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**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND BITFOCUS INC.
REGARDING THE HOMELESS MANAGEMENT INFORMATION SYSTEM**

This agreement ("Agreement") is entered into, to be effective as of July 1, 2016 ("Effective Date"), by and between the County of Santa Clara ("County"), and Bitfocus Inc. ("Service Provider" or "Contractor").

RECITALS

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") provides grant funding to communities nationwide to address homelessness;

WHEREAS each community receiving such funding must establish a local information technology system to collect client-level data and data on the provision of housing and services to homeless individuals and families known as a Homeless Management Information System (HMIS);

WHEREAS the County has been designated as the local entity responsible for overseeing the local HMIS system through an HMIS software solution that complies with HUD's data collection, management, and reporting standards;

WHEREAS, Service Provider has substantial experience and expertise in the creation of a hosted third-party "software as a service" HMIS system for local communities (the "Services," as further described herein) in accordance with HUD standards; and

WHEREAS, Service Provider has agreed to provide the Services to County, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

TERMS

1. The Services.

- 1.1 Purpose; Term. This Agreement sets forth the terms and conditions under which Service Provider agrees to license certain hosted "software as a service" and provide all other services, data import/export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for County's productive use of such software (the "Services"), as further set forth on an Exhibit A. The Agreement and each Exhibit A shall remain in effect unless terminated as provided herein.
- 1.2 Time of Service Provider Performance of Services. For the term of the applicable Exhibit A, as the same may be amended, Service Provider shall provide the Services during the applicable Service Windows and in accordance with the applicable Service Levels, each as described in an Exhibit A, time being of the essence.
- 1.3 Control of Services. Unless otherwise specified in this Agreement, the method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of County.

- 1.4 **Backup and Recovery of County Data.** As a part of the Services, Service Provider is responsible for maintaining a backup of County Data, for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in an **Exhibit A**, Service Provider shall maintain a contemporaneous backup of County Data that can be recovered within one (1) day at any point in time. Additionally, Service Provider shall store a backup of County Data in an off-site "hardened" facility no less than weekly, maintaining the security of County Data, the security requirements of which are further described herein.
- 1.5 **Non-exclusivity.** Nothing herein shall be deemed to preclude County from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Service Provider hereunder.
- 1.6 **Subcontractors.** Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without County's prior written consent and any attempt to do so shall be void and without further effect. County's consent to Service Provider's right to subcontract any of the Services shall not relieve Service Provider of any of its duties or obligations under this Agreement, and Service Provider shall indemnify and hold County harmless from any payment required to be paid to any such subcontractors.
- 1.7 **Change Control Procedure.** County may, upon written notice, request increases or decreases to the scope of the Services under an **Exhibit A**. If County requests an increase in the scope, County shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify County whether or not the change has an associated cost impact. If County approves, County shall issue a change control, which will be executed by the Service Provider. County shall have the right to decrease the scope and the fee for an Exhibit A will be reduced accordingly.

2. **Term and Termination.**

- 2.1 **Term.** Unless this Agreement is extended or terminated earlier in accordance with the terms set forth herein, this Agreement shall commence on the Effective Date and continue until **June 30, 2017.**
- 2.2 **Termination for Cause.** If either party materially breaches any of its duties or obligations hereunder, including three periods of successive failure of Service Provider to meet a Service Level, and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, then the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.
- 2.3 **Termination for Bankruptcy.** If either Party is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Party's insolvency, either Party may terminate this Agreement immediately without penalty.
- 2.4 **Budgetary Contingency.** This Agreement is contingent upon the appropriation of sufficient funding by the County for the Deliverables and/or services covered by this

Agreement. If funding is reduced or deleted by the County for the Deliverables and/or services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

2.5 Payments Upon Termination. Upon the expiration or termination of this Agreement for any reason, County shall pay to Service Provider all undisputed amounts due and payable hereunder.

2.6 Return of Materials.

2.6.1 Upon expiration or earlier termination of this Agreement, Service Provider shall, immediately upon termination of this Agreement, create a copy of the County database and provide said copy to the County. Service Provider shall thereafter destroy and certify the destruction of any County Data within the possession of Service Provider.

2.6.2 A Copy of County database will also be provided to County upon written request for a fee of \$300 per copy plus delivery charges. Copies of County data will be provided on CDs or other mutually agreed upon media. Unless otherwise specified in writing, copies of data will be delivered to County within seven ("7") working days to receipt of written request.

2.6.3 The parties agree to work in good faith to execute the foregoing in a timely and efficient manner. This Section shall survive the termination of this Agreement.

