

AGREEMENT FOR SERVICES 162-S1310
Trauma Registry Software

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 Lancet Technology, Inc., a Massachusetts Corporation duly qualified to conduct business in the State of California, whose principal place of business is 123 South Street, 3rd Floor, Boston MA, 02111, (hereinafter referred to as "Contractor"), and whose Agent for Service of Process is John Bennett, 2605 Terrebonne Avenue, San Dimas, CA 91773.

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to furnish software license and maintenance for a computerized trauma information system providing data collection and data reporting; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State (all references to "State" in this Agreement shall mean the State of California unless otherwise specified) and local laws; and

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by County of El Dorado Charter, Section 210 (b) (6) and/or Government Code 31000.

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to sell to County Trauma One software ("Software") and grant a non-exclusive license to County for the Software as set forth in this agreement. Contractor agrees to provide associated installation and training as set forth in this agreement.

The Software is a computerized trauma information system providing data collection and data reporting for all things concerning the care of the injured patient within the hospital environment. Data collection encompasses the State data set, the National Trauma Data Bank data set, comprehensive continuous quality improvement documentation and customized site-specific fields. The Software has automatic injury severity scoring along with extensive data validation tools. The reporting tool includes standard reports, a robust ad-hoc report writer, letter generation, and customized font controlled output.

A) Contractor responsibilities:

- 1) County is granted a non-exclusive right (the "License") to use and display the Software on a single computer if a single-user version, or on a single server and five workstations if a network version. County may physically transfer the Software from one computer to another, provided the Software is used on only one computer or one server at a time, as applicable. Contractor reserves all rights not expressly granted to County.
 - (a) Each copy of the Software is furnished with one user manual. Software will be provided electronically through a secure download. Should the County require that the software be shipped on a physical media, an additional fee may be incurred.
- 2) Contractor shall provide the Software and may replace the Software from time to time with updates, revisions or new releases (herein "Revisions").
- 3) Contractor will provide a script that resides at each site using the Software (Barton Healthcare System, and Marshall Medical Center) to automatically transfer data to the County site. Contractor shall provide an import function located at the County to accept data and import it into the Software.
- 4) **Copy Restrictions:** The Software and the accompanying written materials are copyrighted. County may make copies as needed for backup purposes. Unauthorized use, copying, publishing, or distribution of the Software, or of the written materials, is expressly forbidden. Use of the charting and/or discharge instructions modules is strictly limited to distribution for patient care purposes within County's facility.
- 5) **Updates:** The terms of this license and other applicable terms and conditions of this order shall govern any update, enhancement, revision, or modification of the Software subsequently furnished to County.
- 6) **Technical Support:** Contractor will provide primary support on issues or problems with Software between the hours of 8:00 A.M. to 5:00 P.M. Eastern Time, Monday through Friday (excluding holidays observed by Contractor). If calls or emails are received by Contractor Technical Support outside of Contractor's Technical Support coverage hours, issues or problems will be responded to on the next business day. Contractor will not provide Operating System support, backup support, network support, or support of other third-party applications. Contractor will provide support of the Structured Query Language ("SQL") 2012 database as it relates to the Software.
 - a) Troubleshooting resulting from improper or incorrect County and/or State documentation or other communication will be charged to the County at the rate of One Hundred and Sixty Dollars per hour (\$160.00).

- 7) **State and/or County Mandated Data Registries:** Contractor agrees to provide County with the capability of downloading data to all State-mandated registries. When requested, Contractor agrees to work directly with agency mandating the submission to ensure the County's compliance with all applicable laws and regulations. Modifications and customization will be limited to those required by the state or other governing body. This will be provided at no additional charge to the County.
 - a) Changes required due to changes in submission requirements, as published by the State or other applicable regulatory entities, will be made without charge during the Service Term.
- 8) Contractor agrees to identify compatible systems (hardware, operating software and communications devices), and will warrant that Contractor's software will perform on these systems.
- 9) Contractor agrees to provide Disaster Recovery Support, utilizing County maintained backups, as it relates to the Software.
- 10) Contractor understands and agrees that County will provide SQL 2012 database that will be hosted in a "virtual Environment" with access across the County wide area network (WAN).

