



County of Solano
Standard Contract

For County Use Only
CONTRACT NUMBER:
03690-26
Dept., Division, FY, #)
H&SS, PH
BUDGET ACCOUNT:
7807
SUBJECT ACCOUNT:
2261

1. This Contract is entered into between the County of Solano and the Contractor named below:

Orchard Software Corporation

CONTRACTOR'S NAME

2. The Term of this Contract is:

7/1/2025 to 6/30/2026

3. The maximum amount of this Contract is:

\$111,278.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of this Contract:

- Exhibit A – Orchard System Service Agreement
Exhibit B – Budget Detail and Payment Provision
Exhibit C – General Terms and Conditions
Exhibit D – Special Terms and Conditions

This Contract is made on May 14, 2025.

Table with 2 columns: CONTRACTOR and COUNTY OF SOLANO. Rows include signature and date information for Kelly James (Contractor) and Bill Emlen (County Administrator), address information for Kelly James, and signature and date information for Emery Cowan (County Director) and Megan Callaway (County Counsel, Deputy).

CONTRACT MUST BE EXECUTED BEFORE WORK CAN COMMENCE

**EXHIBIT A**  
**Orchard System Service Agreement**

The terms of the Service and Support for your Orchard® System are as follows:

<b>Telephone Support Coverage</b>
Technical support staff will be available 24 hours a day, 7 days a week, 365 days a year. The telephone number for technical support is (800) 571-5835.
<b>Interactive Technical Support and Training</b>
Interactive technical support and training will be provided during normal Monday through Friday business hours. Arrangements for extended interactive training must be made in advance. Interactive training is not considered sufficient for training new staff members. Contact Orchard Software to receive a quotation for on-site training and certification to take place at your facility or at Orchard Software's Training center if your laboratory has experienced turnover since primary training was originally conducted.
<b>Software Upgrades</b>
Periodic software upgrades (if supported by your current hardware and operating system capabilities) will be provided at no charge to all customers with active service contracts. If your installed software version is more than one version release from Orchard Software's current shipping version, you may be required to pay an additional fee.
<b>Interfaces</b>
This support agreement does not include coverage for the addition or replacement of interfaces between Orchard Software's application and medical devices being added to your system configuration.  Please contact your Orchard Software Account Manager for details on how to add any new device or information system interface to your Orchard Software system configuration.
<b>Hardware Upgrades and Additional Licenses</b>
Please contact your Orchard Software Account Manager for information on hardware upgrades and/or additional workstation licenses.

### **Hardware Coverage**

This Service Agreement covers the maintenance and upgrade to the Orchard System. Repairs to failed hardware are not covered under this service agreement. If your hardware was provided by an agency other than Orchard Software, contact that agency for hardware repairs, maintenance, and replacement.

The following pertains only to hardware equipment purchased from Orchard Software:

Your hardware may come with a manufacturer's warranty. Please take time to familiarize yourself and your staff with this warranty information. Be certain to fill out any warranty registration cards that come with the equipment. Keep copies of the dated purchase invoice as proof of purchase, should a hardware manufacturer require it.

While hardware failures are not normally handled by Orchard Software Technical Service, we may, at your request, be able to assist you. In some cases, your hardware device may be forwarded to the manufacturer for analysis and repair. Some failure types may require that you send the computer or other hardware device to Orchard Software for analysis and possible repair. For this service, Orchard Software Technical Service charges \$145/hr plus parts and return shipping costs. A purchase order for time, materials, and shipping will be required prior to any repair work.

### **Responsibilities of the Account Covered**

The Orchard Software Client is responsible for allowing remote access to the Orchard System for Orchard Software Technical Support.

### **Termination of Support**

If a Client wishes to terminate support services prior to the expiration date of a paid for support contract, Orchard Software will refund any unused, but paid for, support monies. Orchard Software requires at least a sixty (60) day written notice prior to termination. The refund period will begin the first of the month following the sixty (60) day notice. There will be a \$500.00 administrative fee assessed and deducted from the refund amount.

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**A. Budget Details:**

- 1. Silver Level Support and Maintenance=\$47,442.87
- 2. EMR Integration = \$14,300
- 3. OCHIN EPIC Orders (\$7,150)
- 4. OCHIN EPIC Results (\$7,150)
- 5. HL7 Orders Host Interface (\$7,150) + Unidirectional Delimited File Results Interface (\$6,600) (Total = \$13,750)\*
- 6. Estimate: AWS Cloud Services One Time Migration and Cloud Services Initial Setup = \$18,000 Additional \$3,485.13 to calculate to offset potential price change.

**TOTAL:** ..... \$111,278

**B. Method of Payment:**

- 1. Upon submission of a Solano County vendor claim and invoice by Contractor, and upon review and approval of County's representative, County will pay Contractor in advance of the service year for fees as applicable, up to the maximum amount provided for on the Standard Contract. Each invoice must specify services to be rendered and the dates of the service period. Contractor must document all expenses submitted to County for payment under this Contract by maintaining complete and accurate records of all financial transactions related to the services performed under this Contract including, but not limited to, invoices, receipts, time sheets, itemized cost lists, and other official documentation that sufficiently support all charges under this Contract.
- 2. Payment should be sent to the attention of Orchard Accounts Receivable at the following address: Orchard Software Corporation 701 Congressional Blvd., Suite 360 Carmel, IN 46032

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS**

**1. CLOSING OUT**

A. County will pay Contractor's final request for payment providing Contractor has met all obligations required under this Contract or any other contract and/or obligation that Contractor may have with the County. If Contractor has failed to meet any outstanding obligation, County will withhold compensation due under this Contract from Contractor's final request for payment until Contractor satisfies such obligation(s). Contractor is responsible for County's receipt of a final request for payment 30 days after expiration or earlier termination of this Contract.

