreement.
- 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 this Agreement. 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 this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - 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.

12. 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.

13. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:

County of San Mateo
Information Services Department
Chris Flatmoe, Chief Information Officer/Director
455 County Center, 3rd Floor
Redwood City, CA 94063
Fax: 650-363-7800

In the case of Contractor, to:

Data Systems Group
John A. Baird, President/Chief Executive Officer
2331 Alhambra Boulevard
Sacramento, CA 95817

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

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

COUNTY OF SAN MATEO

By: _____
Richard S. Gordon, President,
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

DATA SYSTEMS GROUP

Contractor's Signature

Date: _____

EXHIBIT A - SERVICES
AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND DATA SYSTEMS GROUP (DSG)

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

1. Scope of Work

Contractor has provided the County's San Mateo Medical Center "SMMC" with Insurance Claims Editor software. Contractor will provide basic support, maintenance and programming services for the County's Insurance Claims Editor software.

Contractor shall perform/provide the following:

- Contractor shall provide Basic Support of the following modules: Medi-Cal Billing (Medi-Cal UB04, Medi-Cal 1500, Medi-Cal LTC, Eligibility and Self-Pay – Medi-Cal); Medicare Billing (Medicare UB04 and Medicare 1500); Commercial Billing (Commercial Insurance UB04 and 1500 – WebMD); Electronic Remittance Posting (ERA – Medicare Part A – Palmetto, ERA – Medicare Part B – Palmetto, ERA – Medi-Cal – EDS, and ERA – HPSM). Basic Support includes program maintenance, user phone support and recovery, hardware and software troubleshooting, administration of warranty services, system restoring and recovery, CPT updates, procedure code updates, and fiscal intermediary, state and federally mandated changes. Phone, VPN and modem support services are provided for troubleshooting, reinforcement training, minor program changes and software updates. Managing payer connectivity and communications for transmitting claims for adjudication is included. Hardware maintenance and repair is the responsibility of the County.
- Contractor shall provide software maintenance, software upgrades and phone support to conform to the warranty provided in Paragraph 5, including but not limited to the following:
 - A. System Documentation and User Manuals
 - B. Medi-Cal Programs in compliance with Medi-Cal specifications as approved by the State Department of Health Services including:
 - 1. Inpatient edits, input/modification screens and 837 file creation programs
 - 2. Outpatient edits, input/modification screens and 837 file creation programs
 - 3. Claims Inquiry Module
 - 4. Long Term Care Billing
 - 5. Remittance advice update from Electronic Data Systems (EDS) and Health Plan of San Mateo (HPSM) – programs to update claims file with payment, adjustment, denial and suspension date including Medi-Cal RA print program
 - C. Palmetto – Part A Medicare
 - 1. Medicare inpatient and outpatient claims: downloads, edits and submission files
 - 2. Remittance advice updates from Palmetto
 - D. Palmetto – Part B Medicare
 - 1. Medicare Physicians claims: downloads, edits and submission files
 - 2. Remittance advice updates from Palmetto. Programs to update claims file with payment, adjustment, denial and suspension date and/or amount
 - E. Commercial Insurance – Emdeon
 - 1. Insurance inpatient and outpatient claims: downloads, edits and submission files to Emdeon

F. Transfer of claims submission information to update account file

G. Software upgrades, as necessary, to conform to the file formats and mandated claims processing requirements of both the Fiscal Intermediary for the state, and federal requirements

- Contractor grants, to the County, a license to the claims processing software, as well as any custom software or code written by Contractor for County pursuant to this Agreement, listed in this Agreement for use by the County for the term of the License Agreement.
- Contractor, as deemed necessary by the County, will provide training and instructions on the operation of the System, system equipment, claims editing process and methods of releasing claims for submission to the payers.
- County is responsible to ensure that the Software covered by this Agreement shall not be tampered with, resold, traded, copied or otherwise made available to any organization or individuals not licensed by this Agreement. County agrees to secure and protect the software and to take such action to satisfy this obligation with its employees, agents or designees.
- Contractor warrants that the Software will provide outputs which conform to the requirements of the State of California Medi-Cal program, as processed by EDS, or their successors and the Health Plan of San Mateo (HPSM), as well as those of Medicare Part A and B as processed by the Medicare Administrative Contractor, Palmetto, using current transmission specifications for each individual payer.

Any modifications provided to extract from the County's Billing System will be warranted to function correctly as part of the combined System and will include all data elements on the claim form provided from the Hospital Financial System and any missing data elements will be included as data entry elements within the biller correction screens.

Under the terms of the Warranty and License Agreement, Contractor provides warranty and update services for on-going enhancements of the System and additional requirements mandated by the State of California, the Health Plan of San Mateo, and Palmetto which improve the functionality of the System and enhance the ability of the billers to operate efficiently.

If the County requests warranty services, and it has been determined and mutually agreed upon by both the County and Contractor, that the Software provided by Contractor was not deficient or at fault, upon written approval by the County, the County agrees to pay all reasonable expenses (limited to administrative and travel expenses) and labor expenses at the then current rate of Contractor.

- Program maintenance, including updates and phone support, is included in the monthly license fee.
- It is understood that the Software may require modification. Contractor will confer with the County regarding such modification necessary to interface with the existing billing system and as considered by the County necessary for optimal use of the Software. Such modifications shall be made by Contractor, at the rates specified in Exhibit B, Specialized Programming and Training, and within the timeframe specified by the

County, and approved by the County. License Agreements continue to exist and such modifications are incorporated as part of the License.

