

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Health Services Agency *mt*

BOARD AGENDA # \*B-5

Urgent  Routine  *ont*

AGENDA DATE May 5, 2015

CEO Concur with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a Professional Services Agreement with Sage Growth Partners for Project Management Services related to the Health Services Agency's Electronic Medical Records System (EMR) Implementation Including Preparing the Health Services Agency for Meaningful Use (MU) Attestation in Calendar Year 2015 as well as ICD-10 Adoption by October 1, 2015

STAFF RECOMMENDATIONS:

1. Approve an agreement with Sage Growth Partners for project management services related to the Health Services Agency's Electronic Medical Records Implementation effective May 11, 2015 through November 30, 2015.
2. Authorize the Managing Director of the Health Service Agency to sign the agreement with Sage Growth Partners in an amount not to exceed \$321,600 plus travel costs and to sign all necessary documents.
3. Authorize the Managing Director of the Health Services Agency or her designee or successor, to negotiate and sign amendment(s) to the agreement, not to exceed \$35,000.

FISCAL IMPACT:

The Health Services Agency (Agency) Clinics and Ancillary Division's Adopted Budget for Fiscal Year 2014-2015 is approximately \$57.8 million. The total cost of the recommended agreement can be absorbed within existing appropriations in Fiscal Year 2014-2015 due to salary savings related to vacancies which include the Agency's EMR Manager as well as the Director of Clinical Services.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2015-197

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, De Martini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of a Professional Services Agreement with Sage Growth Partners for Project Management Services related to the Health Services Agency's Electronic Medical Records System (EMR) Implementation Including Preparing the Health Services Agency for Meaningful Use (MU) Attestation in Calendar Year 2015 as well as ICD-10 Adoption by October 1, 2015

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### **FISCAL IMPACT (Continued):**

Of note, the Agency will need to attest to Stage One Meaningful Use (MU) of its EMR no later than the 4<sup>th</sup> quarter of calendar year 2015. If the Agency is unable to attest, it will result in the loss of the first year of MU incentive funds, estimated at approximately \$800,000 in the year of attestation.

At year end any unexpended funds remaining on the contract will rollover into the next fiscal year as an encumbrance. Approval of this agreement has no impact to the County General Fund.

### **DISCUSSION:**

#### **Background:**

An electronic medical record system (EMR) was identified as an efficiency improvement in the Health Services Agency's (HSA) Strategic Plan that was approved by the Board of Supervisors on September 13, 2005. After approval of the Strategic Plan, which directed the Agency to implement efficiency improvements, management analyzed the potential benefits of an EMR and determined that it was a viable project. On November 15, 2005 the Board of Supervisors authorized the Health Services Agency to explore options and a request for proposal was developed. The vendor that was ultimately selected and awarded the contract by the Board of Supervisors on February 17, 2009 was GE's Centricity Practice Solution (CPS).

An EMR system includes different modules (and components) that are required in order to be federally certified as a complete EMR eligible for meaningful use incentive payments. Modules of the GE Centricity Practice Solution include the following:

**Practice Management Module** – The practice management module is defined as medical practice system that captures billing data such as insurance payers and patient demographics as well as performs billing tasks, appointment scheduling and report generation.

**Electronic Medical Record Module** – The electronic medical record (EMR) is a digital medical record that either originates from an electronic format or is converted from hard copy to an electronic version. An EMR module includes all of the patient medical record that would be found in a paper chart and includes, but is not limited to, the following:

- Vitals, such as height, weight, body mass index (BMI) and body temperature

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- Past medical history
- Past and future medical appointments
- Physician orders
- Medical progress notes
- A drug prescription component that includes generating electronic prescriptions (ePrescribing) which also calculates drugs doses and provides alerts for drug interactions
- An interface for submitting and receiving diagnostic laboratory results
- A clinical decision support system which provides suggestions for appropriate treatment options based on the current "best practices"
- An interface with an internet-accessed patient portal

**Implementation Status** –The Health Services Agency has fully implemented the GE Centricity Practice Management Module, except for ICD-10 (a nationally used diagnosis coding system; federal deadline to transition from ICD-9 to ICD-10 is October 2015), as well as some of the functionality of the EMR Module including the following: past medical history, physician orders, medical progress notes, ePrescribing, the drug to drug allergy interaction checks as well as the interface for submitting and receiving lab results, etc.

