

ClaimRemedi

SERVICES AGREEMENT

This **Services Agreement** (the "Agreement") is effective July 1, 2017, by and between eSolutions, Inc. ("ClaimRemedi"), a Kansas corporation, with its principal business address at 8215 W 108th Terrace Overland Park, Kansas 66214, and the party identified below.

Entity Name: Solano County "Customer"
State of Incorporation: California
Address of principal office: 275 Beck Avenue, MS 5-200, Fairfield, CA 94533
Authorized officer (name & title): Birgitta E. Corsello, County Administrator

General Terms and Conditions

1. Customer Subscription and Acknowledgements.

- a. Subject to the terms and conditions of this Agreement ClaimRemedi, grants to Customer a subscription to utilize ClaimRemedi services and support services as specified herein. This subscription is valid for use of ClaimRemedi services only at the physical site(s) owned or managed by or under the control of Customer and solely for transactions generated by Customer.
- b. ClaimRemedi reserves the right from time to time in its sole discretion, without any liability to Customer, to suspend, revise, modify or update any part of the ClaimRemedi service, provided, however, that ClaimRemedi shall provide Customer with reasonable notice of such occurrence.
- c. Customer agrees to pay for all ClaimRemedi services utilized by Customer at the rate(s) set forth in Exhibit "A" of this Agreement.
- d. Customer acknowledges that all ClaimRemedi services and documentation are proprietary to ClaimRemedi and that Customer acquires no rights of ownership by virtue of entering into this Agreement.
- e. Customer agrees and acknowledges that ClaimRemedi may use anonymous, de-identified (pursuant to the Federal HIPAA Privacy regulations) statistical data derived from the services provided under this Agreement to formulate certain statistical samplings and summaries. Customer agrees to be bound by and understands it is a covered entity (as defined under the Federal HPAA privacy regulations) and as the Business Associate Agreement attached hereto as Exhibit "B" and incorporated herein by reference. Customer agrees to comply with all applicable Federal and State laws and regulations related to the confidentiality of protected health information. ClaimRemedi will refrain from any use that violates Federal or State law.
- f. Customer agrees and acknowledges that ClaimRemedi reserves the right to verify any Customer claims or transactions for accuracy and completeness. Any transactions that or claims that fail to satisfy the required technical specifications shall be rejected. Customer also acknowledges that payer's may also reject and/or append any transaction that fails to meet the criteria employed by the payer for such transaction.

g. The initial ninety (90) days shall be designated as the Implementation Period. This period shall serve as the time in which Company and ClaimRemedi work together to implement all services outlined in the Exhibit A attached hereto. If applicable any set-up or activation fees shall be due at the beginning of the Implementation Period and are non-refundable. Unless a service has been activated prior to the end of the Implementation Period all service fees will begin at the completion of this initial ninety (90) days.

2. Duties of ClaimRemedi.

- a. ClaimRemedi shall supply Customer with access to all agreed upon services and/or documentation.
- b. ClaimRemedi shall provide Customer with routine technical support. ClaimRemedi reserves the right to change the hours and availability of such technical support upon reasonable notice to Customer.
- c. ClaimRemedi, may from time to time offer to provide for an additional fee, other products, features and services available to the Customer.
- d. ClaimRemedi, a business associate, (as defined under the Federal HIPAA privacy regulations) agrees to comply with all applicable Federal and State laws and regulations related to the confidentiality of protected health information.

