

# ORIGINAL

## AGREEMENT FOR SERVICES # #258-S1110 AMENDMENT I

Time Study Buddy

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**THIS AMENDMENT I** to that Agreement for Services #258-S1110 made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Fiscal Experts, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 5350 Dunlay Drive, Suite 2716, Sacramento, CA 95835 and whose Agent for Service of Process is Dan Gardner, 5350 Dunlay Drive, Suite 2716, Sacramento, CA 95835, (hereinafter referred to as "Consultant");

### RECITALS

**WHEREAS**, Consultant has been engaged by County to provide a web-based service for employees of the County of El Dorado Department of Human Services (hereinafter referred to as "DHS") to train and assist employees in recording hours worked in conjunction with mandated welfare programs to certain and various time study codes (hereinafter referred to as "time study") in order to ensure the County will obtain the maximum reimbursement allowed for costs incurred by DHS in administering said mandated welfare programs in accordance with Agreement for Services #258-S1110 dated December 28, 2010; and

**WHEREAS**, the parties hereto have mutually agreed to amend Article I – Scope of Services, Article III – Compensation, Article V – HIPAA Compliance, Article XVI – Notice to Parties, Article XXIII - Insurance, and Article XXIV – Administrator; and

**WHEREAS**, the parties hereto have mutually agreed to add Article XXIX – County Business License.

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

#### ARTICLE I

**Scope of Services:** Consultant shall provide personnel and services necessary to provide the following services on an "as needed" or "as requested" basis:

1. Provide web-based training to DHS employees to demonstrate how to accurately record time study hours to certain and various time study codes; and
2. Provide a web-based service to assist DHS employees in recording said time study hours.

3. Provide additional Time Study Buddy related services on an “as needed” or “as requested” basis and upon written pre-authorization from DHS. Said additional services shall include but not be limited to:
  - a. Custom programming to meet unique or specialized DHS requirements.
    - i. Said custom programming requests shall be in writing from DHS to Consultant.
    - ii. Consultant shall respond request by submitting a written quote for the requested services to DHS.
    - iii. DHS shall review and either approve or disapprove said quote in writing to Consultant prior to the commencement of any custom programming services by Consultant.
  - b. Specialized and/or additional employee training.
    - i. Said specialized and/or additional employee training requests shall be in writing from DHS to Consultant.
    - ii. Consultant shall respond to request by submitting a written quote for the requested services to DHS.
    - iii. DHS shall review and either approve or disapprove said quote in writing to Consultant prior to the commencement of any specialized and/or additional employee training services by Consultant.

**ARTICLE III**

**Compensation for Services:** For services provided herein, Consultant agrees to invoice County as follows:

Rate	Service
\$25 per employee per quarter, based upon the number of active DHS employees in the Time Study Buddy database at the beginning of that particular quarter.	<ol style="list-style-type: none"> <li>a. Web-based training services including but not limited to the provision of training related on-line documents, videos, and newsletters;</li> <li>b. Prompt repair of programming “bugs,” errors, or related fixes;</li> <li>c. Quarterly updates to programming to ensure continuance compliance with current time study codes.</li> <li>d. Invoices shall be submitted at the beginning of each quarter for that particular quarter.</li> </ol>
\$150/hr.	<ol style="list-style-type: none"> <li>a. Custom programming to meet unique or specialized DHS requirements;</li> <li>b. Specialized and/or additional employee training;</li> <li>c. Additional Time Study Buddy related services on an “as needed” or “as requested” basis.</li> <li>d. Invoices shall be submitted on a monthly basis for services provided during the previous month. Written authorizations to perform services shall be attached to invoices.</li> </ol>

Consultant shall submit original monthly invoices along with written authorizations to perform specialized services to the following address:

El Dorado County  
Department of Human Services  
Attn: Accounting Unit  
3057 Briw Road  
Placerville, CA 95667

For services provided herein, County agrees to Consultant monthly in arrears and within thirty (30) days following County's receipt and approval of itemized invoice(s) identifying services rendered. If Consultant is not paid within ninety (90) days following DHS's receipt and approval by the department of Consultant's itemized invoice(s), Consultant reserves the right to suspend services until further notice.

