

Endpoint EMS Consulting LLC
Emergency Medical Services System Evaluation and Strategic Plan

AGREEMENT FOR SERVICES #6993

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Endpoint EMS Consulting LLC, a limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 7300 Shepard Mesa Road, Carpinteria, California 93013 (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Emergency Medical Services Agency (EMSA) with completing an Emergency Medical Services (EMS) System Evaluation and Strategic Plan;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

WHEREAS, on August 10, 2022, Consultant was formally approved to the qualified list for El Dorado County Emergency Medical Services System Evaluation and Strategic Plan, as the result of Request for Qualifications (RFQ) #22-918-056;

NOW THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Work: Consultant is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

In addition to the specific services identified in Exhibit A, this Agreement may also include additional scope of work items or Contingency Work. Such Contingency Work may supplement, expand, or otherwise modify the Scope of Work or may include tasks that are deemed critical by County's Contract Administrator to the furtherance of the project. Before proceeding with any work concerning Contingency Services under this Agreement, the parties shall identify the specific services to be provided for each assignment. The specific services for each Contingency Services work assignment shall be determined at a meeting, by email, or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, and subconsultants, if applicable. Within an agreed timeframe as determined by County's Contract Administrator, following the meeting or telephone conference, Consultant shall provide County's Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Work Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work.

Consultant shall not commence work until receiving the written Work Order. No payment will be made for any work performed prior to the issuance of the written Work Order. No payment will be made for any work performed prior to approval and full execution of the Work Order or beyond the earlier of the expiration date of the Work Order or expiration of the underlying Agreement, and no payment will be made for amounts in excess of the not-to-exceed amount of the Work Order. The period of performance for Work Orders shall be in accordance with dates specified in each Work Order. No payment will be made for any work performed before or after the period of performance in the Work Order unless County's Contract Administrator and Consultant amend the Work Order. No Work Order will be written which exceeds the cumulative total of the not-to-exceed dollar amount of this Agreement. No Work Order will be written which extends beyond the expiration date of this Agreement.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in this Agreement. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XIII, Default, Termination, and Cancellation, herein. Consultant shall submit all

deliverables to County's Contract Administrator in accordance with any completion time schedules identified in Exhibit A.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly. All of the services included in the Scope of Work are the responsibility of Consultant unless specifically described as a task or item of work to be provided by County.

ARTICLE II

Term: This Agreement shall become effective from the date specified in the official Notice to Proceed with the Work, which shall be attached to this Agreement as an addendum and shall become part of this Agreement and shall expire three (3) years thereafter.

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified in the individual Work Orders issued pursuant to this Agreement herein, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

For the purposes hereof, the billing rates shall be in accordance with the following:

EndPoint EMS Consulting Rate Schedule	
Team Member	Hourly rate
Nancy Lapolla, MPH	\$235.00
John Eagleham, EMT-P	\$235.00
Garrett Fahey, MBA	\$75.00
Angelo Salvucci, MD	\$250.00
Kevin Harper, CPA	\$240.00

Phase 1 System Assessment	
Hours	Cost
341	\$75,365.00
Phase 2 Develop EMS Strategic Plan	
Hours	Cost
170	\$36,352.00
Phase 3 EMS Plan to State EMSA	
Hours	Cost
92	\$20,020.00
Phase 4 Contract Development & Negotiations	
Hours	Cost
100	\$20,450.00
Total Cost Phases 1-4	
Hours	Cost
703	\$152,187.00

Contingency Work	
	\$15,000.00
(Optional) Phase 5 Develop Ambulance RFP	
Hours	Cost
240	\$52,350.00

For the purpose of budgeting the phases identified above, the maximum allowable billing amounts for each phase of work are listed above. The amounts listed above represent the composition of the total not-to-exceed budget for this Agreement. In the performance of the scope of services to be provided under this Agreement, Consultant may request to reallocate the expenses listed above among the various phases of work, if applicable, subject to County's Contract Administrator's written approval. In no event shall the not-to-exceed amount of the Agreement be exceeded. The rates listed above include all costs associated with this project, including travel, overhead, insurance, and wages. Any additional costs outside the approach described in this agreement, as mutually agreed to in writing as an amendment, will be billed at the rates specified in the contract amendment.