3. Duties of Customer.

- a. Customer shall pay to ClaimRemedi the fees and charges specified herein. Such payment shall be timely and be paid in accordance with the terms of this Agreement.
- b. Customer hereby authorizes ClaimRemedi and or its agents or contractors to submit claim information on Customer's behalf to the appropriate entities as per the terms and conditions of this Agreement.
- c. All Transactions submitted by Customer shall be submitted through the user interface provided by ClaimRemedi. Customer acknowledges ClaimRemedi's right to modify, enhance or otherwise upgrade such interface.
- d. Customer shall utilize such security devices, mechanisms, processes and technology as may be specified necessary to maintain the confidentiality, integrity and availability of all data and/or protected health information.
- e. Customer shall comply with any and all applicable procedures, rules and regulations that ClaimRemedi, its agents, payers or applicable law may require for transmission of transactions to a payer's system. In addition, Customer agrees to maintain transaction data transmitted via ClaimRemedi and afford Payers access thereto in accordance with procedures then required by applicable law and industry.
- f. Customer shall maintain claims data, batch or single claim, transmitted to a payer until such time as a final claim determination status is made for each individual claim within the batch transaction.
- g. Customer shall guarantee that all transactions submitted through ClaimRemedi by Customer will be on behalf of providers, physicians or suppliers that have executed appropriate written authorizations for such submission and Customer shall maintain such authorization during the term of this Agreement and for two years thereafter. Copies shall be furnished to ClaimRemedi upon request. Customer shall provide ClaimRemedi with advance prompt notice of any changes regarding providers, physicians or suppliers whose transactions are submitted by Customer through the ClaimRemedi Services, including but not limited to name and address changes and/or any change in unique identifiers.



- h. Customer shall be responsible for arranging, maintaining and installing all external systems, devices, and hardware/software needed to create, maintain and utilize ClaimRemedi services. Customer shall inform ClaimRemedi of the proposed connection arrangements prior to their commencement. While ClaimRemedi has no specific preference with regard to external connection arrangements, all external connection and all connectivity devices should be discussed, for purposes of compatibility, with ClaimRemedi in advance of the Customer contracting with any vendor supplying the aforementioned services. ClaimRemedi shall not be responsible for costs related to arranging, maintaining and installing all external systems and devices needed to connect to the server.
- i. Customer warrants and represents that it will not use the ClaimRemedi Services for any fraudulent, illegal or unlawful purpose(s). Further, Customer shall comply with all applicable Federal, State and local laws and regulations related to the performance of this agreement.
- j. Customer agrees that neither ClaimRemedi or its agents or contractors shall have any responsibility for determining the accuracy of any claim submitted, for settling disputed claims, for settling disputed payments, for settling disagreements or disputes between a payer and Customer, for any liability for the acts of a payer and/or Customer that violated any Federal, state or local laws and regulations and/or guidelines, or for any liability foreseeable or otherwise occurring beyond the transmission of data.
- k. Customer agrees to indemnify ClaimRemedi and its agents or contractors from any loss, damage or expense asserted against such party related to Customer's use of the services specified in this Agreement or information transmitted by the Customer under the general terms of this Agreement.
- l. It is the Customer's responsibility to promptly report any performance related problems to ClaimRemedi along with a sufficient description of such problem so as to allow ClaimRemedi the opportunity to correct such problem.
- m. Under no circumstance may Customer reverse engineer, copy, reproduce or modify any ClaimRemedi service, process or manual.

4. Fees.

- a. Customer agrees to pay ClaimRemedi in accordance with the fees attached hereto as Exhibit "A" entitled Services & Fee Schedule. In the event Company subscribes to additional services after the effective date of this Agreement, ClaimRemedi will provide Company with a revised Exhibit A, or entirely new Agreement, which will outline the fees associated with each active service. Upon execution of the new Agreement, Exhibit A, or payment of fees associated with the newest services, the cancellation term for all services shall be governed by Section 1, "Term and Cancellation", of this Agreement. Any service added after the effective date of this agreement shall have an initial term equal to the initial term of this agreement. Customer agrees to pay all ClaimRemedi reasonable and necessary out-of-pocket and travel expenses (if any) associated with activation and Customer training.
- b. Customer shall pay to ClaimRemedi any and all fees due and owing within fifteen (45) days of invoicing. Customer agrees and acknowledges that the fees due and owing under this Agreement are directly related to certain information (providers, sites, etc.) provided to ClaimRemedi. ClaimRemedi reserves the right to perform routine audits to verify that provided information are consistent with the processed transaction counts, and adjust billing in accordance to findings. Customer failure to comply with this section shall be considered a material breach of the Agreement.
- c. Fees (whether flat rate or per transaction) shall be due and owing upon transmission to applicable payer. Such fee shall be due and owing regardless of the acceptance or rejection of any transmitted claims. In the event that Customer's payment is not honored, either credit card, electronic funds transfer and/or check,



ClaimRemedi reserves the right charge Customer a non-sufficient funds fee in such amount to reimburse ClaimRemedi for its cost related to the specific transaction.