- The County is responsible for providing Contractor with a copy of the Medi-Cal claims file or output formatted for submission of claims to EDS, the HPSM, Palmetto, Emdeon or their successors.
- Upgrades in procedure codes released by the Fiscal Intermediary for Medi-Cal or Medicare will be made available to the County by Contractor as included in the monthly License Support Agreement.
- The County's rights and obligations under this License may not in any event be assigned, sub-licensed or otherwise transferred without the express written consent of Contractor. This license cannot be modified, except by a document in writing, signed by an officer of Contractor and the County.
- HIPAA, Contractor Software Updates, Program Maintenance and Support
Current and proposed HIPAA regulations regarding Electronic Data Interchange (EDI) are expected to require software and system modifications in order to be in compliance. Contractor's formats, edits and submissions will conform to HIPAA standards and ANSI ASC X12N standards for the approved information sets. Such software and system modifications will be included in the software updates and program maintenance and support. Current and proposed HIPAA regulations regarding health information security and patient privacy are expected to require software and system modifications in order to be in compliance. Such software and system modifications will be included in the software updates, program maintenance and support.

The methods and techniques used to provide services to the County are within the Contractor's discretion, but subject to County Information Services Department's technology policies, guidelines, and requirements. The amount of time, specific hours, and location of the performance of Contractor's services is also left to the Contractor's discretion provided that Contractor coordinates with County departments as needed.

EXHIBIT B – PAYMENT SCHEDULE AND RATES
AGREEMENT BETWEEN COUNTY OF SAN MATEO
AND DATA SYSTEMS GROUP (DSG)

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. Schedule of Charges

LICENSE FEES (\$4,059.50/MONTH/24 MONTHS)	\$97,428.00
TAX ON LICENSE FEES (@9.5%)	\$9,255.66
BASIC SUPPORT (\$4,630.50/MONTH/24 MONTHS)	\$111,132.00
PROGRAMMING (\$20,800/YEAR*2 YEARS)	\$41,600.00
TOTAL	\$259,415.66

Software Modules	Basic Support	Monthly Software License Fee
Claims/RA Database Management System – 30 Licenses		\$450.00
Medi-Cal Billing		
Medi-Cal UB04	\$1,725.00	\$575.00
Medi-Cal 1500	\$450.00	\$150.00
Medi-Cal LTC	\$225.00	\$75.00
Medi-Cal CHDP/FQHC Billing		\$350.00
Eligibility and Self-Pay Medi-Cal	\$300.00	\$100.00
Medicare Billing		
Medicare – UB04	\$375.00	\$125.00
Medicare – 1500	\$225.00	\$75.00
Medicare Advantage UB04 and 1500 – HPSM		\$300.00
Commercial Billing		
Commercial Insurance UB04 and 1500 – WebMD	\$450.00	\$150.00
Electronic Remittance Posting		
ERA – Medicare Part A – Palmetto	\$188.00	\$62.00
ERA – Medicare Part B – Palmetto	\$180.00	\$60.00
ERA – Medi-Cal – EDS	\$175.00	\$75.00
ERA – HPSM	\$337.50	\$112.50
ERA – HPSM – Medicare Advantage		Included
ERA – Blue Cross of CA		\$150.00
ERA – Blue Shield of CA		\$150.00
ERA – via Post 'N Track and Emdeon – Includes Kaiser N. CA, Aetna, United Health		\$300.00
Additional Modules		
Automated Secondary Billing – UB to UB		\$200.00
Denial Manager and Payment Analysis		\$400.00
Section 1011 – Trailblazers		\$200.00
Direct Payer Connectivity		
Medi-Cal – EDS		
Medicare Part A & B - Palmetto		
Health Plan of San Mateo		
Trailblazers		
Emdeon (Clearinghouse)		
Post 'N Track (Clearinghouse)		
System Software Subtotal		\$4,059.50
Tax on Monthly License Fee (@ 9.5%)		\$385.65
Specialized Programming – Annual Estimates		
Modifications and Training – Including Travel Expenses (Per Year) (40 Hours @ 160/Hr)		\$6,400.00
Edit Changes, Additions, Modifications Specific to SMMC (Per Year) (90 Hours @ \$160/Hr)		\$14,400.00

Contractor shall submit an invoice on a monthly basis for License Fees and Basic Support. Contractor shall submit an invoice for Programming on an “as needed” basis. The County will submit payment within thirty (30) days of receipt of invoice upon the approval of work performed during the billing cycle.

Each invoice will include the following:

- Agreement Number
- Purchase Order Number
- Actual Services performed, amount billed and amount billed in total
- The net amount for which payment is due

In no event shall total payment under this Agreement exceed TWO HUNDRED FIFTY NINE THOUSAND FOUR HUNDRED SIXTEEN DOLLARS (\$259,416). The County will have the right to withhold payment if the County determines that the quantity or quality of work performed is unacceptable.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

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

Definitions

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

- a. *Designated Record Set*. “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information*. “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual*. “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule*. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information*. “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law*. “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary*. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident*. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule*. “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of Contractor

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Contractor

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

Obligations of County

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

Permissible Requests by County

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

Duties Upon Termination of Agreement

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

Miscellaneous

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

(rev. 8/08)