3. Termination Assistance Services. Provided that this Agreement has not been terminated by Service Provider due to County's failure to pay any undisputed amount due Service Provider, Service Provider will provide to County and/or to the supplier selected by County (such supplier shall be known as the "Successor Service Provider"), assistance reasonably requested by County in order to effect the orderly transition of the applicable Services, in whole or in part, to County or to Successor Service Provider (such assistance shall be known as the "Termination Assistance Services") during the ninety (90) calendar day period prior to, and/or following, the expiration or termination of this Agreement in whole or in part (such period shall be known as the "Termination Assistance Period"). Such Termination Assistance Services may include:

3.1 developing a plan for the orderly transition of the terminated or expired Services from Service Provider to County or the Successor Service Provider;

3.2 providing reasonable training to County staff or the Successor Service Provider in the performance of the Services then being performed by Service Provider;

3.3 using commercially reasonable efforts to assist County in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services;

3.4 using commercially reasonable efforts to make available to County, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and,

3.5 such other activities as may be necessary to effectuate the orderly transition of Services to Successor Service Provider that are mutually agreed upon by the Parties.

3.6 The provisions of this Section shall survive the termination of this Agreement.

4. Services Levels.

4.1 Service Levels Reviews. Service Provider and County will meet as often as shall be reasonably requested by County, but no more than monthly, to review the performance of Service Provider as it relates to the Service Levels further described in Exhibit A. A Meeting shall be deemed Virtual unless otherwise requested by County.

4.2 Failure to Meet Service Levels. As further described in Exhibit A, in the event Service Provider does not meet any of the requisite Service Levels, Service Provider shall: (a) reduce the applicable monthly invoice to County by the amount of the applicable Performance Credits as a credit, and not as liquidated damages; and, (b) use its best efforts to ensure that any unmet Service Level is subsequently met. Notwithstanding the foregoing, Service Provider will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.

5. Invoicing and Payment. County shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained therein. However, the maximum compensation to be paid to the Service Provider under this Agreement shall not exceed \$167,300.

5.1 Billing Procedures. Unless otherwise provided for under Exhibit A, Service Provider shall bill to County the sums due pursuant to Exhibit A by Service Provider's invoice, which shall contain: (a) County purchase order number, if any, and invoice number; (b) description of Services rendered; (c) the Services fee or portion thereof that is due; (d); taxes, if any; and, (e) total amount due.

5.2 Credits. Any amounts due from Service Provider may be applied by County against any fees due to Service Provider.

5.3 Non-binding Terms. Any terms and conditions that are included in a Service Provider invoice shall be deemed to be solely for the convenience of the parties, and no such term or condition shall be binding upon County.

5.4 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local employment taxes. Service Provider agrees that County is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.

5.5 Invoicing. Contractor shall invoice according with the pricing set forth in Exhibit A. County will not approve any invoices for Deliverables and/or services not specifically listed in the Agreement.

5.6 Disputed invoices. If County disputes any charge(s) on an invoice, the County may withhold the disputed amount, provided that (a) there is a reasonable basis for the dispute, (b) all other amounts that are not in dispute have been paid in accordance

with this Agreement, and (c) the County delivers a written statement to Contractor on or before the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by the County. The parties shall then meet and confer to resolve the dispute.

- 5.7 **Payment Term.** The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

2.25% 10 Net 45 (provides 35 days of cash acceleration)

2.00% 15 Net 45 (provides 30 days of cash acceleration)

1.75% 20 Net 45 (provides 25 days of cash acceleration)

1.33% 25 Net 45 (provides 20 days of cash acceleration)

1.00% 30 Net 45 (provides 15 days of cash acceleration)

Net 45 (full payment)

Note: Payment term will default to “Net 45 (full payment)”, if no other term was selected. Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

- 5.8 **Miscellaneous.** County shall not make payments prior to receipt of deliverables and/or services (i.e. the County will not make “advance payments”) or for partial delivery. County will not pay late payment charges or fees.

6. **County Resources and Service Provider Resources.** In accordance with the terms set forth in Exhibit A, each party shall provide certain resources (County Resources and Service Provider Resources, as the case may be) to the other party as County and Service Provider may mutually deem necessary to perform the Services.

- 6.1 **County Resources.** If so described in an Exhibit A, where County provides resources (e.g., technology equipment) to Service Provider that are reasonably required for the exclusive purpose of providing the Services, Service Provider agrees to keep such resources in good order and not permit waste (ameliorative or otherwise) or damage to the same. Service Provider shall return the resources to County in substantially the same condition as when Service Provider began using the same, ordinary wear and tear excepted. County shall provide the County Resources, if any, described in an Exhibit A.

- 6.2 **Service Provider Resources.** In addition to any Service Provider Resources described in an Exhibit A, the Service Provider shall, at a minimum, provide all of the resources necessary to ensure that the Services continue uninterrupted, considering

the applicable Service Windows and Service Levels, that County Data is secure to the standards and satisfaction of County, and provide for an optimal response time for County's users of the Services. Where Service Provider fails to provide such minimal Service Provider Resources, County shall have the right to immediately terminate this Agreement or the applicable Exhibit A, in whole or in part, without liability.