B. A final undisputed invoice shall be submitted for payment no later than 90 calendar days following the expiration or termination of this Contract, unless a later or alternate deadline is agreed to in writing by the County. The final invoice must be clearly marked "FINAL INVOICE", thus indicating that, upon full payment of such invoice, no further payments are due or outstanding under the Contract.

C. The County may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written approval of an alternate final invoice submission deadline. Written County approval for an alternate final invoice submission deadline shall be sought from the County prior to the expiration or termination of this Contract.

**2. TIME**

Time is of the essence in all terms and conditions of this Contract.

**3. TIME OF PERFORMANCE**

Work will not begin, nor claims paid for services under this Contract until all Certificates of Insurance, business and professional licenses/certificates, IRS ID number, signed W-9 form, or other applicable licenses or certificates are on file with the County's Contract Manager.

**4. TERMINATION**

A. This Contract may be terminated by County or Contractor, at any time, with or without cause, upon 30 days' written notice from one to the other.

B. County may terminate this Contract immediately upon notice of Contractor's malfeasance.

C. Following termination, County will reimburse Contractor for all expenditures made in good faith that are unpaid at the time of termination not to exceed the maximum amount payable under this Contract unless Contractor is in default of this Contract.

**5. SIGNATURE AUTHORITY**

The parties executing this Contract certify that they have obtained all required approvals and have the proper authority to bind their respective entities to all certifications, terms, and conditions set forth in this Contract.

**6. REPRESENTATIONS**

A. County relies upon Contractor's professional ability and training as a material inducement to enter into this Contract. Contractor represents that Contractor will perform the work according to generally accepted professional practices and standards and the requirements of applicable federal, state and local laws. County's acceptance of Contractor's work shall not constitute a waiver or release of Contractor from professional responsibility.

B. Contractor further represents that Contractor possesses current valid appropriate licensure, including, but not limited to, driver's license, professional license, certificate of tax-exempt status, or

County of Solano

permits, required to perform the work under this Contract.

## 7. INSURANCE

A. Without limiting Contractor's obligation to indemnify County, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Contract and the results of that work by Contractor, Contractor's agents, representatives, employees or subcontractors.

### B. Minimum Scope of Insurance

Coverage must be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
- (2) Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### C. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- |   |   |   |
|---|---|---|
| (1) General Liability:<br>(Including operations, products<br>and completed operations.) | <b>\$2,000,000</b>                      | per occurrence for bodily injury, personal injury and property damage, or the full per occurrence limits of the policy, whichever is greater. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| (2) Automobile Liability:   | <b>\$1,000,000</b>                      | per accident for bodily injury and property damage.   |
| (3) Workers' Compensation:  | As required by the State of California. |   |
| (4) Employer's Liability:   | <b>\$1,000,000</b>                      | per accident for bodily injury or disease.  |

### D. Additional Insurance Coverage

To the extent coverage is applicable to Contractor's services under this Contract, Contractor must maintain the following insurance coverage:

- |                             |                    |  |
|-----------------------------|--------------------|--|
| (1) Cyber Liability:        | <b>\$1,000,000</b> | per incident with the aggregate limit twice the required limit to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information property of the County that will be in the care, custody or control of Contractor under this Contract. |
| (2) Professional Liability: | <b>\$2,000,000</b> | combined single limit per claim and in the aggregate. The policy shall remain in full force and effect for no less than 5 years following the completion of work under this Contract.  |

County of Solano

E. If Contractor maintains higher limits than the minimums shown above, County is entitled to coverage for the higher limits maintained by Contractor. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the County. No representation is made that the minimums shown above are sufficient to cover the indemnity or other obligations of the Contractor under this Contract.

F. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either:

(1) The insurer will reduce or eliminate such deductibles or self-insured retentions with respect to County, its officers, officials, agents, employees and volunteers; or

(2) Contractor must provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. Other Insurance Provisions

(1) The General Liability and Automobile Liability policies must contain, or be endorsed to contain, the following provisions:

(a) The County of Solano, its officers, officials, agents, employees, and volunteers must be included as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or both CG 20 10 and CG 20 37 if later ISO revisions are used or the equivalent) to Contractor's insurance policy, or as a separate owner's policy. The insurance afforded to the additional insureds shall be at least as broad as that afforded to the first named insured.

(b) For any claims related to work performed under this Contract, Contractor's insurance coverage must be primary insurance with respect to the County of Solano, its officers, officials, agents, employees, and volunteers. Any insurance maintained by County, its officers, officials, agents, employees, or volunteers in excess of Contractor's insurance and shall not contribute to it.

(2) If Contractor's services are technologically related, Professional Liability coverage shall include, but not be limited to claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. The policy shall also include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the County in the care, custody, or control of the Contractor. If not covered under the Contractor's Professional Liability policy, such "property" coverage of the County may be endorsed onto the Contractor's Cyber Liability Policy.

(3) Should any of the above described policies be cancelled prior to the policies' expiration date, Contractor agrees that notice of cancellation will be delivered in accordance with the policy provisions.

H. Waiver of Subrogation

(1) Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

(2) The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents and subcontractors.

I. Acceptability of Insurers

Insurance is to be placed with insurers with a current AM Best rating of no less than A:VII unless otherwise acceptable to County.

J. Verification of Coverage

(1) Contractor must furnish County with original certificates and endorsements effecting coverage required by this Contract.