However, now due to limited resources at the Agency including the recent departure of the Director of Clinical Services (who also acted as the Project Manager for the Agency's EMR Project), the Agency is in need of contract services to help the Agency reach full implementation of the Agency's EMR system especially due to two looming deadlines. The two deadlines are related to the following items: the Center for Medicare and Medicaid Services mandated adoption of ICD-10 by October 1, 2015 as well as the need to attest to the Medicaid Program Stage 1 of Meaningful Use no later than the 4<sup>th</sup> quarter in calendar year ending 2015.

### **Meaningful Use Attestation**

The Health Information Technology for Economic and Clinical Health Act (HITECH) provisions of the American Recovery and Reinvestment Act of 2009 (Act) enabled the federal government to establish the electronic health record (also known as the electronic medical record) programs with the following objectives: healthcare quality and efficiency via exchange of healthcare information as well as enabling patients to engage in their own healthcare.

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As part of the Act, both the Medicare and Medicaid programs would provide substantial financial incentives for "meaningful use" (MU) of certified EMR technology by eligible practitioners (meaning physicians and nurse practitioners) with attestation of Meaningful Use in 3 Stages over 5 or 6 years (respectively) with Stage 1 attestation allowed beginning in 2011. However, soon after the Stage One standards were first published, it became evident that the standards for Stage One Meaningful Use were rapidly changing making formerly certified systems (such as the Agency's) no longer certified for Stage 2 implementation. Based on this change, the Agency decided to wait until CPS version 12 was available which is certified for both Meaningful Use Stage One and Two. In 2014, the Agency upgraded to the GE Centricity Version 12. (While Stage 3 of the incentive program is scheduled to begin in 2016 no rules/standards have been finalized).

Below is brief overview of the rules associated with the Three Stages of Meaningful Use:

Stage One – Original Stage One requirements were the adoption of a certified EMR. However in 2012 the rules for Stage Two were changed and included the following: Computerized Provider Entry, Record and Chart Changes within Vital Signs as well as the change to the requirement for Health Information Exchange.

Stage Two – Secure Messaging via Patient Portal, Imaging Results, Registry Reports, Family Health History, as well as the adoption of the Stage Two certified system.

Stage Three – Improved Outcomes (however, the rules have not been finalized).

While both programs have financial incentives, there are some differences including, but not limited to, attestation deadlines, maximum financial incentives as well as the number of years that the incentive payments are available. The maximum financial incentives for each program per eligible provider are as follows and are paid over 5 or 6 years - Medicare incentives are \$43,720 and Medicaid incentives are \$63,750. (Medicaid MU incentives are paid over 6 years at the following amounts per eligible provider: first year \$21,250 and the remaining five years at \$8,500.)

Since the Agency meets the criteria for the Medicaid program and due to the higher financial incentives available, the Agency has chosen the Medicaid EMR Program. Currently, it is estimated that the meaningful use funds that will be available after Stage One attestation will be approximately \$800,000 and the estimated total to be paid over 6 years to be approximately \$2 million.

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## **ICD-10 Adoption**

The International Classification of Diseases, Tenth Revision, (ICD-10) is a revision to the ICD-9 system which is used by physicians and other health care providers to classify and code all diagnoses, symptoms and procedures recorded in conjunction with diseases and health problems in the medical field. The former ICD-9 version was adopted for use in the United States back in 1978 and beginning around 1998 research and work started aimed at developing and adopting a new version - ICD-10. While the initial mandated adoption date of ICD-10 was delayed from October 2014, the new mandated adoption date is October 1, 2015. Since Health Services Agency management believes there is much work yet to be accomplished in order to adopt, the Agency is requesting a consulting agreement to be executed by May 11, 2015.