- d. Technical support, other than routine technical support, customization, staff training shall be subject to ClaimRemedi staff availability. Such services, including travel costs, shall be billed at a rate provided to the Customer in writing prior to the commencements of such services.
- e. In the event that any of the services provided under this Agreement are subject to any Federal, State or local tax, Customer agrees to timely pay such tax.
- f. Customer agrees and acknowledges that the fees due and owing under this agreement are subject to increase in the event of an increased communications costs/fees and/or another other access fees imposed upon ClaimRemedi. Customer shall be notified in writing of such increases thirty (30) days prior to the increase.
- g. Customer agrees to maintain/upgrade its system in order to facilitate the processing of real-time transactions, failure to do so, after written notice from ClaimRemedi, may result in the assessment of additional costs.
- h. **Pass-Through Fees:** Notwithstanding any other provision of this Agreement, ClaimRemedi shall have the right to increase its fees paid by Customer to offset any increases in rates, charges or other costs from third-party suppliers and state or federal governmental entities, including without limitation Medicaid or Medicare administrators, communications common carriers and/or network timesharing suppliers, or to offset any increase in cost of providing services hereunder resulting from rules, regulations and operating procedures of any financial institution, federal, state or local agency or regulatory authority. These fees are not subject to approval by ClaimRemedi or Customer. ClaimRemedi will provide Customer with thirty (30) day notice, to be provided in either email or written form, before any fee increase related to this subsection

5. Representations and Warranties.

ClaimRemedi represents and warrants that ClaimRemedi shall perform in a reasonable manner in accordance with the ClaimRemedi Documentation. In the event that a documented and reproducible flaw in the ClaimRemedi process inconsistent with this warranty is discovered, ClaimRemedi's sole responsibility shall be to use all reasonable efforts to correct such flaw in a timely manner. The above warranty does not apply to any media or documentation which has been subjected to damage or abuse or to any claim resulting from a breach of Customer's obligations hereunder or from changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the applicable ClaimRemedi service or from a breach by Customer of any of its obligations hereunder.

6. Limitation of Liability.

- a. CLAIMREMEDI'S ONLY WARRANTIES ARE THOSE SET FORTH IN SECTION 5 OF THIS AGREEMENT AND CLAIMREMEDI EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. IN NO EVENT SHALL CLAIMREMEDI BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES EVEN IF CLAIMREMEDI HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. CLAIMREMEDI'S LIABILITY TO CUSTOMER AND ITS PROVIDERS UNDER THIS AGREEMENT OR WITH RESPECT TO SERVICES PERFORMED OR MATERIALS FURNISHED HEREUNDER (WHETHER UNDER CONTRACT, TORT, OR ANY OTHER THEORY OF LAW) SHALL IN NO EVENT EXCEED THE AVERAGE AMOUNT PAID BY CUSTOMER TO CLAIMREMEDI PER MONTH DURING THE TWELVE MONTHS PRECEDING SUCH CLAIM. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING OF THE SUBSCRIPTION HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.



- b. ClaimRemedi will not be responsible for delays or failures in performance resulting from acts or events beyond its control, including but not limited to, acts of nature, governmental actions, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruption of power supply or communications or natural disasters, provided ClaimRemedi takes reasonable efforts to minimize the effect of such acts or events.
- c. Without limiting and notwithstanding the foregoing, in the event that any information received from Customer and transmitted to a Payer through ClaimRemedi is not accurate as a result of ClaimRemedi's failure to perform in accordance with the terms of this Agreement, and such inaccuracy results in substantial damage to Customer, then ClaimRemedi's sole obligation and liability to Customer for such event shall be to re-file the Transaction at no additional charge to Customer until the Transaction is properly processed. Other than as expressly set forth in this Section 6, ClaimRemedi shall not be liable for any actual monetary loss resulting from the event or from acts or omissions of Customer, the Customer's employees or agents or any third party in reliance on data transmitted through ClaimRemedi whether transmitted accurately or inaccurately and Customer further agrees that ClaimRemedi shall not be liable in any way for any inaccuracy which can be attributed to or demonstrated as resulting from errors or omissions or negligent or other wrongful acts of any employee of Customer or of any of Customer's affiliates. Any claim under this Section 6 must be asserted in writing within thirty (30) days after the transmission of the inaccurate information on which such claim is based. Customer agrees to promptly supply to ClaimRemedi documentation reasonably requested by ClaimRemedi to support any claim of Customer under this Section 6.