The total amount of this Agreement shall not exceed \$219,537, inclusive of all Work Orders and amended Work Orders, and all costs, taxes, and expenses. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Work Orders.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Work Order number both on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Consultant shall bill County for only one (1) Work Order per invoice.

Invoices shall be mailed to County at the following address:

County of El Dorado
Emergency Medical Services Agency
2900 Fairlane Court
Placerville, California 95667

Attn.: Michelle Patterson, MPH
EMS Agency Manager

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XIII, Default, Termination, and Cancellation, herein.

ARTICLE IV

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, notes, guides, programming, configurations, schedules, processes, applications, specifications, links, compilations and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services provided under this Agreement.

ARTICLE VI

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VII

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE VIII

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Emergency Medical Services Agency for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE IX

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE X

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a

given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement and any Work Orders issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Audit by California State Auditor: Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
 3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, or any Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Work Order or the total amount of the Agreement, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado
Emergency Medical Services Agency
2900 Fairlane Court
Placerville, California 95667

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michelle Patterson, MPH
EMS Agency Manager

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Endpoint EMS Consulting LLC
7300 Shepard Mesa Road
Carpinteria, California 93013

Attn.: Nancy Lapolla
President

or to such other location as Consultant directs.

ARTICLE XV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVI

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts

of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

ARTICLE XVII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XVIII

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.

2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XIX

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XIII, Default, Termination, or Cancellation.

ARTICLE XXI

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

ARTICLE XXII

California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIII

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXIV

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXV

Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXVI

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Michelle Patterson, MPH, EMS Agency Manager, Emergency Medical Services Agency, or successor.

ARTICLE XXVIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXIX

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

ARTICLE XXX

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXXI

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXXII

HIPAA Compliance: As a condition of Contractor performing services for the County of El Dorado, Contractor shall execute that Business Associate Agreement which is attached hereto as Exhibit B, marked "HIPAA Business Associate Agreement," which is incorporated herein for all intents and purposes.

ARTICLE XXXIII

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXIV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- ENDPOINT EMS CONSULTING LLC --

By: _____

Dated: _____

Nancy Lapolla
President
"Consultant"

By: _____

Dated: _____

John H. Eaglesham
Vice President

EndPoint EMS Consulting LLC

Exhibit A

Scope of Work

Consultant will conduct a comprehensive review of County's EMS system and make recommendations based on industry standards, evidence-based medicine, and best practices. Consultant will use qualitative and quantitative methodologies to conduct the EMS system assessment, evaluate the Emergency Medical Services and Emergency Preparedness and Response Division (EMSEPRD), and recommend system improvements and enhancements to optimize patient outcomes and sound fiscal policy. These will be the foundations for developing an EMS Strategic Plan, a new EMS Plan to meet EMSA requirements, a modern high-performance ambulance contract template, and, if warranted, an ambulance Request For Proposal (RFP) for County Service Area (CSA) #7.

Consultant will:

1. Evaluate County's EMS system and EMSEPRD program and develop recommendations for system improvements to optimize patient outcomes within a feasible and stable cost/funding model that can be incorporated as part of overall system enhancements.
2. To achieve the desired outcomes, it is imperative Consultant include a process for open and honest stakeholder input.
3. Consultant will hold listening sessions with County staff, key stakeholders, public safety communication centers, fire departments, current ambulance providers, hospitals, and other healthcare providers and attend existing committee meetings, e.g., Emergency Medical Care Committee (EMCC), Medical Advisory, Continuous Quality Improvement (CQI) Committees, Fire Chiefs Association, Hospital Administrators as deemed appropriate.
4. Develop a survey tool to reach system leaders and field patient care providers to provide a broader process for system input. This method will gather additional information to understand system issues better and identify current best practices.