### **Scope of Work**

As part of the scope of work, the vendor is expected to provide the following services via an EMR Manager and an EMR Project Manager:

Conduct a comprehensive review/analysis of the existing EMR implementation project plan, Agency resources and the associated timelines;

Review existing, current state of clinical workflows for consistency among the various clinical sites to ensure optimal continuity of care including providing recommendations for reengineering as appropriate;

Identify mission critical imperatives, i.e. Meaningful Use preparation;

Provide guidance and recommendations to effectively and efficiently complete the EMR implementation throughout the clinic system;

And finally, to provide recommendations on any long term organizational needs related to the Agency's EMR System.

Agency management has acknowledged that while the EMR is required and essential in order to effectively provide healthcare, the initial implementation and on-going upgrades and maintenance demand resources beyond what could be simply absorbed into the organization. As a result, the EMR project pace has been inadequate. The proposed consulting project scope with Sage Growth Partners has been deliberately designed not only to meet fast-approaching deadlines but also to build project momentum and recommend organizational improvements to enable the Agency to carry forward after the consulting engagement.

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### **Vendor Selection**

In order to locate a vendor that would meet the Agency's needs, the Agency worked with the County's General Services Agency (GSA) to issue a Request for Information (RFI). The RFI was issued on February 23, 2015 with a scope of work that required the vendor be a GE Strategic Partner and to have extensive experience in implementing EMRs in similar environments. The RFI was sent electronically to 720 vendors; however, only one vendor completed a response within the associated timeframe. That vendor is Sage Growth Partners and is not only a GE Strategic Partner but has extensive experience in implementing EMRs in a Federally Qualified Health Center (FQHC) and is GE's partner of choice when contracting for overflow consulting work.

### **POLICY ISSUES:**

This project meets the Board's priorities of A Healthy Community and the Efficient Delivery of Public Services by enabling the Agency to operate more efficiently, maximize revenue sources, and to continue to implement improved quality of care initiatives.

### **STAFFING IMPACT:**

While the Agency is not expecting to add any additional staff related to this project, it does anticipate that various members from the Clinics and Ancillary Division as well as Administration will participate in the project. As part of the scope of work, the vendor is expected to assess and make a recommendation regarding on-going staffing structure needed to appropriately implement modules and upgrades, and maintain the system. Should those recommendations result in necessary changes that would require Board of Supervisor approval, staff would work with the Chief Executive Office, and if warranted return to the Board with a corresponding proposal.

### **CONTACT PERSON:**

Mary Ann Lee, Managing Director, (209) 558-7163.

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Sage Growth Partners, LLC, a limited liability corporation licensed to do business in California, ("Contractor") effective as of the date of last signature.

**Recitals**

WHEREAS, the County has a need for services involving Electronic Medical Record (EMR) project management and consultation;

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. **Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

### 3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

### 5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

### 6. Insurance

Ind. Con. Agmt. (Rev. 7.24.14)



6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall include County, its Officers, Directors, Officials, Agents, Employees and volunteers as Additional Insureds under the General Liability and Auto policy and shall supply specific endorsements for same. The Additional Insured endorsement under the General Liability policy will be the Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization ISO Form CG2010 with the current applicable revision date. The Additional Insured endorsement under the Auto Liability will be "where required by written contract". All Insurance policies will include a Waiver of Subrogation in favor of County.