B) County Responsibilities:

- 1) County's license to use the Software is an individual, personal, non-sub licensable and non-transferable license, in object code only, and only in accordance with the applicable end user documentation, if any, and solely in conjunction with this Agreement. Neither County, nor any of County's employees, will, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software. County or its employees, shall not modify, translate, or create derivative works based on the Software; or rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; use the Software for the benefit of a third party.
- 2) County agrees to notify Contractor of all software customization changes, which may affect the data submission program. Failure to do so, which results in non-routine troubleshooting and/or programming performed by Contractor will be charged to the County at the rate of One Hundred and Sixty Dollars per hour (\$160.00).
- 3) County is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Software, and for paying all third-party licensing fees (e.g., Operating System, MS-Office, MS SQL-Server) incurred while using the software. Contractor agrees to identify compatible systems (hardware, operating software and communications devices) in accordance with the Article titled System Requirements, and will warrant that Contractor's software will perform on these systems.
 - a) County, at its sole cost and expense, shall provide all of the required third-party software, as specified in System Requirements, which shall be used by the County. Upon request, County must supply proof of sufficient software licensing to support the number of actively licensed Users of the Software. County is

responsible for obtaining and maintaining the right for Contractor to use all of the County-Provided Software in the performance of the Services, including the payment of any transfer fees imposed by any third party software provider of the County-Provided Software. The County and Contractor shall comply with the terms and conditions of all software license agreements that control the County-Provided Software.

- b) Except as otherwise specifically set forth in a particular Statement of Services or Service Order, County is solely responsible for the selection and implementation of, and for obtaining and maintaining all services (including, without limitation, upgrade, and data conversion services, support, maintenance, enhancement and software development) related to, all County-Provided Software.
- 4) Except those Software and Contractor Data Center controls for which Contractor has specifically assumed responsibility, County is solely responsible for the content of all County Data and for the selection and implementation of controls for the access, use, and security of the County Data (including, without limitation, the security of the County Data from access by unauthorized persons during transmission). County is also responsible for assigning appropriate access codes and passwords for use of the Software and for maintaining the confidentiality and security of such access codes and passwords and of all network and configuration information relating to the Software located at County's place(s) of business.
- 5) County will, at its sole expense, and when required, connect County's WAN and telecommunications devices to the Software. In addition, County's Local Area Network (LAN) is the sole responsibility of the County.
- 6) County will maintain a file transfer protocol ("FTP") site and network connectivity for transfer of data with Barton Healthcare System and Marshall Medical Center.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties and shall continue in effect thereafter until terminated by one of the parties hereto pursuant to the provisions under the Articles titled "Fiscal Considerations" and "Default, Termination, and Cancellation" herein.

ARTICLE III

Compensation for Services: The Trauma One Software Purchase – Standard Option shall be invoiced upon execution of this Agreement. Subsequent deliverables including training, data conversion, and data links – will be invoiced upon completion of such tasks. The Trauma One Standard Annual Support fee for 2012 shall be invoiced within ninety (90) days following execution of this Agreement.

Contractor shall submit an invoice to County for Trauma One Standard Annual Support within ninety (90) days of each anniversary of this Agreement beginning 2013; such Annual Support fees may be increased by not more than 1.5% annually following 2013.

Travel Expenses: Reimbursement for travel, including, but not limited to travel/transportation, meals lodging, etc., necessary for the performance of services under this Agreement, shall be requested and authorized in writing by the Administrator as defined in the Article titled "Administrator." Such Travel Expenses shall not exceed \$5,000, must be approved in writing by County, and shall be made in accordance with Exhibit A, marked "Board of Supervisors Policy D-1," attached hereto and incorporated by reference herein.

For services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) identifying services rendered.