The total contractual obligation under this Agreement shall not exceed \$80,000.00 for both the stated services and term.

#### **ARTICLE V**

**HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor shall comply with the HIPAA Business Associate Agreement, which is attached hereto as Exhibit "B", incorporated herein and made by reference a part hereof.

#### **ARTICLE XVI**

**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. Notice to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO  
DEPARTMENT OF HUMAN SERVICES  
3057 BRIW ROAD  
PLACERVILLE, CA 95667  
ATTN: KAREN COLEMAN, CHIEF FISCAL OFFICER, OR SUCCESSOR

or to such other location as County directs with a copy to:

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
330 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: THERESA DALY, PURCHASING AGENT, OR SUCCESSOR

Notices to Consultant shall be addressed as follows:

FISCAL EXPERTS, INC.  
5350 DUNLAY DRIVE, SUITE 2716  
SACRAMENTO, CA 95835  
ATTN: DAN GARDNER

or to such other location as Consultant directs.

#### **ARTICLE XXIV**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Karen Coleman, Department of Human Services Chief Fiscal Officer or successor.

#### **ARTICLE XXIII**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is required.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance shall be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above 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, Contractor 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 the 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 the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor 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 (including an endorsement page for the "additional insured" language) stating that:
  1. The insurer shall 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, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except workers' compensation and professional liability insurance policies.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
  - J. Any deductibles or self-insured retentions must be declared to and approved by County. Either:
    1. Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or
    2. Contractor 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. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
  - N. In the event Contractor cannot provide an occurrence policy, Contractor 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. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of County.

**ARTICLE XXIX**

**County Business License.** 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 Code Section 5.08.070.

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Except as herein amended, all other parts and sections of that Agreement #258-S1110 shall remain unchanged and in full force and effect.

**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By: Karen G. Coleman  
Karen Coleman  
Chief Fiscal Officer  
Department of Human Services

Dated: 10/25/11

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By: Daniel Nielson  
Daniel Nielson, M.P.A.  
Director  
Department of Human Services

Dated: 10-28-2011

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to that Agreement for Services #258-S1110 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: \_\_\_\_\_  
Raymond J. Nutting, Chair  
Board of Supervisors  
"County"

Dated: \_\_\_\_\_

ATTEST:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

-- CONSULTANT --

FISCAL EXPERTS, INC.  
A CALIFORNIA CORPORATION

By: Dan Gardner  
Dan Gardner  
President  
"Consultant"

Dated: 11/1/2011

By: Dan Gardner  
Corporate Secretary

Dated: 11/1/2011

## EXHIBIT A

### HIPAA Business Associate Agreement

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This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached and shall be considered simultaneously in effect as of the date of commencement of the term of the Underlying Agreement (“Effective Date”).

#### RECITALS

**WHEREAS**, County and Contractor (hereinafter 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 (“E PHI”) 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 E PHI 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 (“HITECH Act” or “Act”), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (“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 HIPAA Standards for Privacy of Individually Identifiable Health Information including but not limited to 45 CFR Section 160.103 (“Privacy Rule”) and HIPAA Security Rule including but not limited to 45 CFR Parts 160, 162, and 164 (“Security Rule”), 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); and

**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:
    - i. use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - ii. 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
    - iii. disclose PHI as necessary for BA's operations only if:
      1. prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - a. 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,
        - b. the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - iv. 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.
    - v. 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.
    - vi. 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 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:
  - i. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors 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.
  - ii. Within in 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:
  - c. 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.
  - d. Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - e. If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

**7. Effect of Termination.**

- a. 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 subcontractors still maintain in any form, and shall retain no copies of such PHI.
- b. 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.

**8. 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, subcontractors, 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, subcontractors, 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.
9. **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.
10. **Survival.** The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
11. **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.
12. **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.