6.4 The Contractor's insurance coverage shall be primary insurance regarding County and County's officers, officials and employees. Any insurance or self-insurance maintained by County or County's officers, officials and employees shall be excess of Contractor's insurance and shall not contribute with Contractor's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, directors, officials, agents, employees and volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Any available insurance proceeds in

excess of the specified minimum limits required by this Agreement shall be available to County for defense and damages. The indemnity and insurance sections are stand alone and not dependent on each other for coverage limits

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

11.1. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

11.2 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11.3 Contractor shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Contractor's delivery of services.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:  
County of Stanislaus  
Health Services Agency  
Attn: Managing Director  
P.O. Box 3271  
Modesto, CA 95353

To Contractor:  
Sage Growth Partners, LLC.  
Attn: Deb Kephart  
3500 Boston Street, Suite 435  
Baltimore, MD 21222

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions

of this Agreement shall have venue in the County of Stanislaus, State of California.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS  
Health Services Agency

CONTRACTOR NAME

By: Mary Ann Lee  
Mary Ann Lee, Managing Director

By: D. Dorazio

Printed name: Daniel Dorazio

Date: 5/15/15  
*ML*

Title: COO

Date: 4/29/15

"County"

"Contractor"

APPROVED: BOS Resolution # 2015-197  
DATE: May 5, 2015 \*B-5

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By: Marc Hartley  
Marc Hartley, Deputy County Counsel

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## EXHIBIT A

### A. SCOPE OF WORK

The Contractor shall provide services under this Agreement as follows:

Utilizing information gathered from the existing implementation project plan, interviews with the Agency's executive leadership, management, providers and other clinical staff, as well as direct observation of existing clinical workflows, Contractor will work to optimize current state workflows, provide Meaningful Use readiness and optimize implementation efficiencies. The goals of this engagement are to:

- Conduct a comprehensive review/analysis of the existing EMR implementation project plan and associated timelines with recommendations for enhancements and any long term organizational needs.
- Review existing, current state clinical workflows for consistency among the various clinical sites to ensure optimal continuity of care; provide recommendations for reengineering as appropriate.
- Identify mission critical imperatives, i.e. Meaningful Use preparation.
- Provide guidance and recommendations to effectively and efficiently complete the EMR implementation enterprise wide.
- Provide a full-time on-site interim EMR Manager to work directly with Agency leadership during the engagement. The EMR Manager will work in this capacity for a minimum of three (3) months. Interim EMR Manager engagement will be discontinued at the County's request once a permanent EMR Manager has been hired by County.

In order to meet the above goals, Contractors will address the following key deliverables:

#### I. EMR IMPLEMENTATION AND MEANINGFUL USE

##### 1) Implementation Project Plan:

- a. Developed during an on-site, 3 week contiguous engagement, in collaboration with County leadership.

##### 2) Current State Workflow:

- a. Conduct on-site interviews with Executive Leadership, identified providers, site administrators, nursing and other clinical staff members.
  - i. Determine and document key decisions remaining.
- b. Direct observation of existing workflows at identified clinics, check-in to check-out.
- c. On-site review of existing documented workflows.
  - i. Evaluate provider/staff optimization of the EMR functionality – paper versus electronic data capture.
- d. On-site review of the EMR training curricula utilized during the on-boarding process.

##### 3) Meaningful Use Readiness:

- a. On-site review of existing MU attestation project plan.
- b. Assess knowledge, and readiness of the organization.
  - i. Interview MU committee members
  - ii. Interview Physician Champion(s)

##### 4) Comprehensive Report of Findings and Recommendations:

- a. Compile and synthesize findings and recommendations.
- b. Present findings and recommendations to executive leadership (remote or on-site).



## II. EMR PROJECT MANAGEMENT

Additionally, Contractor will act as project manager for Agency's implementation of GE Centricity EMR. Under the direction of the Agency's identified executive leaders, Contractor will:

- 1) **Serve as project manager to:**
  - a. Develop detailed, working project planning documents
  - b. Manage the project documentation archive
  - c. Facilitate meetings and conference calls
  - d. Inform management of timelines, risk, and issues
  - e. Oversee workflow redesign by Agency
  - f. Facilitate system set-up by Agency
- 2) **Interface with GE's project management team to:**
  - a. Promote Agency's agenda to maximize GE's professional service utilization
  - b. Assist Agency in obtaining GE resource as necessary
- 3) **Provide implementation and transition leadership for GE Centricity EMR**

## III. EMR MANAGER

A second contractor, preferably with licensed clinical (i.e. RN) and FQ experience, will be assigned to help the EMR Project Manager Contractor implement work flows, provide training and enforce standardization.