A. Rates:

Trauma One (Standard Purchase) Quote #2TCELDTSQ		Date: 3/21/12
Item	Description	Price
T1-Standard	<u>Trauma One Software Purchase – Standard Option</u> <ul style="list-style-type: none"> • Includes standard data entry pages (including NTDB and CEMISIS-TRAUMA fields) • Able to utilize SQL Server backend. • Up to one (1) concurrent user. • Includes standard reports and ad-hoc report writing. • Includes standard download to NTDB and CEMISIS-TRAUMA. • Includes standard quick port features to import data from Marshall Medical Center and Barton Healthcare System. • Includes quick start training (two hours on-line session) • User manuals included in .pdf format. • Installation via remote access. 	\$3,000.00
T1-OnLine Training	<u>Trauma One On-line Training – 6 hours</u> <ul style="list-style-type: none"> • Customized six (6) hours of ad-hoc report training conducted by a Lancet employee. 	750.00
Data Exchange	<u>Automatic Data Exchange Upgrade</u> Contractor will install the automatic data exchange utility to allow for regular hand-free secure FTP data exchange from any trauma center using Trauma One to the County Trauma One system. This would eliminate the manual batch exchange that comes standard with the software purchase.	5,000.00
T1-Support	<u>Trauma One Standard Annual Support</u> Unlimited technical and "how to" support (Monday through Friday 8 am to 5 pm Eastern Standard Time) and software upgrade support.* Runs for a twelve (12) month period commencing ninety (90) days following software purchase date. Support covers all items purchased.	1,500.00

Trauma One (Standard Purchase) Quote #2TCELDTSQ		Date: 3/21/12
Item	Description	Price
	Subtotal	\$10,250.00
	Sales Tax	218.00
	Total	\$10,468.00
Travel		5,000.00
TOTAL NOT-TO-EXCEED AMOUNT		\$15,468.00

*Software upgrades will be performed by Contractor, via remote access.

B. Invoices / Remittance shall be addressed as indicated in the table below or to such other location as County or Contractor may direct per the Article titled "Notice to Parties."

Mail invoices to:	Mail remittance to:
Health & Human Services Agency – Finance Unit 929 Spring Street Placerville, CA 95667	Lancet Technology, Inc. 123 South Street, 3 rd Floor Boston, MA 02111 Attn: Accounts Receivable

ARTICLE IV

System Requirements:

Workstation	<p>Minimum: Intel® Pentium E5200 (2.5 GHz); Microsoft Windows XP Professional SP3; 1 GB of RAM; 2 GB of available disk space; display adapter and monitor capable of displaying 1024x768; 100 Mbps NIC adapter or faster; mouse; keyboard.</p> <p>Recommended: Intel® Core i5 Processor; Microsoft Windows 7 Professional 64 bit; 4 GB of RAM; 100 GB of available disk space; display adapter and monitor capable of displaying 1024x768; graphics accelerator with 512MB RAM and monitor capable of displaying 1024x768; DirectX 9 graphics device with WDDM 1.0 or higher driver; 1 Gbps NIC adapter or faster; mouse; keyboard.</p>
Database Server	<p>Recommended: SQL server 2008 R2 Express Edition (one to five users) or SQL Server 2008 R2 Standard or Enterprise Edition (5+ users).</p> <p>Minimum: Intel® Xeon® x3320; Microsoft Windows Server 2003 (32-bit) Standard with SP2; Microsoft SQL Server 2008; 4 GB RAM; 2 GB available disk space; display adapter and monitor capable of displaying 1023x768; 1 Gbps network adapter; mouse; keyboard.</p> <p>Recommended Configuration: Intel® Xeon® x7460; Microsoft Windows Server 2008 R2 (64-bit) Standard with SP2; Microsoft SQL Server 2008 (64-bit); 16 GB RAM; display adapter and monitor capable of displaying 1023x768; 10 Gbps network adapter; mouse; keyboard; controller #1 - 2 hard drives, configuration RAID 1 to store operating system files; controller #2 - 2 hard drives, configuration RAID 2, to store transaction log files; controller #3 - 3 hard drives, RAID 5 to store databases. 50 GB available disk space.</p>

ARTICLE V

Limited Warranties: Except as otherwise provided in this Agreement, Contractor does not warrant, guarantee, or make any representations regarding the use, or the result of the use, of the software in terms of clinical efficacy, accuracy of information, readability, conformance to any standards of medical practice, or otherwise. The entire risk for the use of the software is assumed by the end-user. Contractor will be responsible for physical media replacement if the physical media containing the original Software is defective.