County of Solano

- (2) The endorsements should be on forms provided by County or, if on other than County's forms, must conform to County's requirements and be acceptable to County.
- (3) County must receive and approve all certificates and endorsements before work commences.
- (4) However, failure to provide the required certificates and endorsements shall not operate as a waiver of these insurance requirements.
- (5) County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage described above at any time.

## **8. BEST EFFORTS**

Contractor represents that Contractor will at all times faithfully, industriously and to the best of its ability, experience and talent, perform to County's reasonable satisfaction.

## **9. DEFAULT**

A. If Contractor defaults in Contractor's performance, County shall promptly notify Contractor in writing. If Contractor fails to cure a default within 30 days after notification, or if the default requires more than 30 days to cure and Contractor fails to commence to cure the default within 30 days after notification, then Contractor's failure shall constitute cause for termination of this Contract.

B. If Contractor fails to cure default within the specified period of time, County may elect to cure the default and any expense incurred shall be payable by Contractor to County. The contract may be terminated at County's sole discretion.

C. If County serves Contractor with a notice of default and Contractor fails to cure the default, Contractor waives any further notice of termination of this Contract.

D. If this Contract is terminated because of Contractor's default, County shall be entitled to recover from Contractor all damages allowed by law.

## **10. INDEMNIFICATION**

A. Contractor will indemnify, hold harmless and assume the defense of the County of Solano, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly arising from Contractor's operations or from any persons directly or indirectly employed by, or acting as agent for, Contractor, excepting the sole negligence or willful misconduct of the County of Solano. This indemnification shall extend to claims, losses, damages, injury and liability for injuries occurring after completion of Contractor's services, as well as during the progress of rendering such services.

B. Acceptance of insurance required by this Contract does not relieve Contractor from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by Contractor's operations regardless of whether or not any insurance is applicable.

## **11. INDEPENDENT CONTRACTOR**

A. Contractor is an independent contractor and not an agent, officer or employee of County. The parties mutually understand that this Contract is between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

B. Contractor shall have no claim against County for employee rights or benefits including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, retirement benefits, Social Security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

C. Contractor, and not County, is solely obligated to pay all taxes, deductions and other employer-related obligations with respect to Contractor's employees including, but not limited to, federal

County of Solano

and state income taxes, withholding, Social Security, unemployment, disability insurance, Workers' Compensation and Medicare payments.

D. Contractor shall indemnify and hold County harmless from any liability which County may incur because of Contractor's failure to pay such obligations and County shall not be responsible for any employer-related costs not otherwise agreed to in advance between the County and Contractor.

E. As an independent contractor, Contractor is not subject to the direction and control of County except as to the final result contracted for under this Contract. County may not require Contractor to change Contractor's manner of doing business but may require redirection of efforts to fulfill this Contract.

F. Contractor may provide services to others during the same period Contractor provides service to County under this Contract.

G. Any third persons employed by Contractor shall be under Contractor's exclusive direction, supervision and control. Contractor shall determine all conditions of employment with respect to its employees including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment.

H. As an independent contractor, Contractor shall indemnify and hold County harmless from any claims that may be made against County based on any contention by a third party that an employer-employee relationship exists under this Contract.

I. Contractor, with full knowledge and understanding of the foregoing, freely, knowingly, willingly and voluntarily waives the right to assert any claim with respect to any right or benefit or term or condition of employment insofar as such claim may be related to or arise from compensation paid under this Contract.

## 12. RESPONSIBILITIES OF CONTRACTOR

A. The parties understand and agree that Contractor possesses the requisite skills necessary to perform the work under this Contract and County relies upon such skills. Contractor pledges to perform the work skillfully and professionally. County's acceptance of Contractor's work does not constitute a release of Contractor from professional responsibility.

B. Contractor verifies that Contractor has reviewed the scope of work to be performed under this Contract and agrees that in Contractor's professional judgment, the work can and shall be completed for costs within the maximum amount set forth in this Contract.

C. To fully comply with the terms and conditions of this Contract, Contractor shall:

(1) Establish and maintain a system of accounts for budgeted funds that complies with generally accepted accounting principles for government agencies;

(2) Document all costs by maintaining complete and accurate records of all financial transactions associated with this Contract, including, but not limited to, invoices and other official documentation that sufficiently support all charges under this Contract;

(3) Submit monthly reimbursement claims for expenditures that directly relate to this Contract;

(4) Be liable for repayment of any disallowed costs identified through quarterly reports, audits, monitoring or other sources; and

(5) Retain financial, programmatic, client data and other service records for 3 years from the date of the end of the contract award, for 3 years from the date of termination, or as required by applicable law or regulation, whichever is later.

D. Submit verification of non-profit status, if a requirement for the award of this Contract.

E. Obtain a bond at Contractor's sole expense in an amount sufficient to cover start-up funds if any were provided to Contractor from County.

F. Provide culturally and linguistically competent and age-appropriate service, to the extent feasible.

## 13. COMPLIANCE WITH LAW

A. Contractor shall comply with all federal, state and local laws and regulations applicable to

County of Solano

Contractor's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment.

B. To the extent federal funds are used in whole or in part to fund this Contract, Contractor specifically agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended and supplemented in Department of Labor regulations; the Copeland "Anti-Kickback" Act (18 U.S.C. §874) and its implementing regulations (29 C.F.R. part 3); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act (33 U.S.C. §1251); and the Energy Policy and Conservation Act (Pub. L. 94-165).

C. Contractor represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by County as set forth in 2 C.F.R. part 200, as currently enacted or as may be amended throughout the term of this Contract.