7. **Confidentiality.**

During or any time after termination of this Agreement, Customer shall not, without authorization of ClaimRemedi, disclose to or use for the benefit of any person, corporation, or other entity, or itself, any files, proprietary trade secrets, or other confidential information concerning the business clients, patients, methods, operations, financing, employees, products or marketing of ClaimRemedi. Trade secrets and confidential information shall mean information not generally known by Customer except as a consequence of this Agreement. Customer acknowledges that all files, client records, lists, books, records, literature, products, and other materials owned by ClaimRemedi or used by it in connection with the conduct of its business or the conduct of the business of Agent shall at all times remain the property of ClaimRemedi. Customer acknowledges that there are Federal and State laws relating to the retention, maintenance and confidentiality of medical records.

8. **Term.**

The term of this Agreement shall be for two (2) years from July 1, 2017 to June 30, 2019 and shall automatically renew for additional one (1) year terms after expiration unless ninety (90) days prior written notice is provided from either party expressing the intent not to continue this Agreement.

- a. In the event of a material breach of any of the provisions of this Agreement, the non-breaching party should provide the breaching party with fifteen (15) days written notice to cure said breach. If the breaching party does not cure, or has not taken affirmative actions to cure the breach, the non-breaching party may by written notice, terminate the Agreement for cause. This section shall not apply to any breach related to the payments due under this Agreement. A breach for failure to pay and or non-sufficient funds must be cured within fifteen (15) days of written notice.

9. **Waiver.**

The waiver by ClaimRemedi of the breach of any provision of this Agreement by the Customer shall not operate or be construed as a waiver of any subsequent breach by Customer.



10. Notices.

Any notices permitted or required under this Agreement shall be deemed given upon the date of personal delivery or two business days after the date of deposit in the United States mail, postage fully prepaid, return receipt requested, addressed to ClaimRemedi at:

eSolutions, Inc.
Attn: Administration
8215 W. 108th Terrace
Overland Park, KS 66210

Addressed to the Customer at:
Solano County Family Health
Services
Attn: FHS Administrator
2201 Courage Drive
Fairfield, CA 94533

or at any other address as any party may, from time to time, designate by notice given in compliance with this Section.

11. Law Governing.

This agreement shall be construed and interpreted in accordance with the laws of the state of Kansas. In the event of any dispute concerning this Agreement, suit may be brought only in a court of competent jurisdiction in the state of Kansas.

12. Titles and Captions.

All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor effect the interpretation of this Agreement.

13. Entire Agreement.

This Agreement with attached Exhibits "A" and "B" contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement may be subsequently modified only by a writing signed by the parties to this Agreement, except as may be otherwise expressly provided in this Agreement.

14. Computation of Time.

In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.



15. Pronouns and Plurals.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

16. Presumption.

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

17. Further Action.

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

18. Savings Clause.

If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

19. Execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Customer

ClaimRemedi, Inc.

Signature

Signature



Print Name

Birgitta E. Corsello

Gene Creach

Print Title

County Administrator

President and CEO

Date

March 13, 2018

EXHIBIT A

SERVICES & FEE SCHEDULE

ClaimRemedi Base Services

Product Description	Fee Schedule	
	<u>Set-up Fee</u>	<u>Monthly Fee</u>
<input checked="" type="checkbox"/> Complete Claim Lifecycle Management Service	Waived	\$75.00 per FTE
• Electronic Claims Submission • Claim scrubbing • On-line editing • Claim history/status, response reporting • 835 ERA processing • Analytics package • Eligibility services, including batch • Enhanced payer connectivity		
<u>37</u> Minimum FTE Count		