Contractor does not warrant that the software will be error-free in all circumstances. Except as otherwise provided in this agreement, Contractor shall have no liability for the operation and result generated by the software (except as expressly set forth in this agreement). Contractor makes and County received no warranties, expressed, implied, statutory, or in any other manner regarding the software and specifically disclaims any warranty of merchantability or fitness for a particular purpose relating to the software. In any action under contract, tort or otherwise, the aggregate potential liability for Contractor shall not exceed the total amount of fees remitted to Contractor.

Except as specifically provided otherwise in this agreement, Contractor nevertheless warrants that the software will conform, as to all substantial operational features, to Contractor's current published specifications in effect at the time of delivery and will be free of any defect, virus, or infringement, which would substantially affect the software's performance as of the time of installation.

County agrees that it shall be the responsibility of the County to verify that any and all data or other information entered into, or received as output from, the services, systems, custom software, or products is complete and accurate before taking any action in reliance upon that data or information.

Contractor will not be held responsible, or deemed to have failed to meet its obligations under this Agreement, if it either delays performance or fails to perform because of any cause beyond its reasonable control.

ARTICLE VI

Record Retention: Contractor agrees to make all of its books and records pertaining to the goods and services furnished under the terms of the contract available for inspection, examination, or copying by authorized County, State or Federal agencies, or their duly authorized representatives, at all reasonable times at Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five (5) years from the close of the County's fiscal year in which the contract was in effect, or any longer period as may be required by Federal or State law including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists and/or other licensed professionals. If at the end of the applicable retention period,

there is litigation or an audit or other investigation involving those books or records, Contractor will retain the books or records until the resolution of such litigation, audit, or investigation.

ARTICLE VII

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 VIII

Contractor 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 agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE IX

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor 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. In the event County agrees in writing that Contractor may subcontract for services under this Agreement, Contractor shall require that all subcontractors comply with all terms and conditions of this Agreement, and all pertinent Federal and State statutes and regulations.

ARTICLE X

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and therefore shall not be charged with responsibility of preventing risk to Contractor or its employees.

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 of El Dorado 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 that 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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Default, Termination, and Cancellation:

A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. 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 on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

C. Ceasing Performance: County may terminate this Agreement in the event Contractor 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 in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution.

In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor 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.

- E. Within sixty (60) days of shipment, County may request, and will receive, a full and unconditional refund of the Software package price. All out-of-pocket costs incurred by Contractor during this period, including but not limited to: travel or training costs, customization costs will not be refundable. County will be required to return all materials sent to them by Contractor.
- F. County may, upon (30) day written notice to Contractor, terminate Statement of Services, and will receive a prorated refund of maintenance fees, when applicable, for the covered period.

ARTICLE XIII

Waivers: A failure of County to enforce strictly a provision of this Agreement shall in no event be considered a waiver of any part of such provision. No waiver by County of any breach or default by Lancet Technology shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Lancet Technology's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

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 addressed as follows:

COUNTY OF EL DORADO - HEALTH AND HUMAN SERVICES AGENCY
415 PLACERVILLE DRIVE, SUITE J
PLACERVILLE, CA 95667
ATTN: RICHARD W. TODD, EMERGENCY MEDICAL SERVICES AGENCY
ADMINISTRATOR

With a copy to:

COUNTY OF EL DORADO - PROCUREMENT AND CONTRACTS DIVISION
360 FAIR LANE, LOWER LEVEL
PLACERVILLE, CA 95667
ATTN: TERRI DALY, PURCHASING AGENT

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

LANCET TECHNOLOGY, INC.
123 SOUTH STREET, 3RD FLOOR
BOSTON, MA 02111
ATTN: LEON M. BOWMAN, PRESIDENT

or to such other location as the Contractor directs.

ARTICLE XV

HIPAA Compliance: By signing this Agreement, Contractor agrees to comply with Exhibit B, "Business Associate Agreement," attached hereto and incorporated by reference herein.

ARTICLE XVI

Indemnity: The Contractor shall defend, indemnify, and hold the County, its Officers, employees, agents, and representatives harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys 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 Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

Restrictions on Use of Software: County shall not use the Software in any way for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such. County agrees not to transmit or permit County's employees to transmit through the Software any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind. County will only use the Software for lawful purposes, in compliance with all applicable laws including, without limitation, copyright, trademark, obscenity and defamation laws. County hereby agrees to defend, indemnify and hold Contractor harmless against any claim or action that arises from County's use of the Software in an unlawful manner or in any matter inconsistent with the restrictions and limitations stated herein.

ARTICLE XVII

Force Majeure: If either party shall be delayed or prevented from the performance of any obligation hereunder because of labor disputes, natural disaster, failure of utility services, restrictive governmental laws or regulations, riots, insurrection, war or other similar causes beyond the control of such party, the performance of such act shall be excused for the period of the delay.

ARTICLE XVIII

Debarment and Suspension Certification: By signing this agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations and Contractor further certifies to the best of its knowledge and belief that it, and its principals or affiliates or any sub-contractor utilized under the agreement:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- B. Have not within a three year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the above Paragraph B;
- D. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier or sub recipient covered transaction with any person(s) who are proposed for debarment under Federal regulations or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or sub recipient covered transactions.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal and State Governments, County may immediately terminate this Agreement for cause or default.

ARTICLE XIX

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; and
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage with an aggregate limit of \$2,000,000;

- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the 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 per occurrence.
- 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 will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- 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 Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, in addition to any other remedies it may have, County may terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions listed herein below and including an endorsement page for the "additional insured" language 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, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the 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 the 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 Risk Management, as essential for the protection of the County.

ARTICLE XX

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXI

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XXII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled "Default, Termination, and Cancellation."

ARTICLE XXIII

California Residency (Form 590): If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXIV

Nonresident Withholding: If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

ARTICLE XXV

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXVI

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 County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXVII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Richard W. Todd, Emergency Medical Services Agency Administrator, 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 to the obligations set forth herein.

ARTICLE XXIX

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

ARTICLE XXX

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

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

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.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: Richard W. Todd
Richard W. Todd, Administrator
Emergency Medical Services Agency

Dated: 11-28-2012

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Daniel Nielson
Daniel Nielson, M.P.A., Director
Health and Human Services Agency

Dated: 11-28-2012

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

- - COUNTY OF EL DORADO - -

Dated: _____

By: _____

John R. Knight, Chair
Board of Supervisors
"County"

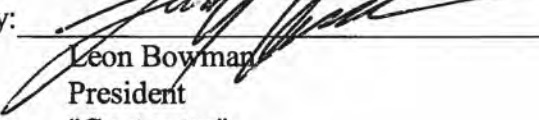
ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

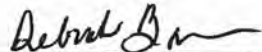
Dated: _____

- - CONTRACTOR - -

LANCET TECHNOLOGY, INC.
A MASSACHUSETTS CORPORATION

By: 
Leon Bowman
President
"Contractor"

Dated: 12-10-12

By: 
Corporate Secretary

Dated: 12/10/12



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 1 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

BACKGROUND:

This policy applies to County officers and employees as well as members of boards and commissions required to travel in or out of county for the conduct of County business. This policy also provides for expenses of public employees from other jurisdictions when specifically referenced in policy provisions set forth below.

For ease of reference, the Travel Policy is presented in the following sections:

1. General Policy
2. Approvals Required
3. Travel Participants and Number
4. Mode of Transport
5. Reimbursement Rates
 - a. Maximum Rate Policy
 - b. Private Auto
 - c. Meals
 - d. Lodging
 - e. Other
6. Advance Payments
7. Compliance – Responsibility of Claimant
8. Procedures

Exhibit A



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 2 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

POLICY:

1. **General Policy**

- a. County officers and employees should not suffer any undue loss when required to travel on official County business, nor should said individuals gain any undue benefit from such travel.
- b. County officers or employees compelled to travel in the performance of their duties and in the service of the County shall be reimbursed for their actual and necessary expenses for transportation, parking, tolls, and other reasonable incidental costs, and shall be reimbursed within maximum rate limits established by the Board of Supervisors for lodging, meals, and private auto use. "Actual and necessary expenses" do not include alcoholic beverages.
- c. Travel arrangements should be as economical as practical considering the travel purpose, traveler, time frame available to accomplish the travel mission, available transportation and facilities, and time away from other duties.
- d. Employees must obtain prior authorization for travel, i.e., obtain approvals before incurring costs and before commencing travel.
- e. Receipts are required for reimbursement of lodging costs, registration fees, public transportation and for other expenses as specified, or as may be required by the County Auditor-Controller.

Exhibit A



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 3 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

- f. Requests for travel authorization and reimbursement shall be processed using forms specified by the County Auditor and Chief Administrative Office.
- g. The Chief Administrative Officer may, at his or her sole discretion, authorize an exception to requirements set forth in this Travel policy, based on extenuating circumstances presented by the appropriate, responsible department head. Any exception granted by the Chief Administrative Office is to be applied on a case-by-case basis and does not set precedent for future policy unless it has been formally adopted by the Board of Supervisors.

2. Approvals Required

- a. Department head approval is required for all travel except by members of the County Board of Supervisors. Department heads may delegate approval authority when such specific delegation is approved by the Chief Administrative Officer. However, it is the expectation of the Chief Administrative Officer that department heads take responsibility for review and approval of travel.
- b. Chief Administrative Office approval is required when travel involves any of the following:
 - (1) Transportation by common carrier (except BART), e.g., air, train, bus.
 - (2) Car rental.

Exhibit A



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 4 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

- (3) Out-of-county overnight travel.
 - (4) Members of boards or commissions, or non-county personnel.
 - (5) Any exceptions required for provisions within this policy, e.g., travel requests not processed prior to travel, requests exceeding expense guidelines or maximums.
- c. It remains the discretion of the Chief Administrative Officer as to whether or not costs of travel which were not authorized in advance will be reimbursed, and whether or not exceptional costs will be reimbursed.

3. Travel Participants and Number

- a. Department heads and assistants should not attend the same out-of-county conference; however, where mitigating circumstances exist, travel requests should be simultaneously submitted to the Chief Administrative Office with a justification memorandum.
- b. The number of travel participants for each out-of-county event, in most instances, should be limited to one or two staff members, and those individuals should be responsible for sharing information with other interested parties upon return.
- c. If out-of-county travel involves training or meetings of such technical nature that broader representation would be in the best interest of the County, the department head may submit a memo explaining the situation to the Chief Administrative Office, attached to travel requests, requesting authorization for a group of travelers.

Exhibit A



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 5 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

d. Non-County personnel travel expenses are not normally provided for since only costs incurred by and for county officers and employees on county business are reimbursable. However, reimbursement is allowable for county officers (elected officials and appointed department heads) and employees who have incurred expenses for non-county staff in the following circumstances.

- (1) Meals for persons participating on a Human Resources interview panel when deemed appropriate by the Director of Human Resources.
- (2) Conferences between County officials and consultants, experts, and public officials other than officers of El Dorado County, which are for the purpose of discussing important issues related to County business and policies.
- (3) Transportation expenses for a group of County officers and employees and their consultants, and experts on a field trip to gain information necessary to the conduct of County business.
- (4) Lodging expenses for non-county personnel are NOT reimbursable except when special circumstances are noted and approved in advance by the Chief Administrative Office. Otherwise, such expenses must be part of a service contract in order to be paid.

4. Mode of Transport

- a. Transportation shall be by the least expensive and/or most reasonable means available.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 6 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

- b. Private auto reimbursement may be authorized by the department head for county business travel within county and out of county. Reimbursement shall not be authorized for commuting to and from the employee's residence and the employee's main assigned work site, unless required by an executed Memorandum of Understanding between the County and a representing labor organization, or one-time, special circumstances approved by a department head.
- c. Out of county travel by county vehicle or private vehicle may be authorized if the final destination of the trip does not exceed a four (4) hour driving distance from the County offices. Any exception to this policy must receive prior approval from the Chief Administrative Officer. If air travel would be more economical, but the employee prefers to drive even though travel by car would not be in the County's best interest, the County will reimburse transportation equal to the air travel; transportation costs over and above that amount, as well as any extra days of lodging and meals, etc., will be considered a personal, not reimbursable cost of the traveler.
- d. Common carrier travel must be in "Coach" class unless otherwise specifically authorized in advance by the Chief Administrative Officer. Generally, any costs over and above coach class shall be considered a personal, not reimbursable expense of the traveler.
 - (1) Rental cars may be used as part of a trip using public transportation if use of a rental car provides the most economical and practical means of travel. The use of a rental car must be noted on the Travel Authorization in advance and authorized by the Department Head

Exhibit A



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 7 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

and Chief Administrative Officer. Justification for the use of the rental car must accompany that request. Rental car costs will not be reimbursed without prior authorization except in the case of emergencies. Exceptions may be granted at the sole discretion of the Chief Administrative Officer or designated CAO staff.

5. Reimbursement Rates

- a. a. Maximum rates for reimbursement may not be exceeded unless due to special circumstances documented by the department head and approved by the Chief Administrative Officer. The amount of any reimbursement above the maximum shall be at the sole discretion of the Chief Administrative Officer.

- b. Private Auto

Travel by private auto in the performance of "official County business" shall be reimbursed at the Federal rate as determined by the Internal Revenue Service.

Mileage for travel shall be computed from the employee's designated work place. If travel begins from the employee's residence, mileage shall be calculated from the residence or work place, whichever is less. (For example, an employee who lives in Cameron Park and drives to a meeting in Sacramento, leaving from the residence will be paid for mileage from the residence to Sacramento and back to the residence.)

The mileage reimbursement rate represents full reimbursement, excluding snow chain installation and removal fee, for expenses incurred by a County



Exhibit A

COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 8 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

officer or employee (e.g., fuel, normal wear and tear, insurance, etc.) during the use of a personal vehicle in the course of service to El Dorado County.

c. Meals

Actual meal expenses, within maximum allowable rates set forth below, may be reimbursed routinely out-of-county travel, and for in-county overnight travel. Meals will not be provided for in-county travel or meetings which do not involve overnight lodging, unless special circumstances are involved such as the following:

- (1) When meals are approved as part of a program for special training sessions, conferences, and workshops;
- (2) When employees traveling from the western slope of the county to Lake Tahoe and vice-versa are required to spend the entire work day at that location;
- (3) When the Director of Human Resources deems it appropriate to provide meals to a Human Resources interview panel;
- (4) When Senior Managers and/or Executives of El Dorado County or the El Dorado County Water Agency meet with executives of other governmental agencies, community organizations, or private companies in a breakfast, lunch or dinner setting in order to conduct County business. While such meetings are discouraged unless absolutely necessary to the efficient conduct of County or Water Agency business, such expenses for County managers require approval by the Chief Administrative Officer.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 9 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

Actual costs of meals may be reimbursed up to a total of \$40 per day without regard to how much is spent on individual meals (e.g., breakfast, lunch, dinner, snacks), and without receipts. If an employee is on travel status for less than a full day, costs may be reimbursed for individual meals within the rates shown below.

Breakfasts may be reimbursed only if an employee's travel consists of at least 2 hours in duration before an employee's regular work hours. Dinner may be reimbursed if travel consists of at least 2 hours in duration after an employee's regular work hours.

Maximum Allowable Meal Reimbursement

Breakfast	\$8.00
Lunch	\$12.00
Dinner	\$20.00
Total for full day	\$40.00/day

d. Lodging

- (1) Lodging within county may be authorized by a department head if assigned activities require an employee to spend one or more nights in an area of the county which is distant from their place of residence (e.g., western slope employee assigned to 2-day activity in South Lake Tahoe).
- (2) Lodging may be reimbursed up to \$125 per night, plus tax, single occupancy. The Chief Administrative Office may approve extraordinary costs above these limits on a case by case basis when

Exhibit A



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 10 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

the responsible department head and Chief Administrative Office determine that higher cost is unavoidable, or is in the best interest of the County.

- (3) Single rates shall prevail except when the room is occupied by more than one County employee. However, nothing in this policy shall be construed to require employees to share sleeping accommodations while traveling on County business. In all travel, employees are expected to secure overnight accommodations as economically as possible and practical.
- (4) Lodging arrangements should be made, whenever possible and practicable, at hotels/motels which offer a government discount, will waive charges to counties for Transient Occupancy Tax, or at which the County has established an account. When staying at such a facility, the name of the employee and the department must appear on the receipt of the hotel/motel bill.

e. Other Expenses

All other reasonable and necessary expenses (i.e., parking, shuttle, taxi, etc.) will be reimbursed at cost if a receipt is submitted with the claim.

Receipts are required except for those charges where receipts are not customarily issued, for example, bridge tolls and snow chain installation and removal fees. When specific cost guidelines are not provided by the county, reasonableness of the expense shall be considered by the



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 11 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

department head and Chief Administrative Officer before deciding whether to approve.

Reasonable costs for snow chain installation and removal may be claimed and reimbursed. The purchase cost of snow chains would not be an allowable charge against the county.

6. Advance Payments

The Auditor may provide advance funds for estimated "out of pocket" expenses up to seventy-five percent (75%), but no less than \$50.00. The "out of pocket" expenses may include meals, taxi and public transportation, lodging, parking, and pre-registration costs.

7. Compliance - Claimant Responsibility

It is the responsibility of the claimant to understand and follow all policies and procedures herein in order to receive reimbursement for mileage, travel and expense claims. Any form completed improperly or procedure not followed may result in the return of a claim without reimbursement.

8. Procedures:

- a. Authorization to incur expenses must be obtained as set forth in this County policy, and as may be directed by the department.
- b. Requests for advance funds for anticipated travel expenses itemized on the Travel Authorization Request form are obtained by indicating this need on that form prior to processing the request.

Exhibit A



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 12 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

- c. Forms which require Chief Administrative Office approval should be submitted to the Chief Administrative Office, after department head approval, at least 7 to 10 days prior to travel to allow time for processing through County Administration and Auditor's Department.
- d. Cancellation of travel, requires that any advanced funds be returned to the Auditor Controller's office within five (5) working days of the scheduled departure date. If the advance is not returned within this time frame, the employee could jeopardize their standing to receive advances in the future.
- e. Travel Claims are due to the Auditor within 30 days after completion of travel. Personal Mileage and Expense Claims are due to the Auditor within 15 days after the end of each calendar month. The due date may be extended if deemed appropriate by the County Auditor. Claims must itemize expenses as indicated on claim forms, and must be processed with receipts attached.
- f. Reimbursements will be provided expeditiously by the County Auditor upon receipt of properly completed claim forms. The Auditor's Office shall promptly review claims to determine completeness, and if found incomplete, will return the request to the claimant noting the areas of deficiency.
- g. Personal Mileage and Expense Claim forms should be completed for each calendar month, one month per claim form. These monthly claims are due to the Auditor within 15 days following the month end; however, the deadline may be extended if deemed appropriate by the County Auditor. If monthly amounts to be claimed are too small to warrant processing at the

Exhibit A



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAVEL	Policy Number D - 1	Page Number: Page 13 of 13
	Date Adopted: 12/22/1987	Revised Date: 10/20/2009

end of a month (i.e., if cost of processing would exceed the amount being claimed), the claims for an individual may be accumulated and processed in a batch when a reasonable claim amount has accrued. In any event, such claims shall be made and submitted to the County Auditor for accounting and payment within the same fiscal year as the expense was incurred.

h. Expense Claim Form

For the purpose of travel and meeting expenses, the claim form is to be used for payments to vendors. The employee must obtain Department Head approval and submit the claim to the Auditor's Office within sixty (60) days of the incurred expense.

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 (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 (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 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 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.
 - (2) 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:
 - (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 subcontractors 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, 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.

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.