Consultant will work with County's EMS Agency to obtain email contacts to reach out directly, ensure confidentiality, and limit duplication and multiple responses from a single individual.

5. Gather information and review data on all aspects of the current system from County's EMS Agency and system providers.
6. Build an EMS system strategic plan to identify and prioritize opportunities for system enhancements to address staffing, operations, and oversight for EMSEPRD and

EMS system design, that provides the most appropriate levels of response, high-quality clinical care, and ambulance transport for County.

7. The strategic plan will include specific objectives and an implementation timeline.
8. Assist County's EMS Agency in preparing materials and presenting preliminary findings and recommendations to system stakeholders, the Board of Supervisors, other advisory bodies, or town hall forums.
9. Develop a modern ambulance contract template that meets the systems needs identified through the system assessment and strategic planning process that is economically feasible and financially sustainable to meet clinical standards as expected in high-performing EMS systems. Consultant will provide support to County in contract negotiations, if requested, with the selected ambulance vendor.
10. Complete a new 2023 EMS Plan for County that addresses all one hundred and twenty-one (121) of the State EMSA requirements.
11. If an ambulance RFP is indicated for CSA #7, County may request Consultant to assist County as needed during the County's competitive RFP process that includes the system enhancement identified in the system assessment that assures the selected vendor's operational, clinical, and financial transparency.

Phase 1 System Assessment

Working with County, Consultant will gather and analyze information using a pre-review questionnaire to collect pertinent information, policies, and relevant data. Consultant will conduct listening sessions with key informants and system stakeholders, attend EMS advisory meetings, and as deemed necessary, conduct focus groups and/or town hall meetings. In addition, a survey tool will be developed and distributed to ensure field-level providers have an opportunity to express views and provide input.

The desired outcome of this phase is to review and evaluate the current EMS system, identify what is working well in the system, and make future recommendations based on industry standards, evidence-based medicine, and best practices. Consultant will evaluate the system using a qualitative and quantitative approach to assess the level of clinical proficiency, operational performance, and fiscal sustainability in place and identify opportunities for system-wide improvements.

The assessment and resulting recommendations will at a minimum address each of the following subject areas, identifying the current state and recommended future state of each subject:

- A. Use of communications system, including dispatch and communications practices and configuration including Medical Priority Dispatch (MPDS) for prioritization and tiered response and nonresponse.

Evaluate County's EMS medical dispatch system to:

1. Assess the number, type of systems, and radio frequencies used in County for medical dispatch and review the 911 call routing practices and configurations.
 2. Review access to 911 medical dispatch and the number of times the caller is transferred prior to receiving life-saving pre-arrival medical intervention instructions. Review call times to assess any call transfer delays that may impact patient outcomes.
 3. Make recommendations based on communication system utilization and dispatch configuration and identify opportunities to streamline utilization to reduce duplication of effort.
 4. Provide recommendations to maximize communication systems to support County's EMS future best practices.
 5. Analyze 911 call type, tiered level, and code of response and transport following MPDS.
 - Evaluate the current emergency medical dispatch to determine how the Medical Priority Dispatch System (MPDS®) uses call processing procedures to dispatch medical resources assess current best practices, benchmark against industry standards, and make recommendations for the use of Medical Priority Dispatch System (MPDS®) to prioritize calls, follow medical dispatch protocols regarding tiered response strategies and if medically appropriate determination of a non-response.
 - Evaluate and determine the performance improvement activities, including initial hiring, orientation, training, certification, continuing dispatch education, recertification, and performance evaluations necessary to help ensure the ongoing safety in the performance of Emergency Medical Dispatch (EMD).
 - Review data reports, including a review of dispatch protocols and their implications on patient outcomes, and evaluate policies and procedures used in County to identify opportunities to make recommendations for future best practices.
- B. Response time and outlier performance standards, including a population-based analysis of the existing urban, suburban, rural, and wilderness zones.
1. Review the current response time standards and assess the outlier performance of current providers.
 2. Work with the County and Geographic Information System (GIS) to develop new maps using geographical mapping tools:

- Develop new maps for ambulance response zones
 - Maps to illustrate Exclusive Operating Area (EOA) boundary lines
 - Potential call volume within EOA
 - Response area data based on population density zones using 2020 Census Information.
3. Provide response time recommendations that meet the patient's clinical needs and are economically suitable for County.