#### **14. CONFIDENTIALITY**

A. Contractor shall prevent unauthorized disclosure of confidential information including names and other client-identifying information, and mental health records (per Welfare & Institutions Code section 5328) except for statistical information not identifying a particular client receiving services under this Contract and use of confidential information shall be in accordance with Welfare & Institutions Code section 10850 and Division 19 of the California Department of Social Services Confidentiality, Fraud, Civil Rights, and State Hearings Manual of Policies and Procedures.

B. Contractor shall not use client specific information for any purpose other than carrying out Contractor's obligations under this Contract.

C. Contractor shall promptly transmit to County all requests for disclosure of confidential information.

D. Except as otherwise permitted by this Contract or authorized by law, Contractor shall not disclose any confidential information to anyone other than the State of California without prior written authorization from County.

E. For purposes of this section, identity shall include, but not be limited to, name, identifying number, symbol or other client identifying particulars, such as fingerprints, voice print or photograph. Client shall include individuals receiving services pursuant to this Contract.

#### **15. CONFLICT OF INTEREST**

A. Contractor represents that Contractor and/or Contractor's employees and/or their immediate families and/or Board of Directors and/or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, including separate contracts for the work to be performed hereunder, which conflicts with the rendering of services under this Contract. Contractor shall employ or retain no such person while rendering services under this Contract. Services rendered by Contractor's associates or employees shall not relieve Contractor from personal responsibility under this clause. Contractor agrees to file a Statement of Economic Interest if specified in the applicable County department's Conflict of Interest policy or if required by Cal. Code Regs., tit. 2 §§ 18219, 18700.3, 18704, or 18734.

B. Contractor has an affirmative duty to disclose to County in writing the name(s) of any person(s) who have an actual, potential or apparent conflict of interest.

#### **16. DRUG FREE WORKPLACE CERTIFICATION**

By signing this Contract, Contractor certifies to the County that Contractor is knowledgeable of Government Code section 8350 et seq., and shall abide by and implement its statutory requirements to provide a drug-free workplace.

#### **17. HEALTH AND SAFETY STANDARDS**

Contractor shall abide by all health and safety standards set forth by the State of California and/or

County of Solano

the County of Solano pursuant to the Injury and Illness Prevention Program. If applicable, Contractor must receive all health and safety information and training from County.

#### **18. CHILD/ADULT ABUSE**

If services pursuant to this Contract will be provided to children and/or elder adults, Contractor certifies that Contractor is knowledgeable of the Child Abuse and Neglect Reporting Act (Penal Code section 11164 et seq.) and the Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code section 15600 et seq.) requiring reporting of suspected abuse.

#### **19. INSPECTION**

Authorized representatives of County, the State of California and/or the federal government may inspect and/or audit Contractor's performance, place of business and/or records pertaining to this Contract.

#### **20. NONDISCRIMINATION**

A. In rendering services under this Contract, Contractor shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, gender identity, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, military status, or other protected status.

B. Further, Contractor shall not discriminate against its employees, which includes, but is not limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

#### **21. SUBCONTRACTOR AND ASSIGNMENT**

A. Services under this Contract are deemed to be personal services.

B. Subject to any required state or federal approval, Contractor shall not subcontract any work under this Contract without the prior written consent of the County's Contract Manager or assign this Contract or monies due without the prior written approval of the County's applicable Department Head or his or her designee and the County Administrator.

C. If County consents to the use of subcontractors, Contractor shall require and verify that its subcontractors (i) maintain insurance meeting all the requirements stated in Section 7 above; (ii) are not currently excluded, debarred, or otherwise ineligible to participate in a federally or state funded program; and (iii) satisfy all of Contractor's requirements under this Contract.

D. Assignment by Contractor of any monies due shall not constitute an assignment of the Contract.

#### **22. UNFORESEEN CIRCUMSTANCES**

Contractor is not responsible for any delay caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond Contractor's reasonable control, provided Contractor gives written notice to County of the cause of the delay within 10 days of the start of the delay.

#### **23. OWNERSHIP OF DOCUMENTS**

A. County shall be the owner of and shall be entitled to possession of any computations, plans, correspondence or other pertinent data and information gathered by or computed by Contractor prior to termination of this Contract by County or upon completion of the work pursuant to this Contract.

B. No material prepared in connection with the project shall be subject to copyright in the United States or in any other country.

County of Solano

## 24. NOTICE

A. Any notice necessary to the performance of this Contract shall be given in writing by personal delivery or by prepaid first-class mail addressed as stated on the first page of this Contract.

B. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

## 25. NONRENEWAL

Contractor acknowledges that there is no guarantee that County will renew Contractor's services under a new contract following expiration or termination of this Contract. Contractor waives all rights to notice of non-renewal of Contractor's services.

## 26. COUNTY'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

A. The County's obligation under this Contract is subject to the availability of authorized funds. The County may terminate the Contract, or any part of the Contract work, without prejudice to any right or remedy of the County, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Contract, or any subsequent amendment, the County may, upon written Notice to the Contractor, terminate this Contract in whole or in part.

B. Payment shall not exceed the amount allowable for appropriation by the Board of Supervisors. If the Contract is terminated for non-appropriation of funds:

(1) The County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and

(2) The Contractor shall be released from any obligation to provide further services pursuant to this Contract that are affected by the termination.

C. Funding for this Contract beyond the current appropriation year is conditional upon appropriation by the Board of Supervisors of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, this Contract will terminate at the close of the current appropriation year.

D. This Contract is void and unenforceable if all or parts of federal or state funds applicable to this Contract are not available to County. If applicable funding is reduced, County may either:

(1) Cancel this Contract; or,

(2) Offer a contract amendment reflecting the reduced funding.

## 27. CHANGES AND AMENDMENTS

A. County may request changes in Contractor's scope of services. Any mutually agreed upon changes, including any increase or decrease in the amount of Contractor's compensation, shall be effective when incorporated in written amendments to this Contract.

B. The party desiring the revision shall request amendments to the terms and conditions of this Contract in writing. Any adjustment to this Contract shall be effective only upon the parties' mutual execution of an amendment in writing.

C. No verbal agreements or conversations prior to execution of this Contract or requested amendment shall affect or modify any of the terms or conditions of this Contract unless reduced to writing according to the applicable provisions of this Contract.

## 28. CHOICE OF LAW

The parties have executed and delivered this Contract in the County of Solano, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Contract. Solano County shall be the venue for any action or proceeding that is not subject to the jurisdiction of a

County of Solano

federal court, in law or equity that may be brought in connection with this Contract. The United States District Court for the Eastern District of California shall be the venue for any action or proceeding that is subject to the jurisdiction of a federal court.

### **29. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

Contractor represents that it is knowledgeable of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. parts 160-64) regarding the protection of health information obtained, created, or exchanged as a result of this Contract and shall abide by and implement its statutory requirements. State law may preempt HIPAA and Contractor must follow the most restrictive law, or both if applicable.

### **30. BACKGROUND SCREENING**

A. If Contractor staff will have access to Personally Identifiable Information (“PII”) and/or Protected Health Information (“PHI”), Contractor agrees to conduct a background screening of Contractor staff prior to granting access.

B. The background screening shall be commensurate with the risk and magnitude of harm the employee could cause. A more thorough screening shall be done for those employees who are authorized to bypass significant technical and operational security controls. County requires LiveScan, Office of Inspector General List of Excluded Individuals/Entities (“LEIE”) and the General Services Administration (“GSA”) Systems for Award Management (“SAM”) screenings for all contractors and their workforce. In addition, contractors billing for Medi-Cal services must screen against the Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List.

C. Contractor shall retain each of its staff members’ background screening documentation for a period of three years following the conclusion of the employment relationship.

### **31. WAIVER**

Any failure of a party to assert any right under this Contract shall not constitute a waiver or a termination of that right, under this Contract or any of its provisions.

### **32. CONFLICTS IN THE CONTRACT DOCUMENTS**

The Contract documents are intended to be complementary and interpreted in harmony so as to avoid conflict. In the event of conflict in the Contract documents, the parties agree that the document providing the highest quality and level of service to the County shall supersede any inconsistent term in these documents.

### **33. FAITH BASED ORGANIZATIONS**

A. Contractor agrees and acknowledges that County may make funds available for programs or services affiliated with religious organizations under the following conditions: (a) the funds are made available on an equal basis as for programs or services affiliated with non-religious organizations; (b) the program funded does not have the substantial effect of supporting religious activities; (c) the funding is indirect, remote, or incidental to the religious purpose of the organization; and (d) the organization complies with the terms and conditions of this Contract.

B. Contractor agrees and acknowledges that County may not make funds available for programs or services affiliated with a religious organization (a) that has denied or continues to deny access to services on the basis of any protected class; (b) will use the funds for a religious purpose; (c) will use the funds for a program or service that subjects its participants to religious education.

C. Contractor agrees and acknowledges that all recipients of funding from County must: (a) comply with all legal requirements and restrictions imposed upon government-funded activities set forth in

County of Solano

Article IX, section 8 and Article XVI, section 5 of the California Constitution and in the First Amendment to the United States Constitution; and (b) segregate such funding from all funding used for religious purposes.

#### **34. PRICING**

Should Contractor, at any time during the term of this Contract, provide the same goods or services under similar quantity, terms and conditions to one or more counties in the State of California at prices below those set forth in this Contract, then the parties agree to amend this Contract so that such lower prices shall be extended immediately to County for all future services.

#### **35. USE OF PROVISIONS, TERMS, CONDITIONS AND PRICING BY OTHER PUBLIC AGENCIES**

Contractor and County agree that the terms of this Contract may be extended to any other public agency located in the State of California, as provided for in this section. Another public agency wishing to use the provisions, terms, and pricing of this Contract to contract for equipment and services comparable to those described in this Contract shall be responsible for entering into its own contract with Contractor, as well as providing for its own payment provisions, making all payments, and obtaining any certificates of insurance and bonds that may be required. County is not responsible for providing to any other public agency any documentation relating this Contract or its implementation. Any public agency that uses provisions, terms, or pricing of this Contract shall by virtue of doing so be deemed to indemnify and hold harmless County from all claims, demands, or causes of actions of every kind arising directly or indirectly with the use of this Contract. County makes no guarantee of usage by other users of this Contract nor shall the County incur any financial responsibility in connection with any contracts entered into by another public agency. Such other public agency shall accept sole responsibility for placing orders and making payments to Contractor.

#### **36. DEBARMENT AND SUSPENSION CERTIFICATION**

A. By signing this Contract, Contractor certifies to the County that its officers, directors and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in a federally funded program or to be awarded a contract, subcontract or grant by the State; (ii) have not been convicted of a criminal offense related to the provision of federally funded items or services nor has been previously excluded, debarred, or otherwise declared ineligible to participate in any federally funded programs or to be awarded a contract, subcontract or grant by the State, and (iii) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Contractor being excluded from participation in federally funded programs or from being awarded a contract, subcontract or grant by the State.

B. For purposes of this Contract, federally funded programs include, but are not limited to, any federal health program as defined in 42 USC § 1320a-7b(f) (the "Federal Healthcare Programs").

C. This certification shall be an ongoing certification during the term of this Contract and Contractor must immediately notify the County of any change in the status of the certification set forth in this section.

D. If services pursuant to this Contract involve federally funded programs, Contractor agrees to provide further certification of non-suspension with submission of each invoice. Failure to submit certification with invoices will result in a delay in County processing Contractor's payment.

#### **37. EXECUTION IN COUNTERPARTS**

This Contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile or electronic transmission (e.g., by e-mail delivery of a ".pdf" format data file), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with

County of Solano

the same force and effect as if such facsimile or electronic signature page were an original signature.

**38. LOCAL EMPLOYMENT POLICY**

Solano County desires, whenever possible, to hire qualified local residents to work on County projects. A local resident is defined as a person who resides in, or a business that is located in, Solano County. The County encourages an active outreach program on the part of its contractors, consultants and agents. When local projects require subcontractors, Contractor shall solicit proposals for qualified local residents where possible.

**39. ENTIRE CONTRACT**

This Contract, including any exhibits referenced, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by County or Contractor other than those contained in it.

County of Solano

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

**1. HIPAA CONTRACTOR AGREEMENT**

Contractor shall execute the form attached as Exhibit D-1.

SOLANO COUNTY  
HIPAA CONTRACTOR AGREEMENT

---

---

Orchard Software Corporation

---

---

This Exhibit shall constitute the Business Associate Agreement (the “Agreement”) between the County of Solano (the “County”) and the Contractor or grant recipient (the “Contractor”) and applies to the functions Contractor will perform on behalf of the County (collectively, “Services”), that is identified in Exhibit A, Scope of Work.

- A County wishes to disclose certain information to Contractor pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B County and its Contractor acknowledge that Contractor is subject to the Privacy and Security Rules (45 CFR parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH Act), in certain aspects of its operations performed on behalf of the County.
- C As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require County to enter into an Agreement containing specific requirements with Contractor 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 Agreement.

**I. DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR parts 160 and 164.

- 1. **Breach** means the same as defined under the HITECH Act [42 U.S.C. section 17921].
- 2. **Contractor** means the same as defined under the Privacy Rule, the Security rule, and the HITECH Act, including, but not limited to, 42 U.S.C. section 17938 and 45 C.F.R. § 160.103.
- 3. **Breach of the Security of the Information System** means the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by or on behalf of the County. Good faith acquisition of personal information by an employee or agent of the information holder for the purposes of the information holder is not a breach of the security of the system; provided, that the personal information is not used or subject to further unauthorized disclosure.
- 4. **Commercial Use** means obtaining protected health information with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the intent of this Agreement.

5. **Covered Entity means the same as defined** under the Privacy Rule and the Security rule, including, but not limited to, 45 C.F.R. § 160.103.
6. **Designated Record Set means the same as defined** in 45 C.F.R. § 164.501.
7. **Electronic Protected Health Information (ePHI) means the same as defined** in 45 C.F.R. § 160.103.
8. **Electronic Health Record means the same as defined** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. § 17921.
9. **Encryption** means the process using publicly known algorithms to convert plain text and other data into a form intended to protect the data from being able to be converted back to the original plain text by known technological means.
10. **Health Care Operations means the same as defined** in 45 C.F.R. § 164.501.
11. **Individual means the same as defined** in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
12. **Marketing means the same as defined** under 45 CFR § 164.501 and the act or process of promoting, selling, leasing or licensing any patient information or data for profit without the express written permission of County.
13. **Privacy Officer means the same as defined** in 45 C.F.R. § 164.530(a)(1). The Privacy Officer is the official designated by a County or Contractor to be responsible for compliance with HIPAA/HITECH regulations.
14. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.
15. **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. § 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. §§ 160.103 and 164.501].
16. **Required By Law means the same as defined** in 45 CFR § 164.103.
17. **Security Rule** means the HIPAA Regulation that is codified at 45 C.F.R. parts 160 and 164, subparts A and C.
18. **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.
19. **Security Event** means an immediately reportable subset of security incidents which incident would include:

- a. a suspected penetration of Contractor's information system of which the Contractor becomes aware of but for which it is not able to verify immediately upon becoming aware of the suspected incident that PHI was not accessed, stolen, used, disclosed, modified, or destroyed;
- b. any indication, evidence, or other security documentation that the Contractor's network resources, including, but not limited to, software, network routers, firewalls, database and application servers, intrusion detection systems or other security appliances, may have been damaged, modified, taken over by proxy, or otherwise compromised, for which Contractor cannot refute the indication of the time the Contractor became aware of such indication;
- c. a breach of the security of the Contractor's information system(s) by unauthorized acquisition, including, but not limited to, access to or use, disclosure, modification or destruction, of unencrypted computerized data and which incident materially compromises the security, confidentiality, or integrity of the PHI; and or,
- d. the unauthorized acquisition, including but not limited to access to or use, disclosure, modification or destruction, of unencrypted PHI or other confidential information of the County by an employee or authorized user of Contractor's system(s) which materially compromises the security, confidentiality, or integrity of PHI or other confidential information of the County.

If data acquired (including but not limited to access to or use, disclosure, modification or destruction of such data) is in encrypted format but the decryption key which would allow the decoding of the data is also taken, the parties shall treat the acquisition as a breach for purposes of determining appropriate response.

20. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160 and 164, subparts A and C.

21. **Unsecured PHI** means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. 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).

## II. OBLIGATIONS OF CONTRACTOR

1. Compliance with the Privacy Rule: Contractor agrees to fully comply with the requirements under the Privacy Rule applicable to "Business Associates" as defined in the Privacy Rule and not use or further disclose Protected Health Information other than as permitted or required by this agreement or as required by law.
2. Compliance with the Security Rule: Contractor agrees to fully comply with the requirements under the Security Rule applicable to "Business Associates" as defined in the Security Rule.
3. Compliance with the HITECH Act: Contractor hereby acknowledges and agrees it will comply with the HITECH provisions as proscribed in the HITECH Act.