- 1) **Serve as EMR Manager to:**
  - a. Work collaboratively with Clinic Managers on implementing, modifying and/or standardizing approved work flows.
  - b. Document all work flows and transition institutional knowledge learned to County hired EMR Manager, once one is identified.
  - c. Work with Project Manager to create tasks, assign resources and provide time lines to meet project objectives
  - d. Provide weekly updates to County leadership on progress based on approved project plan and agreed deliverables.
  - e. Assist IT in clinical elements of the EMR
  - f. Coordinate end-user training events pertinent to the adoption of the EMR
  - g. Develop and implement changes in clinical flow and patient care tracking
  - h. Review & recommend changes of 3<sup>rd</sup> party EMR interfaces; i.e. IndxLogic, Qvera, Secure Messaging, Patient Portal, Care Manager, Quest, Midmark Diagnostics, ConnectIQ – specifically for Meaningful Use attestation.
  - i. Ensure Meaningful Use objectives are met and County is ready to start attestation by October 1st, 2015.

## B. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

1. Contractor will be compensated for project management \$29,600 per month, equivalent to 160 hours per month at the rate of \$185/hr. with approximately 67% of consultant's time to be on-site and for a full-time on-site interim EMR Manager \$24,000 per month, equivalent to 160 hours per month at the rate of \$150/hr. Total for professional services provided shall be \$53,600 per month.
2. Contractor hours will be tracked monthly and reconciled every three (3) months. Hours performed in excess of the allotted 480 hours per three months will be billed at the hourly rate of

\$185. Any of the designated 480 hours not worked in the three month period, will be carried over up to a maximum of twenty (20) hours. The final quarter of engagement will not be subject to any carry over hours.

3. Contractor shall submit monthly invoices to the County by the tenth (10th) of the month, following the month for which payment is claimed. Invoices shall specify the dates of service and scope of the work performed with sufficient detail so as to support hours and expenses billed. Payment will be made by County to Contractor within thirty (30) days of receipt of invoice.

4. Contractor will be reimbursed for all project related out-of-pocket expenses, including travel, lodging, meals, and other travel as required. County agrees to arrange for long-term residential accommodations (i.e. apartment) and transportation for any Contractor staff on-site for more than thirty (30) consecutive days at a time during the engagement. Contractor will provide detailed support to substantiate expenses and will receive prior approval for all material expenses. Contractor understands and agrees that travel will be compensated in accordance with the County's Travel Policy. Contractor agrees that it has received a copy of the Travel Policy approved by the Board of Supervisors on August 4, 2009 (attached hereto, as "Attachment B").

The parties hereto acknowledge the maximum compensation amount to be paid by the County for services provided shall not exceed \$321,600 during the term of this Agreement. Said maximum shall include, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement. The parties agree that should overages in hours worked by Contractor occur, pursuant to paragraph 2 above, the contract maximum may need to be amended to allow services performed under the Agreement uninterrupted. The parties agree that the contract maximum shall be increased by amendment once the stated contract maximum has reached 85% expended in accordance with Paragraph 17 of the body of this Agreement.

### **C. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

Paragraph 5 of the body of this Agreement is hereby amended to read:

County shall provide such office space, supplies, equipment, reference materials and telephone service as is necessary for Contractor to provide the services.

### **D. INSURANCE**

Paragraph 6.1.2 of the body of this Agreement shall not apply.

### **E. CONFIDENTIALITY**

The following paragraph is added to Section 10 of this Agreement:

Contractor, as a Business Associate, shall comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.), the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), as more particularly set forth in Exhibit B attached to this Agreement.

### **F. TERM AND TERMINATION**

Paragraph 3.1 of the body of this Agreement is hereby amended to read as follows:

The term of this contract will begin May 11, 2015 and terminate November 30, 2015. Either party may terminate this Agreement for convenience and without cause upon providing thirty (30) days prior written notice to the other party. Upon termination of this Agreement, the County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed.