C. Clinical oversight and performance measures.

Consultant's emergency medical physician, Angelo Salvucci, MD, FACEP, FAEMS, will assist in the assessment of clinical oversight and clinical performance of County's EMS system.

Consultant will evaluate the current clinical performance structure and make recommendations through the following:

1. Assess the system's ability to measure clinical performance and make corrective changes to improve patient outcomes.
2. Identify existing performance measures for each aspect of the EMS system (dispatch, first responder, ambulance transport, 911 receiving hospitals, and specialty care centers) and make recommendations based on clinical best practices.
3. Assess how corrective actions are implemented at each level of the system.
4. Identify processes in place and how each provider is addressing performance issues.
5. Review current Electronic Patient Care Reporting (ePCR) platform(s) used to determine if they meet patient care documentation requirements and State EMSA standards.
6. Identify performance measures established in addition to the State Core Measures and how providers meet these standards.
7. Assess performance measures utilizing Cardiac Arrest Registry to Enhance Survival (CARES), specialty system data including ST-Elevation Myocardial Infarction (STEMI), Stroke, Trauma, existing performance measures, and EMSA Core measures.

8. Provide recommendations for future performance measures.

Consultant will provide recommendations based on thorough evaluation and benchmarking to industry standards to ensure quality patient care is delivered within County's EMS system.

D. Clinically-based response time performance standards.

1. Review current response time requirements and make recommendations based on clinical best practices. These will include a focused review of the efficacy of on-scene treatment and release, alternate destinations within County, and 911 triage for non- response policies.
2. Provide recommendations and options for system improvements that impact patient outcomes and are economically feasible.

E. Integration and use of Advanced Life Support (ALS) and Basic Life Support (BLS) responders.

Consultant acknowledges the value of BLS and ALS response services as an integrated part of a high-performing EMS system. Consultant will evaluate the current structure and the integration of BLS and ALS responders and their performance as part of the system assessment.

Consultant will:

1. Review the existing ambulance provider relationships with fire first responders.
2. Evaluate opportunities to expand or add new partnership arrangements as a system enhancement.
3. Provide recommendations to maximize utilization of all responders to ensure the timely needs of the patient are met.

F. Deployment and the number of ambulance response resources.

Consultant will use information gathered to evaluate the current ambulance response system and develop recommendations.

1. Review response time requirements and performance of the current ambulance provider.
2. Compare and contrast existing system design with other comparable medical transportation delivery systems.

3. Assess Ambulance Patient Off-load Times (APOT) and any impacts on response time compliance.
 4. Evaluate the newly designed population maps to determine appropriate ambulance response for each population classification (urban, suburban, rural, wilderness) area.
 5. Make recommendations, if appropriate, for the inclusion of first responder support agreements and public/private partnership agreements.
 6. All recommendations will meet the patient's clinical needs and be developed to ensure they are economically feasible for County.
- G. Review of system cost and revenue, in consideration of payor mix and Center for Medicare and Medicaid Services (CMGS) reimbursement.

Consultant's associate Kevin Harper CPA will perform a comprehensive economic review of County's current EMS system costs and revenue compared to other EMS systems of similar economics.

Consultant will:

1. Evaluate current provider's profit and loss statements and audited financial reports if available.
2. Review the payor mix to assess its impact on user fees.
3. Review federal and state healthcare reimbursement Centers for Medicare and Medicaid Services (CMS) to enable the projection of future system operations and identify the uncertainties of potential new funding programs.
4. Evaluate opportunities available for public ambulance providers through the Public Provider Intergovernmental Transfer (PPIGT) program.
5. Identify and provide recommendations for cost containment strategies.

The information obtained will assess the incumbent ambulance provider's financial strengths. The information will be used to assist with future projections and set system enhancement priorities utilizing funding opportunities and cost containment strategies.

- H. Data and performance reporting requirements.

Consultant will review all available data reports, including Medical Priority Dispatch System (MPDS®), Computer Aided Design (CAD) reports, fire responder and ambulance response times, and clinical performance of pre-hospital and specialty

care centers using industry standards. Consultant will evaluate any tools currently in use and make recommendations for data mining platforms that streamline data analysis to improve efficiencies and maximize the use of data to make informed decisions that impact clinical performance.

I. EMS provider staffing and schedules relative to fatigue and crew/patient safety.

As part of its listening sessions, Consultant will pay particular attention to the current group of caregivers and ambulance staffing schedules and review provider policies to determine if there is a risk to County's EMS system.

J. Options to less expensive and more humane transport of mental health patients and patients transported pursuant to Welfare and Institutions Code, Section 5150.

Consultant will explore the development of a mental health response and alternate transport programs using EMS or other credentialed personnel in response vehicles to provide assessment, management, transport, and referral as appropriate to individuals with behavioral and mental health emergencies in the prehospital setting. Consultant will identify solutions to address the system's mental health patient transportation needs that will best meet the needs of the individual while reducing the cost associated with unnecessary ambulance transports contributing to overcrowded emergency departments.

K. Consultant will assess feasibility for future community paramedic, innovative system design, and mobile integrated healthcare demands, including:

- a. Efficacy of on-scene treat and release.
- b. Efficacy of alternate destinations within County.
- c. Efficacy of 9-1-1 triage for non-response.
- d. Efficacy of a tiered 9-1-1 system.

Consultant will review current medical literature to identify relevant studies that may support the appropriateness of new clinical strategies identified above. Consultant will analyze dispatch reports and clinical performance to identify best practices that include:

- a. A focused review of the efficacy of future opportunities for the use of on-scene treatment and release, alternate destinations.
- b. 9-1-1 triage for non-response.
- c. A tiered 9-1-1 response system within County.

As funding and clinical options evolve, it is essential to ensure adequate clinical oversight and effective monitoring structures are in place. Any recommendations must meet the financial needs of the system and be sustainable. Consultant will ensure that future ambulance contracts will include flexibility for these system enhancements if they are deemed medically appropriate and financially support the EMS system.

L. EMSEPRD Assessment

- a. Evaluation of EMSEPRD staffing resources to support EMS System and EMSEPRD operations.
- b. EMS policies, including currently adopted ambulance ordinances.
- c. Data systems and uses.
- d. Means of providing oversight of the EMS System in its current or future design.

To accomplish the EMSEPRD assessment, Consultant will:

1. Evaluate EMSEPRD staffing resources and review the Division's organizational chart to determine the number of staff, job assignments, and breadth of responsibilities.
2. Compare staffing requirements to Counties of similar size and geographic nature to assess the operational structure.
3. Review relevant EMS policies and the County Ambulance Ordinance and recommend optimizing functionality and necessary system improvements.
4. Assess how data is utilized for EMS system evaluation and performance improvement activities.
5. Assess the transparency and neutrality utilized to provide oversight of the EMS system and make recommendations for its future design.
6. Provide observations and recommend ways to optimize the program and improve system efficiencies to support the EMS system.

Deliverables: Within one (1) year after contract execution:

- One (1) electronic copy of a written Report.
- One (1) electronic PowerPoint presentation highlighting key findings from the System Assessment.
- Up to two (2) presentations of System Assessment findings to County Leadership and system stakeholders.