## III. USES AND DISCLOSURES

Contractor shall not use Protected Health Information except for the purpose of performing Contractor's obligations under the Contract and as permitted by the Contract and this Agreement. Further, Contractor shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by County.

1. Contractor may use Protected Health Information:
  - a. For functions, activities, and services for or on the Covered Entities' behalf for purposes specified in the Contract and this Agreement.
  - b. As authorized for Contractor's management, administrative or legal responsibilities as a Contractor of the County. The uses and disclosures of PHI may not exceed the limitations applicable to the County;
  - c. As required by law.
  - d. To provide Data Aggregation services to the County as permitted by 45 CFR § 164.504(e)(2)(i)(B).
  - e. To report violations of law to appropriate Federal and State authorities, consistent with CFR § 164.502(j)(1).
2. Any use of Protected Health Information by Contractor, its agents, or subcontractors, other than those purposes of the Agreement, shall require the express written authorization by the County and a Business Associate Agreement or amendment as necessary.
3. Contractor shall not disclose Protected Health Information to a health plan for payment or health care operations if the patient has requested this restriction and has paid out of pocket in full for the health care item or service to which the Protected Health information relates.
4. Contractor shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of County and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by the County to Contractor for services provided pursuant to the Contract.
5. Contractor shall not use or disclose Protected Health Information for prohibited activities including, but not limited to, marketing or fundraising purposes.
6. Contractor agrees to adequately and properly maintain all Protected Health Information received from, or created, on behalf of County.
7. If Contractor discloses Protected Health Information to a third party, Contractor must obtain, prior to making any such disclosure, i) reasonable written assurances from such third party that such Protected Health Information will be held confidential as provided pursuant to this Agreement 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 Contractor of any breaches of confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach [42 U.S.C. section 17932; 45 C.F.R. §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

#### **IV. MINIMUM NECESSARY**

Contractor (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Health necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. section 17935(b); 45 C.F.R. § 164.514(d)(3)]. Contractor understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”

#### **V. APPROPRIATE SAFEGUARDS**

1. Contractor shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Health Information otherwise than as permitted by this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information in accordance with 45 C.F.R. §§ 164.308, 164.310, and 164.312. [45 C.F.R. § 164.504(e)(2)(ii)(B); 45 C.F.R. § 164.308(b)]. Contractor shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. § 164.316. [42 U.S.C. section 17931].
2. Contractor agrees to comply with Subpart 45 CFR part 164 with respect to Electronic Protected Health Information (ePHI). Contractor must secure all Electronic Protected Health Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable.
3. Contractor agrees that destruction of Protected Health Information on paper, film, or other hard copy media must involve either cross cut shredding or otherwise destroying the Protected Health Information so that it cannot be read or reconstructed.
4. Should any employee or subcontractor of Contractor have direct, authorized access to computer systems of the County that contain Protected Health Information, Contractor shall immediately notify County of any change of such personnel (e.g. employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for County to disable previously authorized access.

#### **VI. AGENT AND SUBCONTRACTOR’S OF CONTRACTOR**

1. Contractor shall ensure that any agents and subcontractors to whom it provides Protected Health Information, agree in writing to the same restrictions and conditions that apply to Contractor with respect to such PHI and implement the safeguards required with respect to Electronic PHI [45 C.F.R. § 164.504(e)(2)(ii)(D) and 45 C.F.R. § 164.308(b)].
2. Contractor shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. §§ 164.530(f) and 164.530(e)(I)).

#### **VII. ACCESS TO PROTECTED HEALTH INFORMATION**

1. If Contractor receives Protected Health Information from the County in a Designated Record Set, Contractor agrees to provide access to Protected Health Information in a Designated Record Set to the County in order to meet its requirements under 45 C.F.R. § 164.524.
2. Contractor shall make Protected Health Information maintained by Contractor or its agents or subcontractors in Designated Record Sets available to County for inspection and copying within five (5) days of a request by County to enable County to fulfill its obligations under state law, [Health and Safety Code section 123110] the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524 [45 C.F.R. § 164.504(e)(2)(ii)(E)]. If Contractor maintains an Electronic Health Record, Contractor shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. section 17935(e).

3. If Contractor receives a request from an Individual for a copy of the individual's Protected Health Information, and the Protected Health Information is in the sole possession of the Contractor, Contractor will provide the requested copies to the individual in a timely manner. If Contractor receives a request for Protected Health Information not in its possession and in the possession of the County, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Contractor shall promptly forward the request to the County. Contractor shall then assist County as necessary in responding to the request in a timely manner. If a Contractor provides copies of Protected Health Information to the individual, it may charge a reasonable fee for the copies as the regulations shall permit.
4. Contractor shall provide copies of HIPAA Privacy and Security Training records and HIPAA policies and procedures within five (5) calendar days upon request from the County.

#### **VIII. AMENDMENT OF PROTECTED HEALTH INFORMATION**

Upon receipt of notice from County, Contractor shall promptly amend or permit the County access to amend any portion of Protected Health Information in the designated record set which Contractor created for or received from the County so that the County may meet its amendment obligations under 45 CFR § 164.526. If any individual requests an amendment of Protected Information directly from Contractor or its agents or subcontractors, Contractor must notify the County in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Contractor or its agents or subcontractors shall be the responsibility of the County [45 C.F.R. § 164.504(e)(2)(i)(F)].