7. **Representations and Warranties.**

- 7.1 Mutual Representations and Warranties. Each of County and Service Provider represent and warrant that:
- 7.1.1 it is a business duly incorporated, 501(c)(3) non-profit or government entity validly existing, and in good standing under the laws of its state of incorporation;
 - 7.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
 - 7.1.3 this Agreement, when executed and delivered, shall be a valid and binding obligation of it enforceable in accordance with its terms;
 - 7.1.4 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
 - 7.1.5 it shall comply with all applicable federal, state, local, international, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
 - 7.1.6 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.
- 7.2 **By Service Provider.** Service Provider represents and warrants that:
- 7.2.1 Service Provider is possessed of superior knowledge with respect to the Services;
 - 7.2.2 Service Provider knows the particular purpose for which the Services are required;
 - 7.2.3 the Services to be performed under this Agreement shall be performed in a competent and professional manner and in accordance with the highest professional standards;
 - 7.2.4 Service Provider has the experience and is qualified to perform the tasks involved with providing the Services in an efficient and timely manner. Service Provider acknowledges that County is relying on Service Provider's representation of its experience and expertise, and that any substantial misrepresentation may result in damage to County;

- 7.2.5 the Services will achieve in all material respects the functionality described in Exhibit A and the documentation of Service Provider, and that such functionality shall be maintained during the Term;
- 7.2.6 Service Provider will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, the "Virus") are introduced into County's computer and network environment while performing the Services, that Service Provider will adhere to County's then current procedures to protect against the same, and that, where Service Provider transfers such Virus to County through the Services.

8. County Data.

- 8.1 "County Data" shall mean data and information received by Contractor from County or any agency participating in the County HMIS system. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data.
 - 8.2 Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement.
 - 8.3 Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement.
 - 8.4 Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof.
 - 8.5 Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82, at Contractor's sole expense. Contractor shall not charge the County for *any* expenses associated with Contractor's compliance with the obligations set forth in this section.
9. Confidentiality and Protection of County Data. In receiving, maintaining, using, and disposing of County Data, Service Provider will comply with all applicable state and federal laws including but not limited to:
- 9.1 The Health Insurance Portability and Accountability Act (HIPAA).
 - 9.2 The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
 - 9.3 California Welfare and Institutions Code section 5328; and

- 9.4 Federal and state constitutional and statutory provisions protecting the privacy of non-health-related private information, including but not limited to criminal-justice and public benefit-related information.

Further, Service Provider will comply with all terms of the attached Business Associate Agreement, which is incorporated herein by this reference as Exhibit C.

10. **Proprietary Rights.**

- 10.1 **Pre-existing Materials.** County acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials") and that same shall remain the sole and exclusive property of Service Provider.
- 10.2 **Data of County.** County's information, or any derivatives thereof, contained in any Service Provider repository (the "County Data," shall be and remain the sole and exclusive property of County. County shall be entitled to an export of County Data, upon the request of County and upon termination of this Agreement or Exhibit A. Service Provider is provided a license to County Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display County Data only to the extent necessary in the provisioning of the Services.
- 10.3 **No License.** Except as expressly set forth herein, no license is granted by either party to the other with respect to Pre-existing Materials, or County Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest in Pre-existing Materials or County Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or County Data.
- 10.4 The provisions of this Section shall survive the termination of this Agreement.

11. **Information Security.** Service Provider acknowledges that County has implemented an information security program (the County Information Security Program, as the same may be amended) to protect County's information assets, such information assets as further defined and classified in the County Information Security Program (collectively, the "Protected Data"). Where Service Provider has access to the Protected Data, Service Provider acknowledges and agrees to the following.

- 11.1 **Undertaking by Service Provider.** Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining an information security program that is designed to: (i) ensure the security and confidentiality of the Protected Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Protected Data; (iii) protect against unauthorized access to or use of the Protected Data; (iv) ensure the proper disposal of Protected Data; and, (v) ensure that all subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's information security program be less stringent than the information security safeguards used by the County Information Security Program as provided by County to Service Provider for this purpose. The County Information Security Program is Confidential Information of County.

12. **Insurance and Indemnification.** The County's standard insurance and indemnification requirements for contracts exceeding \$100,000 are hereby incorporated by this reference as **Exhibit B** to this Agreement.
13. **General.**
- 13.1 **Relationship between County and Service Provider.** Service Provider represents and warrants that it is an independent contractor with no authority to contract for County or in any way to bind or to commit County to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of County. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of County. In recognition of Service Provider's status as independent contractor, County shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. County shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of County.
- 13.2 **Governing Law, Venue.** This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.
- 13.3 **Compliance With Laws, County Policies and Procedures.** Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with County policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.
- 13.4 **Cooperation.** Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any County supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to County, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 13.5 **Force Majeure.** Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophic, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such

excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of County Data. Configuration changes, other changes, viruses / malware, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for County to use the Services shall not constitute a force majeure event.

- 13.6 **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 13.7 **Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 13.8 **Assignment of Agreement.** This Agreement and the obligations of Service Provider hereunder are personal to Service Provider and its staff. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of County.
- 13.9 **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile or PDF signature may substitute for and have the same legal effect as the original signature.
- 13.10 **Entire Agreement.** This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between County and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.
- 13.11 **Cumulative Remedies.** All rights and remedies of County herein shall be in addition to all other rights and remedies available at law or in equity, including, without

limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

- 13.12 **Liens, Claims, and Encumbrances.** The Contractor represents and warrants that all the deliverables and/or materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Contractor represents and warrants that it has free and clear title (including any and all intellectual property rights) to the deliverables and/or materials purchased by County.
- 13.13 **Intellectual Property Indemnity.** Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.
- 13.14 **Acceptance.** County shall have thirty (30) days from the date of delivery or installation, whichever is later, to inspect and test the deliverables from professional services. If County determines that such deliverables and/or services do not meet the specifications and/or requirements set forth in this Agreement, County may reject such deliverables and/or services by providing written notice to Contractor. Contractor shall then have a reasonable period to cure the defect, but in no event longer than thirty (30) days. If Contractor is unable to cure the defect, County may immediately terminate the applicable professional services work for cause.
- 13.15 **Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement. Should any ambiguities or conflicts between contract terms and conditions contained in this Agreement and its exhibits exist, the terms and conditions in this Agreement shall control over its exhibits.
- 13.16 **Third Party Beneficiaries.** This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

14. **County Standard Terms and Conditions.**

- 14.1 **California Public Records Act Indemnity.** The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor contends that any documents are Contractor's confidential or proprietary material, not subject to the CPRA, and/or exempt from the CPRA, and Contractor wishes to prevent disclosure of said documents, Contractor shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information without liability. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and

reasonable attorney's fees) that may result from denial, withholding or redaction of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

- 14.2 **Cooperation With Review.** Contractor shall cooperate with County's periodic review of Contractor's performance to insure compliance with this Agreement. Contractor shall make itself available (at no cost to County) to review the progress of the project and Agreement, as requested by the County.
- 14.3 **Grant Agreements.** Service Provider will cooperate with County in complying with the provided terms of all federal, state, and philanthropic funding agreements under which the County is a Grantee that apply to the services performed under this Agreement.
- 14.4 **Audit Rights.** Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000 USD) shall be subject to audit by the State Auditor. All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings. Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County, state, or federal audits. Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.
- 14.5 **Access and Retention of Records and Provision of Reports.** Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the Agreement between Contractor and County. Records shall be maintained during the terms of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract. All books, records, reports, and accounts maintained pursuant to the Agreement, or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records. Contractor shall provide annual reports that include, at minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, (ii) the number of orders placed, the breakdown (by County ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year.
- 14.6 **Contracting Principles.** Contractor agrees to comply with the County's Contracting Principles set forth in the Board Policy Manual section 5.5.5.4. The Contracting Principles require, among other things, that Contractor be a fiscally responsible entity and treat its employees fairly. Contractor is also required to (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the

contract; and (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

- 14.7 **No Smoking.** Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.
- 14.8 **Food and Beverage Standards.** Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events. If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving. If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.
- 14.9 **Assignment of Clayton Act, Cartwright Act Claims.** Contractor shall assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.
- 14.10 **Conflict of Interest.** Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and

regulations including, without limitation, California Government Code section 1090 *et. seq.*, the California Political Reform Act (California Government Code section 87100 *et. seq.*) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 *et. seq.*). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County. Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. If the disclosure provisions of the California Political Reform Act of 1974 ("Act") are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations.

- 14.11 **Non-Discrimination.** Contractor shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting.
- 14.12 **Debarment.** Contractor represents and warrants that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within thirty (30) calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor shall defend, indemnify, and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.
- 14.13 **Use of County's Name.** Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.
- 14.14 **Wage Theft Prevention.**
- 14.14.1 **Compliance with Wage and Hour Laws:** Contractor, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.
- 14.14.2 **Final Judgments, Decisions, and Orders:** For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include:

the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

- 14.14.3 Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.
- 14.14.4 Judgments During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.
- 14.14.5 County's Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.
- 14.14.6 Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.

14.14.7 Notice to County Related to Wage Theft Prevention: Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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Executed on the dates set forth below by the undersigned authorized representatives of the parties to be effective as of the Effective Date.

COUNTY OF SANTA CLARA
("County")

Bitfocus Inc.
("Service Provider")

By:



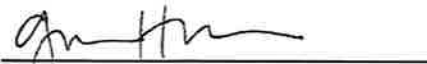
Name: Ky Le
Title: Director, Office of Supportive
Housing
Date: _____

By:



Name: Robert Herdzik
Title: President
Date: May 19th 2016

APPROVED AS TO FORM AND
LEGALITY:



Greta S. Hansen
Lead Deputy County Counsel

Date: 5/27/16

Address for Notice:

Bitfocus Inc.
Attention: Robert Herdzik
548 Market St #60866
San Francisco, CA 94104

Address for Notice:

Office of Supportive Housing
Attention: Hilary Baroga
County of Santa Clara
3180 Newberry Drive, Suite 150
San Jose, CA 95118

EXHIBIT A

Service Provider's "Software as a Service" Statement of Work for HMIS

This Exhibit A - Service Provider's Software as a Service Statement of Work – is incorporated in and governed by the terms of the Agreement by and between **COUNTY OF SANTA CLARA** ("County") and **Bitfocus Inc.** ("Service Provider") dated **September 15, 2015**, as amended (the "Agreement"). In the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description:

Service Provider agrees to provide authorized end users ("Users") access to and use of its Client and Service Management System ("System") subject to the following terms and conditions:

1. **Number of Users.** Internet access will be available to 500 Enterprise Seats / 50 Manager Seats / 4 Administrator Seats with access rights transferable to different users by County.
2. **Number of Organizations.** Up to 50 Organizations/Agencies will be authorized under this Agreement.
3. **Features and Functionality.** County will have full access to and use of all documented features provided in the most recent version of the Services, including functionality to capture and require client consent to assist the County to ensure client level data entered into the system complies with County protected information consent requirements. Features found in the Services will meet HUD HMIS Required functionality.

Support Description:

1. **Standard Hosting Services.** Service Provider will set up hosted Internet access for the above-specified number of users and organizations. The setup will include services and capacities to accommodate configuration.
2. **Standard Support Services.** The standard support services will be provided as specified in the Agreement as part of the fees charged for setup and ongoing service. 1 Hour of free phone consultation service will be provided on a monthly basis to support system growth.
3. **User Management of Access Rights.** Service Provider is responsible for the initial, pre-use security and user access settings. Thereafter, County is responsible for the ongoing adjustment and maintenance of data sharing settings for specific users and user access, and security rights.
4. **Service Representative and Contract Management.** Service Provider will assign a designated staff to be the support liaison and contract manager for County.
5. **Standard System Setup (Initial).** Service Provider will provide the following system setup activities:

- a. *Installation.* The System will be installed for use via the Internet by users authorized by County.
- b. *Intra-Organization Access.* Service Provider will setup intra-organizational access and security settings in accord with written specifications provided by County. Organizational level access rights will include view, edit, add, and delete rights to system features or groups of data, but not field level access. Standard access and security setup will include assignment of users to Access Roles within their respective organizations. Service Provider will setup a maximum of six ("6") Access Roles. These Access Roles will be either defined in writing by County or defaults provided by Service Provider. Initial Login accounts and passwords will be assigned by Service Provider to each user in specified access Roles within their respective organizations.
- c. *Inter-Organization Access.* Service Provider will assign one ("1") data sharing setting for each organization covered by the Agreement. This will enable each organization to define what client or service data will be accessed by staff from other organizations.
- d. *End-User Access and Security Settings.* End users authorized by County will have ability to adjust and refine user access and security rights. Such end-user adjustments of access and security settings will be the responsibility of County. Service Provider will not be responsible for access and security setting adjustments made by County.
- e. *Default Access and Security Settings.* Access and security rights must be setup before Service Provider will provide system access to non-System Manager users.
- f. *Training Data.* System setup will include an alternative database for training and practice. This training database will contain fictional data with no relationship to any real client, organization, or user.

Service Levels:

1. **Continuity of Service.** Notwithstanding other provisions in this contract, Service Provider will provide 99.999 percent availability. Service Provider's standard arrangements provide continuous service twenty-four ("24") hours a day for seven ("7") days a week, and guaranteed continuous service between the hours of 5:00 AM and 9:00 PM PST during the common Monday to Friday workweek. Service Provider guarantees, in accord with the remedies stated below, that there would be no outage time in excess of .0075 consecutive hours or no more than .001 percent total outage time per month. Outage time is defined as the length of time elapsed from when Service Provider is notified of or otherwise discovers the problem to the point of time that the problem is remedied. Remedies for outage time longer than these parameters will be a refund or credit equal to one hundred [100] percent of the cost of the percent of outage time pro-rata (calculated as percent outage out of total charge for month of outage). Requests for such remedies must be made within the monthly billing cycle of outage time. These remedies will not be available in cases where:
 - a. County did not notify and Service Provider did not discover the inability to transmit or receive data.
 - b. Outage time is caused by gross negligence or misconduct by County or their end-users.

- c. Failure of equipment or applications that are not owned or controlled by Service Provider.
 - d. "Acts of war or god" and other circumstances beyond the control of Service Provider.
 - e. Reasonable and brief scheduled and pre-announced service maintenance with a five ("5") day notification.
2. **Hosting Facilities.** Hosting will be provided at facilities that are ranked as Tier 4 and Class A. The hosting facility will provide state-of-the-art security that provides 24/7 physical and electronic security, including on-site security guards, trap-door entry, keycard and biometric access, and electronic surveillance and alarms. Other capacities of the hosting facility will include fire alerts, gaseous fire suppression, sophisticated security and video camera surveillance system; 24x7 secured, and escorted access. Battery backup, Diesel Generation and multiple Fiber Optic connections will be provided to ensure maximum uptime and performance.
 3. **Support Response Time.** Service Provider will be available during normal business hours for both Operational and Technical support. If specific arrangements are made, after hours and weekend support will be available. These calls may require contacting an on-call representative who will be able to assist you or make arrangements to provide needed assistance. Outside of standard operating hours Service Provider will respond to any phone calls within four ("4") business hours and emails within 8 business hours of contact made to on call representative.

Backup Requirements:

1. **Backup Schedule.** External hard drive backups will be made daily.
2. **Backup.** Daily data backups will be stored at the hosting site for seven (7) days.
3. **Storage of Backup Data.** After seven (7) days, external drive backups will be transferred to an encrypted media and stored in a secure off-site location for one (1) year. After one (1) year, remotely stored backup data will be fully destroyed so that said data is totally unrecoverable.
4. **County Requested Copies of Data.** County may request copies of its data at any time subject to the conditions of this Agreement.

Service Windows:

1. **System Maintenance and Internet Service Support.** Service Provider will install, configure, and test all upgrades and service packs as they become available. Forthcoming upgrades will be announced via e-mail no less than fifteen ("15") calendar days prior to deployment via hosting services. Service Provider will upon request, provide County with opportunities to review and test these upgrades.

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Service Fees and Rates:

Item and Description	Billing Schedule	Maximum Amount
Ongoing Charges		
500 Clarity Enterprise Seats <ul style="list-style-type: none"> Includes access and operation at the Enterprise level per each seat \$20 per seat per month 	\$10,000 per month	\$120,000
50 Clarity Manager Seats <ul style="list-style-type: none"> Includes Enterprise level access and operation, with the addition of ability to customize agency preferences, including services and programs of the selected agency. \$50 per seat per month 	\$2,500 per month	\$30,000
4 Clarity Administrator Seats <ul style="list-style-type: none"> Includes Enterprise and Manager level access and operation with the addition of System Administration management functions. Includes 30 Hours of Advanced Technical Assistance per year. \$150 per seat per month 	\$600 per month	\$7,200
Training Site License <ul style="list-style-type: none"> Clarity Training Web Site provides an implementation specific site for training purposes and is an important part of any Clarity installation. This service provides optional ongoing training site operation, including software updates in concert with the production site. 	July 2016	\$2,500
Virtual Private Network Maintenance and Support <ul style="list-style-type: none"> Virtual Private Network (VPN) is a Clarity premium service for clients seeking a secured connection to their database for sophisticated reporting purposes. Includes 4 hours of customer support per year. 	July 2016	\$400
Replica Database Access and Support <ul style="list-style-type: none"> Includes a unique VPN for direct access, given at direction of the County, to a live-time replica of the SCC HMIS database 	\$600 per month	\$7,200
Total (Maximum Amount)		\$167,300

1. **Special Services.** Additional services will be provided only by mutual written agreement. None of the following services are provided unless specified in separate written agreement. Services provided by such special agreement include:
 - a. No additional Services, except those expressly listed in this agreement, are included as part of the Software as a Service agreement. Services are handled in the System Administration contract.

2. **Recovery Services.** Service Provider will give the highest priority to the reinstatement of services for County's impacted by system failure disasters. Service Provider will perform data recovery services without charge for data loss or damage resulting only from failures of software

and equipment provided by Service Provider. Loss due to County error, gross negligence or misconduct will be charged to the County. In the event of a disaster related system failure, Service Provider will be prepared to provide the following recovery services:

- a. **Secure and Assess Data.** Immediate priority will be to secure the most recent version of data, consult to determine guidelines for assessing quality, and running tests to determine the status of data.
 - b. **Restore Data as Necessary.** If necessary, backup data will be used to restore all or part of the most recent data.
 - c. **Reinstate or Setup New Hosting Site.** Pending options and needs, a functioning system will be reinstated at the original or a new host site.
 - d. **Restore Timeframe.** Time frames for various failures are referenced in the Disaster Recovery and Business Continuity previously provided and approved by County's security contractor.
3. **Training and Special Support Services.** Agreement already includes all included services. System Administration services are outlined in the separate System Administration exhibit/contract

County Infrastructure Requirements:

County will be responsible for ensuring that County users have the appropriately configured hardware, software, and communication lines required for system use. Minimum requirements are as follows:

1. **System Requirements.** Unless otherwise agreed in writing, County will use or provide equipment compatible with the Services and Service Provider's network and facilities. County will bear the cost of any additional protective apparatus reasonably required to be installed because of the use of Service Provider's network or facilities by County, lessees or assignees.
2. **Minimum Hardware Requirements.** Intel or AMD dual core processor (or newer) that supports SSE2. 1GB of RAM. 500MB of hard drive space.
3. **Operating System and Browsers.** Windows XP, Windows Vista, Windows 7 or newer, Mac OS X 10.5, Mac OSX 10.6, Mac OS X 10.7 or newer. Firefox 6 or newer. Internet Explorer 8 or newer.
4. **Line Bandwidth.** For each County user connecting over a given line there must be at least 20kbps of bandwidth available for the user. This means that if a given County site has 20 users, there would need to be at least 400kbps of bandwidth available to access Services. Although Service Provider recommends a dedicated line, be sure to take into account any other traffic that may be using the same connection. Other traffic would include that used by email, web access, and web serving.
5. **Performance.** County acknowledges that the minimum system requirement may result in minimum system performance. Service Provider will not be responsible for unreliable or low performance (in excess of 80 milliseconds response time) resulting from County technological infrastructure.

6. **Non-Interference with Maintenance and Upgrading of Facilities and Resources.** County use of the Services provided herein and any equipment associated therewith will not interfere with or impair services over Service Provider's network or facilities.

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EXHIBIT B-2 (revised)

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

EXHIBIT B-2 (revised)

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000

2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

EXHIBIT B-2 (revised)

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

EXHIBIT B-2 (revised)

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

EXHIBIT C: BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara (“County” or “Covered Entity”) is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information (“PHI”) to “Business Associate” pursuant to the terms of the Agreement and this Business Associate Agreement (“BAA”); and

WHEREAS, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) performing both covered and non-covered functions; and

WHEREAS, the Santa Clara Valley Health and Hospital System, which is part of the County is comprised of multiple County Departments, including Valley Medical Center and Clinics (“VMC”), the County Mental Health Department (“MHD”), the County Department of Alcohol and Drug Services (“DADS”), the County Public Health Department (“PHD”) and the County Custody Health Services (“Custody Health”) and County Valley Health Plan (“VHP”), all of which are “Covered Entities” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

WHEREAS, the Covered Entity and Business Associate are “qualified service organizations” or “QSO” within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations (“C.F.R.”) Part 2; and

WHEREAS, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI used and disclosed pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290dd-2, 42 C.F.R part 2, California Confidentiality of Medical Information Act Civil Code Section 56, California Health & Safety Code 1280.15, and other applicable laws; and to the extent the Business Associate is to carry out the covered entity’s obligation under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

WHEREAS, part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to the BAA, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health

Act, Public Law 111-005, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

Privacy Breach Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

Protected Information shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity's behalf.

Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h)(1) and 45 C.F.R. 164.402.

II. Duties & Responsibilities of Business Associates

a. Permitted Uses. Business Associate shall use Protected Information only for the purpose of performing Business Associate's obligations under the Contract and as permitted or required under the Contract or Addendum, or as required by law.

Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code Section 5328, 42 C.F.R. Part 2, or the HITECH Act, if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. [45 C.F.R. Sections 164.502(a)(3), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

b. Permitted Disclosures. Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule, 42 C.F.R., Welfare & Institutions Code Section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information obtained pursuant to the Agreement and this BAA to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any Breaches of confidentiality of the Protected Information within twenty-four (24) hours of discovery, to the extent it has obtained knowledge of such Breach. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i)-(ii)(A) and 164.504(e)(4)(ii)].

c. Prohibited Uses and Disclosures. Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. [42 U.S.C. Section 17936(a) and 45 C.F.R. 164.501]. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the Individual 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. [42 U.S.C. Section 17935(a); 45 C.F.R. Section 164.502(a)(5)(ii)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. [42 U.S.C. Section 17935(d)(2)]. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

d. Appropriate Safeguards. Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or

disclosure of Protected Information other than as permitted by this BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, and comply, where applicable, with the HIPAA Security Rule with respect to Electronic PHI.

e. Reporting of Improper Access, Use or Disclosure. Consistent with Section (h)(4) of this agreement, Business Associate shall notify Covered Entity within twenty – four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e. any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in any information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors.

Business Associate shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA. As set forth below, [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b); California Health & Safety Code 1280.15, California Confidentiality of Medical Information Act 56.10, California Welfare & Institutions 5328].