Upon submission of a Solano County vendor claim and invoice by ClaimRemedi, and upon review and approval of County's representative, Customer will pay ClaimRemedi monthly in arrears for fees and expenses incurred the prior month, or upon demonstrated completion of deliverables, as applicable, up to the maximum amount provided for on the Standard Contract. Each invoice must specify services rendered, to whom, date of service and the accrued charges. ClaimRemedi must document all expenses submitted to Customer for payment under this Agreement by maintaining complete and accurate records of all financial transactions related to the services performed under this Agreement including, but not limited to, invoices, receipts, time sheets, itemized cost lists, and other official documentation that sufficiently support all charges under this Agreement.



Additional Services

Please mark if these services will be used:

Product	Description / Pricing
Patient Statements	<p>\$0.67* first page, \$0.15 per additional page \$0.01 Color Paper / Ink per Page \$0.15 Undeliverable as addressed \$0.50 NCOALink (address correction)</p>
	<p>Minimum Monthly Fee: \$30</p>
Online ePayment Services**	<p>ePay – Online payments made patient to practice</p>
	<p>Fee Schedule Visa/MC/Disc: 2.86% + \$0.19/transaction AMEX & e-check: 2.86% + \$0.39/transaction</p>
Worker's Compensation Claims	<p>\$0.55* first page, \$.25 per additional page</p>
	<p>Minimum Monthly Fee: \$30</p>
EOB Max	<p>\$0.45 per claim</p>
	<p>Minimum Monthly Fee: \$30</p>
X Medicare Navigator	<p>Set-up Fee: \$150 Monthly Fee: \$50 for the first user, \$45 for each additional user</p>
	<p>Provides access to the Medicare FISS/DDE systems</p>
	<p>Please indicate the number of user accounts: <u>2</u></p>
Print to Paper	<p>\$0.45* per transaction</p>

Pricing Valid Through: July 1, 2018

** Pricing may vary due to postal rates*

****Available only if patient statements are used. If under \$1900 per month in total payments, a \$25 fee will be assessed. Return check fee for non-sufficient funds will be \$4 per check. Bank charge back will have a \$15 fee. Annual interchange or assessment increases by Visa/MasterCard or Discover may affect these rates. Rates and acceptance are subject to underwriting.**

Other Notes:

1) FTE Definition
a. For auditing purposes, ClaimRemedi equates 1 FTE to 400 claims and/or 250 Eligibility transactions per month.

Effective Date

This Exhibit A replaces any previous Exhibit A and is effective: July 1, 2017. I hereby accept this Exhibit:

Signature _____ **Date** _____

Birgitta E. Corsello
Print name

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is an Agreement between eSolutions, Inc. ("Business Associate") and Solano County ("Covered Entity") (collectively the "Parties").

I. INTRODUCTION

- A. **WHEREAS**, Business Associate performs, for or on behalf of Covered Entity, certain services (the "Services"); and
- B. **WHEREAS**, in performing the Services, Business Associate will receive, create, or access certain Protected Health Information of Covered Entity, and, accordingly, is a "Business Associate" as defined in the Privacy Rule; and
- C. **WHEREAS**, the Parties desire to enter into this Agreement to comply with the provisions in the Privacy Rule requiring a Business Associate to provide adequate assurances to a Covered Entity with respect to the confidentiality of PHI.
- D. **NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

II. DEFINITIONS

- A. "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR 160.103.
- B. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 CFR 160.103.
- C. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR 164.501.
- D. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information," at 45 CFR 160 .103.
- E. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
- F. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.
- G. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.
- H. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).



- I. "Minimum Necessary" shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b)
- J. "Privacy Rule" means the "Standards for Privacy of Individually Identifiable Health Information," at 45 CFR parts 160 and 164, subparts A and E, as promulgated pursuant to HIPAA.
- K. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103.
- L. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- M. "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his designee.
- N. "Security Rule" means the "Standards for the Security of Electronic Protected Health Information," at 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.