#### **IX. ACCOUNTING OF DISCLOSURES**

1. At the request of the County, and in the time and manner designed by the County, Contractor and its agents or subcontractors shall make available to the County, the information required to provide an accounting of disclosures to enable the County to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528, and the HITECH Act, including but not limited to 42 U.S.C. § 17935. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by the Contractor 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 Contractor maintains an electronic health record and is subject to this requirement.
2. 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 Health 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.
3. In the event that the request for an accounting is delivered directly to Contractor or its agents or subcontractors, Contractor shall forward within five (5) calendar days a written copy of the request to the County. It shall be the County's responsibility to prepare and deliver any such accounting requested. Contractor shall not disclose any Protected Information except as set forth in this Agreement [45 C.F.R. §§ 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this paragraph shall survive the termination of this Agreement.

#### **X. GOVERNMENTAL ACCESS TO RECORDS**

Contractor shall make its internal practices, books and records relating to its use and disclosure of the protected health information it creates for or receives from the County, available to the County and to the Secretary of the U.S. Department of Health and Human for purposes of determining Contractors compliance

with the Privacy rule [45 C.F.R. § 164.504(e)(2)(ii)(H)]. Contractor shall provide to the County a copy of any Protected Health Information that Contractor provides to the Secretary concurrently with providing such Protected Information to the Secretary.

## **XI. CERTIFICATION**

To the extent that the County determines that such examination is necessary to comply with the Contractor's legal obligations pursuant to HIPAA relating to certification of its security practices, County, or its authorized agents or contractors may, at the County's expense, examine Contractor's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to County the extent to which Contractor's security safeguards comply with HIPAA Regulations, the HITECH Act, or this Agreement.

## **XII. BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

1. In the case of a breach of unsecured Protected Health Information, Contractor shall comply with the applicable provisions of 42 U.S.C. § 17932 and 45 C.F.R. part 164, subpart D, including but not limited to 45 C.F.R. § 164.410.
2. Contractor agrees to notify County of any access, use or disclosure of Protected Health Information not permitted or provided for by this Agreement of which it becomes aware, including any breach as required in 45 C.F.R. § 164.410. or security incident immediately upon discovery by telephone at 707-784-3198 and [hss-compliance@solanocounty.com](mailto:hss-compliance@solanocounty.com) or through the online reporting portal at <https://solanocounty.cqs.symplr.com/Portal> and will include, to the extent possible, the identification of each Individual whose unsecured Protect Health Information has been, or is reasonably believed by the Contractor to have been accessed, acquired, used, or disclosed, a description of the Protected Health Information involved, the nature of the unauthorized access, use or disclosure, the date of the occurrence, and a description of any remedial action taken or proposed to be taken by Contractor. Contractor will also provide to County any other available information that the County requests.
3. A breach or unauthorized access, use or disclosure shall be treated as discovered by the Contractor on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Contractor or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Contractor.
4. Contractor shall mitigate, to the extent practicable, any harmful effect that results from a breach, security incident, or unauthorized access, use or disclosure of unsecured Protected Health Information by Contractor or its employees, officers, subcontractors, agents or representatives.
5. Following a breach, security incident, or any unauthorized access, use or disclosure of unsecured Protected Health Information, Contractor agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make all documentation available to the County.
6. Except as provided by law, Contractor agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the County's prior written consent. County hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice. When applicable law requires the breach to be reported to a federal or state agency or that notice be given to media outlets, Contractor shall cooperate with and coordinate with County to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

7. Contractor acknowledges that it is required to comply with the referenced rules and regulations and that Contractor (including its subcontractors) may be held liable and subject to penalties for failure to comply.
8. In meeting its obligations under this Agreement, it is understood that Contractor is not acting as the County's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Contractor is at all times acting an independent contractor in providing services pursuant to this Agreement and Exhibit A, Scope of Work.

### **XIII. TERMINATION OF AGREEMENT**

1. Upon termination of this Agreement for any reason, Contractor shall return or destroy, at County's sole discretion, all other Protected Health Information received from the County, or created or received by Contractor on behalf of the County.
2. Contractor will retain no copies of Protected Health Information in possession of subcontractors or agents of Contractor.
3. Contractor shall provide the County notification of the conditions that make return or destruction not feasible, in the event that Contractor determines that returning or destroying the PHI is not feasible. If the County agrees that the return of the Protected Health Information is not feasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further use and disclosures of such Protected Health Information for so long as the Contractor or any of its agents or subcontractor maintains such information.
4. Contractor agrees to amend this Exhibit as necessary to comply with any newly enacted or issued state or federal law, rule, regulation or policy, or any judicial or administrative decision affecting the use or disclosure of Protected Health Information.
5. Contractor agrees to retain records, minus any Protected Health Information required to be returned by the above section, for a period of at least 7 years following termination of the Agreement. The determining date for retention of records shall be the last date of encounter, transaction, event, or creation of the record.

### **XIV. QUALIFIED SERVICE ORGANIZATION**

To the extent that Contractor is also considered a Qualified Service Organization ("QSO"), with access to protected substance abuse treatment information, this Agreement shall be considered a Qualified Services Organization Agreement as required by 42 C.F.R. Part 2, and Contractor agrees to the following:

1. In receiving, storing, processing or otherwise dealing with any protected substance abuse information from County, Contractor is fully bound by the provisions of the federal regulations governing confidentiality of alcohol and drug abuse patient records, 42. C.F.R. Part 2.
2. If necessary, Contractor will resist in judicial proceedings any efforts to obtain access to protected substance abuse information, including patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment, except and unless access is expressly permitted under 42 C.F.R. Part 2. (See 42 C.F.R. § 2.12(c)(4).)