Phase 2 Strategic Plan

Consultant will develop a strategic plan utilizing the information and recommendations gathered during Phase 1 of this project. System needs will be prioritized with clear objectives, deliverables, and timelines. The strategic plan will cover at a minimum:

- EMSEPRD staffing, operations, and oversight.
- EMS System design.
- Recommend resources to support system enhancements, as identified in Phase 1.

The strategic plan will be developed in collaboration with County, County's EMSEPRD, and system stakeholders to ensure emphasis is placed on appropriate priorities. The strategic plan will be developed with two modules; one, an internal plan for EMSEPRD staffing, operations, and system oversight, and a second; an external plan that addresses components for an updated EMS system design. Both modules will identify resources necessary to support enhancements and system sustainability.

Deliverables: Within eighteen to twenty-four (18-24) months after contract execution:

- Facilitate at a minimum two (2) strategic planning meetings with EMSEPRD and system stakeholders.
- Develop one (1) electronic written strategic plan to include two modules:
 - The first module within the strategic plan will address an internal plan for EMSEPRD.
 - The second module will provide a strategic plan identifying options for an updated EMS system design.

Phase 3 EMS Plan for State EMS Authority

Consultant will develop a 2023 EMS Plan to address the State EMS Authority requirements. Consultant will meet with EMSEPRD staff to gather pertinent information and data to complete the EMS Plan. The plan will describe the EMS system design and include information gathered during the EMS system assessment. Consultant understands the details the State EMSA requires to ensure local systems meet all 121 of the state requirements.

Deliverables: Between or before months twenty-four (24) and thirty (30) after contract execution.

- Update the El Dorado County EMS Plan.
- Provide one (1) electronic document for submission to the State of California EMS Authority.

Phase 4 Ambulance Contract Template

Consultant will develop a modern high-performance ambulance contract template for the County. The ambulance contract template will be produced by incorporating the system design requirements and system enhancements from the EMS system assessment and include all County contract requirements.

Deliverables: Between or before months twenty-four (24) and thirty (30) after contract execution.

- Provide one (1) electronic high-performance ambulance contract template.

Phase 5 Ambulance RFP for CSA #7 (Optional)

Consultant understands at the conclusion of Phase 2, EMS System stakeholders, including the County Board of Supervisors, may decide that an RFP is warranted to consider options for the provision of ambulance service for CSA #7, as well as considering new opportunities for County EMS system design.

1. Upon request by County, Consultant will assist with the development of an RFP for CSA #7. The RFP will rely on the system assessment, strategic plan, and stakeholder feedback. Consultant will develop an ambulance RFP for CSA #7 to meet the following objectives:
 - Preserves a high level of emergency medical response throughout County.
 - Ensures that the ambulance services meet the needs of the patients at a reasonable and efficient cost.
 - Ensures that the ambulance RFP complies with the state and local standards for ambulance services.
 - Establishes response time standards for urban/suburban/rural/wilderness response areas based on MPDS categories and includes recommendations from the EMS system assessment.
 - Provide performance requirements to assure operational, clinical, and financial transparency.
2. Consultant will provide support to County through the entire RFP process.

Deliverables: Phase 5 Requires BOS approval.

- Develop one (1) electronic PowerPoint presentation for the Board of Supervisors to consider EMS system design options, including the option of an ambulance RFP.

EndPoint EMS Consulting LLC

Exhibit B

HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

RECITALS

WHEREAS, County and Contractor (here in after referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103; and

WHEREAS, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “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 § 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by BA of County Disclosed PHI.
 - A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
 - (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
 - (3) disclose PHI as necessary for BA's operations only if:
 - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
 - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
 - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
 - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.

- (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
 - (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
 - C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
- 3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
 - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to County within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.

- D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subconsultants for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.

(2) Within thirty (30) days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.

E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such

information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:

- (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
- (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subconsultants still maintain in any form, and shall retain no copies of such PHI.
- (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity.

A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subconsultants, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or

nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subconsultants, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.

- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment

The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

9. Survival

The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.

10 Regulatory References

A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.

11. Conflicts

Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.