[Remainder of page intentionally left blank, Exhibit B follows]

## EXHIBIT B

### BUSINESS ASSOCIATE EXHIBIT-

Business Associate (BA) shall comply, to the extent required by law, with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.), the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule and Security Standards."

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

#### 1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms used in the Privacy Rule and Security Rule (defined below).

- 1.1 "Breach" shall have the meaning given to such term under the HITECH Act (42 U.S.C. Section 17921).
- 1.2 "Business Associate"(BA) shall mean CONTRACTOR as identified in this Agreement.
- 1.3 "Covered Entity"(CE) shall mean Stanislaus County, Health Services Agency (COUNTY).
- 1.4 "Data Aggregation" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.5 "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.
- 1.6 "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.
- 1.7 "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.8 "Privacy Rule" shall mean the Standards for Privacy of individually identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.9 "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 164.501, limited to the information provided to by Covered Entity to Business Associate or created or received by Business Associate from or on behalf of Covered Entity.
- 1.10 "Protected Information" shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- 1.11 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.
- 1.12 "Physical Safeguards" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.13 "Security or Security measures" encompass all of the administrative, physical, and technical safeguards in an information system.
- 1.14 "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.15 "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).

## 2. Operations

2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the Health Services Agency's Privacy Policy.

2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

## 3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

## 4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 CE may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

## 5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of CE, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by CE or the minimum necessary policies and procedures of the CE.

5.2 If BA discloses Protected Information to a third party, BA 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 Business Associate Exhibit, or 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 BA of any breaches in confidentiality of the Protected Information, 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), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

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

5.4 BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than permitted by the Agreement or Business Associate Exhibit, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and

documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

5.5 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.6 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of CE.

5.7 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.

5.8 BA will promptly report, in writing, to CE any use or disclosure of a PHI not provided for by this Exhibit within seven (7) days of the time BA becomes aware of such use or disclosure, pursuant to 45 CFR, Section 164.528.

5.9 BA shall document such disclosure of PHI and information related to such disclosures as would be required for the CE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

5.10 BA shall provide to CE or an individual, within seven (7) days, information collected in accordance with Title 45, CFR, Section 164.528, to permit CE to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

## **6. Agents and Subcontractors of BA**

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from CE, or created or received by BA on behalf of the CE, agree in writing to comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information and implement the safeguards required by paragraph 5.3 above with respect to Electronic PHI.

## **7. Access to PHI**

7.1 BA shall provide access, within seven (7) days of such a request, to the CE or, as directed by the CE, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

7.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

## **8. Accounting Rights**

Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, promptly upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At 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. In the event that the request is for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.

## **9. Amendment to PHI**

Ind. Con. Agmt. (Rev. 7.24.14)

BA shall make any amendment(s) to PHI in a designated record set that the CE directs or at the request of the CE or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

**10. Records Available**

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the CE, or created or received by the BA on behalf of the CE, available to the CE or to the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the CE or the Secretary of HHS.-

**11. Minimum Necessary**

BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.541(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidelines issued by the Secretary with respect to what constitutes "minimum necessary."

**12. Data Ownership**

BA acknowledges that BA has no ownership rights with respect to the Protected Information.

**13. Notification of Breach**

During the term of this Agreement, BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

**14. Breach Pattern or Practice by Covered Entity**

Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under this Agreement or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under this Agreement or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

**15. Retention, Transfer and Destruction of Information**

15.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the CE, or created or received by the BA on behalf of the CE in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

15.2 Prior to termination of this Agreement, the BA may be required by the CE to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

15.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the CE, or created or received by the BA on behalf of the CE. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

15.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the CE notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

**16. Force Majeure**

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

**17. Limitation of Damages**

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

**18. Attorney-Client Privilege**

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or CE by virtue of this Subparagraph.

**19. Interpretation**

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the CE to comply with the Privacy Rule and Security Standards.

**20. Amendment to Comply with Law**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and amendment of the Agreement or this Exhibit 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 laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information.