III. AGREEMENTS

A. Obligations of Business Associate.

- 1. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to a Covered Entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.
- 2. **Uses and Disclosures.** Business Associate shall not use or further disclose PHI other than (a) as permitted or required by this Agreement, (b) as permitted or required by the Privacy Rule, (c) as Required by Law, (d) in a manner that would be permissible if used or disclosed by Covered Entity, or (e) in a manner that would not violate the Privacy Rule or other applicable federal or state law or regulation. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).
- 3. **Minimum Necessary Standard.** Business Associate shall use and disclose PHI in a manner minimally necessary to accomplish the intended purpose of the use or disclosure. Business Associate shall be responsible for making minimum necessary determinations.



4. **Security.** Business Associate agrees to (a) implement safeguards in accordance with the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, (b) ensure that any agent, including subcontractor, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards in accordance with the Security Rule to protect the PHI, and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.
5. **Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:
 - (a) a brief description of what happened, including the date of the breach and the date of the discovery;
 - (b) the name(s) of the individual(s) whose PHI was used or disclosed;
 - (c) the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made;
 - (d) description of the types of unsecured PHI that were disclosed; and
 - (e) the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.
6. **Reporting.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for under Section III.A.2 of this Agreement of which Business Associate becomes aware. Additionally, Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect of a use or disclosure of PHI of which it becomes aware that is in violation of the requirements of Section III.A.2 of this Agreement.
7. **Mitigation of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by Business Associate's violation of the requirements of this Agreement or its failure to properly secure PHI in accordance with the guidelines published by the Department of Health and Human Services.
8. **Agents and Subcontractors.** Business Associate shall ensure that any subcontractors or agents to whom it provides PHI that has been created or received by Business Associate from or on behalf of Covered Entity agrees to the same restrictions and conditions with respect to such PHI as are applicable to Business Associate as set forth herein. Should Business Associate, at its sole discretion, enter into a written contract with such subcontractors or agents to assure that such subcontractors or agents abide by the same restrictions and conditions that apply to Business Associate with regard to PHI, Business Associate shall, upon request, provide a copy of such contract(s) to Covered Entity.

9. **Requests for Information or Access.** Business Associate shall timely forward to Covered Entity any requests it receives from individuals seeking access to or copies of their PHI.
10. **Requests to Amend.** Business Associate shall timely forward to Covered Entity any requests it receives from individuals seeking to amend their PHI.
11. **Requests for Accountings.** Business Associate shall timely forward to Covered Entity any request it receives from individuals requesting an accounting of the disclosures of their PHI.
12. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary and to Covered Entity for purposes of determining Covered Entity's compliance with HIPAA, the Privacy Rule, and other applicable federal and/or state law. Business Associate shall notify Covered Entity immediately of any such requests and shall provide Covered Entity with a copy of the request and any documents or information provided in response to such requests.
13. **Return of PHI Upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form. Business Associate shall retain no copies of such PHI. Within 30 days of termination and upon request of Covered Entity, Business Associate shall provide a written certification of the return and/or destruction of the PHI. If the return or destruction of such PHI by Business Associate is not feasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any further use or disclosure of the PHI to those purposes that make its return or destruction infeasible. This provision shall survive the termination of this Agreement.
14. **Prohibition against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of an individual; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

B. **Additional Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions, and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere in this Agreement, Business Associate may use and disclose PHI in connection with its performance of services for Covered Entity. In addition, Business Associate may use PHI for the following purposes:

1. As necessary for data aggregation purposes relating to the health care operations of Covered Entity,
2. As necessary for data aggregation purposes of Business Associate, but only if the PHI is de-identified pursuant to 45 CFR 164.514,
3. For the proper internal management and administration of Business Associate,
4. To carry out the legal responsibilities of Business Associate,



For purposes (3) and (4) above, Business Associate may use or disclose PHI to third parties only if the disclosure is Required by Law, Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person to whom the disclosure is made is obligated to notify Business Associate of any instances of which that person is or becomes aware in which the confidentiality of the information has been breached.