Compliance & Privacy Officer
Santa Clara Valley Health & Hospital System
2325 Enborg Lane, Suite 240
San Jose, California 95128
Facsimile: (408) 885-6886
Telephone: (408) 885-3794

The Breach notice must contain: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (2) the location of the breached information; (3) the unauthorized person who used the PHI or to whom the disclosure was made; (4) whether the PHI was actually acquired or viewed; (5) a description of the types of PHI that were involved in the Breach; (6) safeguards in place prior to the Breach; (7) actions taken in response to the Breach; (8) any steps Individuals should take to protect themselves from potential harm resulting from the Breach; (9) a brief description of what the business associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and (10) contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R. Sections 164.410(c) and 164.404(c)]. Business Associate shall take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Business Associate shall otherwise comply with 45 C.F.R. Section 164.410 with respect to reporting Breaches of Unsecured PHI. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 165.308(b)]

f. Business Associate's Agents and Subcontractors. Business Associate shall ensure that any agents or subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (II) d above with respect to Electronic PHI. [45 C.F.R. Sections 164.502(e)(1)(ii), 164.504(e)(2)(ii)(D) and 164.308(b)]. If Business Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes a material

breach of violation of an agent or subcontractor's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Business Associate shall terminate the contract or arrangement with agent or subcontractor, if feasible. [45 C.F.R. Section 164.504(e)(1)(iii)]. Business Associate shall provide written notification to Covered Entity of any pattern of activity or practice of a subcontractor or agent that Business Associate believes constitutes a material breach or violation of the agent or subcontractor's obligations under the Contract or Addendum or other arrangement with twenty four (24) hours of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

The Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

g. Access to Protected Information. Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524. [45 C.F.R. Section 164.504(e)(2)(ii) (E); 42 C.F.R. part 2 and Welfare & Institutions Code Section 5328]. If Business Associate maintains an Electronic Health Record, Business Associates shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e)(1). If any Individual requests access to PHI directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request.

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains Electronic PHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
- (2) Document and keep these security measures current and available for inspection by Covered Entity.
- (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect it. Agencies which the County has designated as HMIS service providers are not agents or subcontractors of Contractor for purposes of this provision.
- (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R. Section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." Security incident shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate, or (b) immaterial incidents that occur on a routine basis, such as general "pinging" or "denial of service" attacks.

i. Amendment of PHI. Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any Individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.

j. Accounting Rights. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Privacy Rule and the HITECH Act. [42 U.S.C. Section 17935(c) and 45 C.F.R. Section 164.528]. Business Associate agrees to implement a process that allows for an accounting of disclosures to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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. [45 C.F.R. Section 164.528(b)]. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity in writing within five (5) days of the request. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in the Agreement and this BAA.

k. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 165.504(e)(2)(ii)(I)]. Business Associate shall concurrently provide to Covered Entity a copy of any internal practices, books, and records relating the use and disclosure of PHI that Business Associate provides to the Secretary.

l. Minimum Necessary. Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information reasonably necessary to accomplish the purpose of the request, use, or disclosure in accordance with 42 U.S.C. Section 17935(b). Business Associate understands and agrees that the definition of "minimum necessary" is defined in HIPAA and may be modified by the Secretary. Each party has an obligation to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

m. Adherence to the Requirements of 42 C.F.R. Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by SCVHHS under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Section 2.1, *et seq.*, and HIPAA, and may not use or disclose the information except as permitted or required by this BAA or applicable law.

n. Resist Efforts in Judicial Procedures. Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.

o. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information governed by this BAA, and all rights, interests, and title remain vested in the County at all times.

p. Warranties and Disclosures. Business Associate assumes risk for any and all use of PHI, excluding the use of PHI by County designated HMIS services providers to collect self-reported data. SCVHHS assumes no liability or responsibility for any errors or omissions in, or reliance upon, the PHI, including, but not limited to information electronic systems. SCVHHS makes no representations or warranties of any kind, express or implied, including but not limited to: accuracy, completeness, or availability of content, non-infringement, merchantability or fitness for a particular use or purpose, the fullest extent of the law. SCVHHS does not warrant that PHI is free of viruses or other harmful components or that service will be uninterrupted or error-free, or that defects will be corrected.

q. Audits, Inspection and Enforcement. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with the BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or BAA, Business Associate shall notify Covered Entity within five (5) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

a. Material Breach. A Breach by Business Associate of any provision of this BAA shall constitute a material Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

b. Judicial or Administrative Proceedings. Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section 2 of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii)(2)(I)]. If County elects destruction of the PHI, Business Associate shall certify in writing to County that such PHI has been destroyed.

IV. General Provisions

a. Indemnification. In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the Covered Entity for any Breach of Business Associate's privacy or security obligations under the Agreement, including any fines, penalties and assessments that may be made against Covered Entity or the Business Associate for any privacy breaches or late reporting and agrees to pay the cost of and notice for any credit monitoring services.

b. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the use and safeguarding of PHI.

c. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

d. Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances

consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

Covered Entity may terminate Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

e. Assistance in Litigation of Administrative Proceedings. Business associate shall notify Covered Entity within forty-eight (48) hours of any litigation or administrative proceedings commenced against Business Associate or its agents or subcontractors. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named as an adverse party.

f. No Third-Party Beneficiaries. Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

g. Effect on Agreement. Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

h. Interpretation. The BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, 42 Code of Federal Regulations ("C.F.R.") Part 2, the Privacy Rule and the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

i. Governing Law, Venue. This agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

j. Survivorship. The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.