C. **Obligations of Covered Entity.**

1. **Comply With the Privacy Rule.** Covered Entity shall comply with all the obligations imposed on Covered Entities under the Privacy Rule with respect to the permitted and required uses and disclosures of PHI.
2. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices, as well as any changes made to such Notice from time to time.
3. **Communication of Restrictions on Uses and Disclosures.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to.
4. **Limitation on Plan Requests of Business Associate.** Except to the extent permitted under Section III.B above, Covered Entity shall not ask Business Associate to use or disclose PHI in a manner that would not otherwise be permitted under the Privacy Rule if done by Covered Entity.

D. **Termination.** If either party knows or discovers a pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Agreement or under applicable federal standards, the discovering party agrees to immediately notify the other party in writing as to the nature and extent of such breach, and shall provide the other party a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than five (5) business days. Notwithstanding the foregoing, should the discovering party determine that the breach is incurable, or that the other party has repeatedly engaged in such impermissible use or disclosure despite prior notice, the discovering party must terminate this Agreement, if feasible, upon written notice to the breaching party, without damages or liability thereto; or, if termination is not feasible, report the problem to the Secretary.

E. **Security.** The Parties shall work together in good faith to cooperate with each other's current and future security policies and procedures to ensure the integrity, confidentiality, and availability of PHI in a manner that complies with HIPAA and the Security Rule, as amended from time to time.

F. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Agreement and the Privacy Rule.



G. **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of Covered Entity concerning its business affairs, property, products, operations, computer systems, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform the Services as required by this Agreement.

Likewise, Covered Entity may receive, create, or have access to confidential and/or proprietary information of Business Associate concerning its business affairs, property, operations, computer systems, and strategies. Covered Entity agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform its obligations as required by this Agreement.

H. **Amendment.** Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the State or the United States relating to any such law, or the publication of any interpretative policy or opinion of any government agency charged with the enforcement of any such law or regulation, Business Associate, by written notice to Covered Entity, may amend this Agreement in such manner as Business Associate determines necessary to comply with such law or regulation, and Covered Entity agrees to be bound by such amendment, unless within thirty (30) days of Covered Entity's receipt of notice of such amendment Covered Entity notifies Business Associate that it rejects such amendment. Upon receipt of such notice of rejection, Business Associate may terminate the Agreement immediately upon written notice to Covered Entity.

I. **Binding Effect.** Except as otherwise provided herein, the terms and conditions of the Agreement shall remain in full force and effect. Additionally, to the extent that Business Associate retains PHI, the terms and conditions of this Agreement shall remain in full force and effect following termination.

J. **Indemnification by Covered Entity.** Covered Entity shall indemnify, defend, and hold harmless Business Associate, its board of directors, officers, members, agents, employees, subcontractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Business Associate as a result of, or that are proximately caused by, (1) Covered Entity's breach of the terms of this agreement or; (2) Covered Entity's violation of HIPAA and any amendments thereto.

Business Associate shall provide prompt written notice of relevant information concerning the Claims to Covered Entity. Business Associate shall provide such reasonable assistance (at Covered Entity's expense) as may reasonably be requested by Covered Entity in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Covered Entity hereunder shall not extend to Claims attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of Business Associate.

K. **Indemnification by Business Associate.** Business Associate hereby agrees to indemnify, defend, and hold harmless Covered Entity, its board of directors, officers, members, agents, employees, subcontractors, and personnel (the "Indemnities") from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by the Indemnities as a result of, or that are proximately caused by, (1) Business Associate's breach of this Agreement; or (2) Business Associate's violation of HIPAA or any amendments thereto.

Covered Entity shall provide prompt written notice of relevant information concerning the Claims to Business Associate. Covered Entity shall provide such reasonable assistance (at Business Associate's expense), as may reasonably be requested by Business Associate, in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Business Associate hereunder shall not extend to Claims attributable solely to the negligence, gross negligence, intentional misconduct, or willful malfeasance of Covered Entity.

L. **Counterparts.** This Agreement may be executed in the original or by facsimile or other electronic means in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the above date.

eSolutions, Inc.

Signature:



Covered Entity: SOLANO COUNTY

Signature:

Print Name: Gene Creach

Print Name: Birgitta E. Corsello

Title: President and CEO

Title: County Administrator

Date: March 13, 2018

Date: