

Agreement between San Benito County and Kings View Corporation for Electronic Health Record Information System and All Pay Sources Billing Services

This Agreement is made and entered into on the date of signature, by and between KINGS VIEW CORPORATION, a California not-for-profit corporation, hereinafter referred to as "CONTRACTOR", and the COUNTY OF SAN BENITO, a political subdivision of the State of California, hereinafter referred to as "COUNTY".

RECITALS

- A. CONTRACTOR is a California not-for-profit corporation and provides computerized management information services and support, other management consulting services and assistance with billing of all Pay Sources.
- B. COUNTY desires to increase access to Behavioral Health management information services in an efficient and cost effective manner and, therefore, desires to contract with CONTRACTOR, and CONTRACTOR desires to provide such services to COUNTY, pursuant to the terms and subject to the conditions contained herein.

AGREEMENT

NOW, THEREFORE, in view of the foregoing and for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. PURPOSE.

COUNTY desires to procure management information services ("MIS") and assistance with billing of all Pay Sources from CONTRACTOR as described in Exhibit "A" – Scope of Services, attached hereto and incorporated by reference herein, and CONTRACTOR agrees to provide the services set forth in Exhibit "A" – Scope of Services for the compensation and on the terms and conditions set forth herein.

2. TERM.

- a. This Agreement shall become effective upon the date of signature and shall continue in full force and effect for one (1) year from this Effective Date, unless sooner terminated in accordance with the Section entitled "TERMINATION", as set forth elsewhere in this Agreement. The term of this Agreement shall automatically renew two (2) times for successive one-year terms commencing from the expiration date of the first (1) year

term and commencing on each anniversary thereof unless written notice of non-renewal or request for contract re-negotiation is given by either party to the other at least ninety (90) days prior to the commencement date of the new (1) year term. The compounded term of the Agreement including all automatic renewals shall not exceed three (3) years. Automatic renewal costs for CONTRACTOR and Cerner Software support will be based on initial costs as outlined in Section 3 titled COMPENSATION.

- b. **Non-appropriation of funds.** It is mutually agreed that if, for the current fiscal year and/or any subsequent fiscal years covered under this contract, insufficient funds are appropriated to make the payments called for by this contract, this contract shall be of no further force or effect. In this event, the County shall have no liability to pay any further funds whatsoever to Contractor or furnish any other consideration under this contract and Contractor shall not be obligated to perform any further services under this contract. If funding for any fiscal year is reduced or deleted for the purposes of this program, the County shall have the option to either cancel this contract with no further liability incurring to the County, or offer an amendment to Contractor to reflect the reduced amount available to the program. The parties acknowledge and agree that the limitations set forth above are required by Article XVI, section 18 of the California Constitution. Contractor acknowledges and agrees that said Article XVI, section 18 of the California Constitution supersedes any conflicting law, rule, regulation or statute.
3. **COMPENSATION.** COUNTY agrees to pay CONTRACTOR for the services provided by CONTRACTOR hereunder the amounts as set forth in Exhibit B, Compensation, attached hereto and incorporated by reference herein. Payment of 1/12th the total for Annual Services amount will be due and payment on the first day of each month commencing with the Effective Date of the contract. The amount of compensation for each subsequent year under this Agreement shall be increased over the prior year by 2.5% per year based on the prior year total contract price until a new contract is negotiated.

CONTRACTOR will provide COUNTY with documentation from Cerner Software supporting annual Version Rights and Support costs as shown in Exhibit C. Payment for a percentage of the total for Cerner Support Agreement plus applicable sales tax will be due and payable on the first day of each month commencing with the Effective Date of the contract. Monthly amount will be based on supported documentation provided by Cerner Software invoice. It is understood by COUNTY and CONTRACTOR Cerner Software's Version Rights and Support is a pass through which CONTRACTOR pays to Cerner Software with no markup. Cerner Software Version Rights and Supports can increase each year. CONTRACTOR will submit to COUNTY the annual software rights costs for review as provided by Cerner Software. The annual fee for Database

Driver Subscription 28 concurrent users and Visual Data Flex 28 concurrent users as detailed in Exhibit C section b – c will be invoiced separately with supporting documentation from Cerner Software. The annual renewal will range from 0% to 5% and capped at a maximum of 5% increase of the previous year's costs plus any applicable sales tax.

4. **INSURANCE.**

- a. CONTRACTOR shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the COUNTY as may be required by the COUNTY. County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Contractor's insurance shall be primary insurance as respects the County, its officers, officials, employees, representatives and agents, and any insurance or self-insurance maintained by the County, its officers, officials, employees, representatives and agents shall be in excess of the Contractor's insurance and shall not contribute with it. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the COUNTY for all of the following insurance policies:
 - i. **Worker's Compensation** - in compliance with the laws and statutes of the State of California.
 - ii. **General Liability** - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall indicate on the certificate of insurance the preceding coverage's and indicate the policy aggregate limit applying to premises and operations and broad form contractual.
 - iii. **Automobile Liability** - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall cover bodily injury and property damage, owned automobiles, and non-owned automobiles.
 - iv. CONTRACTOR'S insurance policy(ies) shall be placed with insurer(s) with acceptable Best's rating of A:VII.
- b. COUNTY agrees to furnish CONTRACTOR with a copy of an Endorsement to COUNTY'S liability insurance policy naming CONTRACTOR as an additional insured, in the amount at least

\$1,000,000 combined single limit coverage containing a prior written notice feature to provide thirty (30) days notice to CONTRACTOR.

5. **RESPONSIBILITIES OF COUNTY.** During the term of this Agreement, COUNTY shall have the obligation to:

- a. Cooperate with CONTRACTOR. COUNTY shall cooperate with CONTRACTOR by timely and accurately providing all information required by CONTRACTOR for the delivery of the MIS and billing of all Pay Sources Services pursuant to this Agreement.
- b. COUNTY, at its sole cost and expense, shall provide all equipment necessary for the installation, operation and maintenance of on-site information management and control, including communications equipment compatible with CONTRACTOR'S equipment. Included in the equipment to be provided by COUNTY shall be cabling, personal computers, server, a router, and a dedicated line for connection with CONTRACTOR'S information system.

6. **WARRANTIES.**

- a. Limited Warranty. CONTRACTOR makes the following representations and warranties with respect to the Software Products to be utilized in the performance of the services hereunder.
 - i. The Software Products do not infringe any U.S. or international copyright or trade secret, or, to the knowledge of CONTRACTOR, any patent right or other Intellectual Property right of any third party.
 - ii. The Software Products do not, at the time of delivery to COUNTY, contain any malicious software such as a virus, worm, Trojan horse detectable by currently available utilities nor do the Software Products contain any encoded or embedded serial number, time-out or any similar or dissimilar disabling device or characteristic, and that no such device or characteristic will be contained in any future Software Products made available by CONTRACTOR.
 - iii. The Software Products will, in all material respects, operate properly in conjunction and concurrent with the software listed as required third party technologies in the agreement. This warranty does not extend to the operation of the Software Products in conjunction with other software applications. It is understood that the third party technologies required to operate Enhancements or New Versions of the Software Products may change over time.
 - iv. CONTRACTOR'S warranties do not apply to: (i) any copy of the Software Products modified by any Person or Organization other

than CONTRACTOR or an authorized representative of CONTRACTOR; (ii) use of the Software Products other than in accordance with the most current Documentation; (iii) failures caused by defects, problems, or failures in selection, installation, or configuration of COUNTY Equipment; (iv) failures caused by defects or problems with software applications other than the Software Products; (v) failures caused by conflicts with software applications not listed as required third party technologies in the agreement; (vi) failures caused by any Internet Services Provider; (vii) failures caused by malicious software; or (viii) failures caused by negligence or malicious conduct of COUNTY or its designees or any Person or Organization except CONTRACTOR or an authorized representative of CONTRACTOR.

- v. CONTRACTOR makes no warranty: (i) that the functions performed by the Software Products will meet COUNTY'S requirements or achieve the results desired by COUNTY or will operate in the combinations that may be selected for use by COUNTY; (ii) that the operation of the Software Products will be error free in all circumstances; (iii) that all defects in the Software Products that would not constitute a Material Breach will be corrected; nor (iv) that the operation of the Software Products will not be interrupted for a short period of time by reason of a defect therein or by reason of fault on the part of CONTRACTOR.

b. Disclaimer:

Except as specifically set forth in this agreement and the exhibits hereto, CONTRACTOR makes no representations or warranties, whether written or oral, express or implied, with respect to the subject matter of this agreement or exhibit to this agreement, and CONTRACTOR hereby disclaims all other representations and warranties, including any implied warranties or merchantability or implies warranties of fitness or suitability for a particular purpose, (whether or not CONTRACTOR knows, has reason to know, has been advised, or is otherwise in fact aware of any such purpose), whether alleged to arise by law, by reason of custom or usage in trade, or by course of dealing. In addition, CONTRACTOR expressly disclaims any warranty or representation to any person or organization other than COUNTY with respect to the software products or any part thereof.

7. **LIMITATION OF LIABILITY.**

In no event will contractor be liable for any loss of revenue, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages of any kind in connection with the use of the software

products or the delivery of the services to be provided under this agreement or its exhibits. It is understood that such software products will be used in the delivery of clinical services and administration of human service programs, and it is agreed that responsibility for all decisions relating to the provision of treatment, payment of benefits and allocation of resources are the responsibility of COUNTY and not the responsibility of CONTRACTOR. CONTRACTOR'S liability and county's sole remedies under this agreement for damages are limited to the repair or replacement of defective software products and defects, and, in the event of a final decision rendered in accordance with the dispute resolution procedures of section 21, finding a material breach by CONTRACTOR, refund of no more than then amount of compensation hereunder paid by COUNTY to CONTRACTOR for the six month period preceding such material breach. These disclaimers and limitations of liability will apply regardless of any other contrary provisions of this agreement and regardless of the form of action, whether in contract, tort, or otherwise.

8. **INDEMNIFICATION**

- a. **General Indemnification for COUNTY.** CONTRACTOR shall hold the COUNTY, its agents, officers, employees, and volunteers harmless from, save, indemnify, and defend the same against, any and all claims, and damages for injury to person or property, and related costs and expenses (including reasonable attorney's fees), arising out of any act or omission of CONTRACTOR, its agents, officers, employees, or volunteers, during the performance of its obligations under this AGREEMENT.
- b. **General Indemnification for CONTRACTOR.** COUNTY shall hold CONTRACTOR, its agents, officers, employees, and volunteers harmless from, save, indemnify, and defend the same against, any and all claims, and damages for injury to person or property, and related costs and expenses (including reasonable attorney's fees), arising out of any act or omission of COUNTY, its agents, officers, employees, or volunteers, during the performance of its obligations under this AGREEMENT.
- c. **Indemnification of Intellectual Property** Subject to the limitations of this Paragraph 8c and Paragraph 7 of this Agreement, CONTRACTOR shall indemnify and hold COUNTY, its agents and employees harmless from any loss, damage or liability for infringement of any United States patent right, copyright, trade secret or any other proprietary right with respect to the use of the items delivered hereunder, provided CONTRACTOR is promptly notified in writing of any suit or claim against COUNTY and provided further that COUNTY permits CONTRACTOR to defend, compromise or settle the same and gives CONTRACTOR all available information, assistance and authority to enable CONTRACTOR to do so. CONTRACTOR indemnity as to use shall not apply to any infringement arising out of use in combination with other items where such infringement

would not have occurred in normal use. This paragraph shall survive any expiration or termination of this Agreement.

- i. If such materials are found to infringe, or in the reasonable opinion of CONTRACTOR are likely to be the subject of a claim, CONTRACTOR will, at its option:
 1. obtain for the COUNTY the right to use such materials;
 2. replace or modify the materials so they become non-infringing; or
 3. if neither 1 or 2 is reasonably achievable, remove such materials and refund their net book value based on straight-line (equal year over year) depreciation with a salvage value of zero dollars over a five (5) year period commencing on the date the allegedly infringing item(s) were first delivered to the COUNTY.
- ii. CONTRACTOR has no obligation to the extent any claim results from:
 1. modification of the materials other than at the direction of CONTRACTOR, or
 2. Use of an allegedly infringing version of the materials, if the infringement could have been avoided by the use of a different version made available to the COUNTY.

This section states CONTRACTOR'S entire obligation to the COUNTY and the COUNTY'S sole remedy for any claim of infringement.

9. **NON DISCRIMINATION BY CONTRACTOR.** In connection with its performance under this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.
10. **TERMINATION.**
 - a. COUNTY may terminate this Agreement by written notice in the event CONTRACTOR fails to perform its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of such written notice. COUNTY may terminate the Agreement upon One Hundred Twenty (120) days written notice to CONTRACTOR without cause.
 - b. CONTRACTOR may terminate this Agreement by written notice in the event COUNTY fails to perform any of its obligations under this Agreement, and such default is not cured within thirty (30) days after

receipt of such written notice. CONTRACTOR may terminate the Agreement upon One Hundred Twenty (120) days written notice to CONTRACTOR without cause.

11. **INTELLECTUAL PROPERTY RIGHTS.**

- a. The Software Products are protected by both United States copyright law and international copyright treaty provisions. Cerner retains sole and exclusive ownership of all right, title and interest in and to the Software Products and all Intellectual Property rights relating thereto.
- b. It is expressly understood by COUNTY and CONTRACTOR that Cerner will retain the sole and exclusive ownership and intellectual property rights to any customized modifications or enhancements of the software products or any original software products created by Cerner for COUNTY or CONTRACTOR. Any such work will not be considered "work for hire" within the meaning of copyright law, even if COUNTY or CONTRACTOR pays Cerner to develop the enhancement or software product
- c. Except as authorized by this Agreement, COUNTY will not itself, or through any parent, subsidiary, affiliate, agent or other third party: (1) sell, lease, license, sublicense, market, or distribute the Software Products anywhere in the world; (2) de-compile, disassemble, or reverse engineer the Software Products, in whole or in part; (3) write or develop any derivative work based upon the Software Products, Documentation or any Company Information; or (4) provide, disclose, divulge or make available to, or permit use of the Software Products by any third party, except as permitted by this Agreement or with Cerner's prior written consent.

12. **CONFIDENTIAL INFORMATION; TRADE SECRETS.**

- a. The parties hereby acknowledge that their personnel may gain access to information that the other party deems to be confidential and/or proprietary information and which has commercial value in its business and is not in the public domain. "Confidential Information" means any and all proprietary business information of the disclosing party that does not constitute a Trade Secret (as hereafter defined), including any proprietary business information of which the receiving party becomes aware as a result of its access to and presence at the other party's facilities. "Trade Secrets" means information related to the business or services of the disclosing party or its affiliates, including without limitation the Software Products, its documentation and support materials which: (i) derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value

from its disclosure or use, and (ii) is the subject of efforts by the disclosing party or its affiliates that are reasonable under the circumstances to maintain its secrecy, including, without limitation, (a) marking any information reduced to tangible form clearly and conspicuously with a legend identifying its confidential or proprietary nature, (b) identifying any oral presentation or communication as confidential immediately before, during, or after such oral presentation or communication, or (c) otherwise treating such information as confidential. "Trade Secret" means, without limitation, any and all technical and non-technical data related to designs, programs, research, software file structures, flow charts, business rules embedded within Software Products, drawings, techniques, standards, Source Code and Object Code of the Software Products, the documentation, inventions, finances, actual or potential customers and suppliers, research, development, marketing, and existing and future products and employees of the disclosing party and its affiliates. "Company Information" means, collectively, the Confidential Information and Trade Secrets. Company Information also includes information that has been disclosed to any party by a third party which such party is obligated to treat as confidential, and all software tools, methodologies, documentation, business plans, product plans, and all related technical materials and enhancements and modifications thereto.

- b. **Obligations.** COUNTY and CONTRACTOR will each use the same care to prevent disclosing to third parties the Company Information of the other as it employs to avoid disclosure, publication, or dissemination of its own information of the same nature, but in no event less than a reasonable standard of care. Furthermore, except as contemplated by this Agreement, neither party will: (i) make any use of the other party's Company Information; (ii) acquire any right in or assert any lien against the other party's Company Information; (iii) disclose any Company Information to a third party except as permitted by this Agreement or with the written permission of the other party or (iv) refuse to promptly return, provide a copy of, or destroy the other party's Company Information upon request of the other party. COUNTY will reimburse Contractor for the cost of destruction of information maintained on backup tapes.
- c. **Exclusions.** Notwithstanding the foregoing, this section shall not apply to any information that the receiving party can demonstrate: (i) was in the public domain at the time of disclosure to it; (ii) was published or otherwise became a part of the public domain, after disclosure to the receiving party, through no fault of its own; (iii) was in the possession of the receiving party at the time of disclosure to it from a third party who had a lawful right to such information and disclosed such information without a breach of duty owed to the disclosing party; or (iv) was independently developed by the receiving party without reference to the Company Information of the

disclosing party. Further, either party may disclose the other party's Company Information to the extent required by law or by order of a court or governmental agency.

- d. Report of Unauthorized Use or Disclosure of Company Information.
 - i. Each party will immediately report to the other any use or disclosure of Company Information of the other that is not permitted by this Agreement or other written agreement of the parties.
 - ii. COUNTY will not allow any person other than an Authorized User or Cerner or Contractor staff access to the Software Products or to use Company Information until that person has executed a written agreement with Cerner holding that person to the same requirements as this part 9 and COUNTY has been notified by Cerner that this Agreement has been executed and that the Person has permission to access and use the Cerner Company Information to support COUNTY. Authorized Users are members of COUNTY'S Workforce to whom COUNTY has assigned passwords or otherwise permitted access to or use of the Software Products, and who have signified their agreement to terms and conditions of use of the Software Products that are consistent with this Agreement, including provisions for the protection of Cerner Intellectual Property Rights and Confidential Information. Workforce means directors, officers, employees, volunteers, trainees, and other persons whose conduct in the performance of work is under the direct control of COUNTY. Workforce does not include contractors other than Contractor who perform services that would otherwise be performed by Cerner or Contractor, unless the contractor has signed an agreement with Cerner for the protection of Cerner's Intellectual Property rights.
 - iii. COUNTY understands that Cerner's Proprietary Rights and Non-Disclosure Agreements prohibit any person other than Contractor, Cerner staff and Authorized Users from retaining possession of Cerner Company Information. COUNTY will immediately notify Contractor and Cerner if it becomes aware that any person other than an Authorized User or Cerner or Contractor staff has or appears to have in their possession Cerner Company Information, or makes unsubstantiated claims that Cerner has granted permission to that person to use Cerner customer Information to support COUNTY.
- e. Period of Limitation. The covenants of confidentiality set forth herein: (i) will apply upon commencement of this Agreement to any Company

Information disclosed to the receiving party, including Company Information disclosed during the course of negotiation of this Agreement, and (ii) will continue and must be maintained until termination of the Agreement, and in addition, with respect to Trade Secret, at any and all times after termination of the relationship between the parties hereto, during which such Trade Secrets retain their status as such under applicable law.

- f. Third Party Vendors. It is understood that COUNTY may wish to create linkages between the Software Products and other software applications or databases. COUNTY acknowledges that the file structures and business rules of the Software Products and the documentation are the Intellectual Property of Cerner and Company Information, within the meaning of section 12b. COUNTY will not give third party vendors other than Contractor access to this Company Information without the written permission of Cerner. Cerner will give that permission if the third party vendor enters a written Proprietary Rights, Non-Disclosure, and Non-Compete agreement with Cerner.

- 13. **ACCESS TO COUNTY SITES.** CONTRACTOR may need physical access to COUNTY facilities for technical services or support during this Agreement. Prior to any technical services or support visit by CONTRACTOR, an appointment will be made by CONTRACTOR with the COUNTY IT Helpdesk. A member of COUNTY'S IT staff must be on-hand to provide access to the facility and accompany CONTRACTOR personnel.

- 14. **MEDICAL RECORDS.**

- a. **Ownership and Access.** All records contained in the patient files maintained by COUNTY shall be the property of COUNTY, and CONTRACTOR shall not remove these records upon termination of this Agreement, except pursuant to a specific request in writing with respect to and from a person treated by a Provider during the term of the Agreement, unless otherwise agreed to by COUNTY. Any working copies of client records generated by CONTRACTOR will be maintained by CONTRACTOR throughout the term of the Agreement. At such time as the Agreement may be terminated, all working copies of client records will be securely delivered to COUNTY at COUNTY's expense and as directed by COUNTY. In the event of a claim or challenge by a patient or any regulatory authority, COUNTY shall cooperate with CONTRACTOR by making the patient files in COUNTY Behavioral Health's possession available for copying or inspection (to the extent allowable by the rules regarding confidentiality of medical records). CONTRACTOR shall similarly cooperate with COUNTY and make available working copies of client records in the event of such a claim or challenge. There is hereby

made a part hereof the provisions of Exhibit "D" - Business Associates, which is incorporated by reference herein.

- b. **Compliance with Medicare Rules.** To the extent required by law or regulation, COUNTY shall make available, upon written request from CONTRACTOR, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and COUNTY'S books, documents and records to the extent necessary to certify the nature and extent of the costs for services provided by CONTRACTOR. COUNTY shall preserve and make available such books, documents and records for a period of seven (7) years after the end of the term of this Agreement. If COUNTY is requested to disclose books, documents or records pursuant to this subparagraph for any purpose, COUNTY shall notify CONTRACTOR of the nature and scope of such request, and COUNTY shall make available, upon written request of CONTRACTOR, all such books, documents or records. COUNTY shall defend, indemnify and hold free and harmless CONTRACTOR if any amount of reimbursement is denied or disallowed because of COUNTY's failure to comply with the obligations set forth in this subparagraph. Such indemnity shall include, but not be limited to, the amount of reimbursement denied plus any interest, penalties and reasonable legal fees and costs.

15. **COMPLIANCE.**

- a. **Compliance with Applicable Laws.** To the best of each party's knowledge and belief, COUNTY and CONTRACTOR have operated in compliance with all federal, state, county and municipal laws, ordinances and regulations applicable thereto and each party represents that it has not received payment or any remuneration whatsoever to induce or encourage the referral of clients or the purchase of goods and/or services as prohibited under 42 United States Code Section 1320a-7b(b), or otherwise perpetrated any Medicare or Medicaid fraud or abuse, nor has any fraud or abuse been alleged within the last five (5) years by any Governmental Authority, a carrier or a third party payer.
- b. **Health Care Compliance.** COUNTY is presently participating in or otherwise authorized to receive reimbursement from payer programs, and is not nor has ever been an excluded provider. Any and all necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned as of the date hereof, and no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such payer program.

- c. **Fraud and Abuse**. Neither party shall engage in any activities which are prohibited by or are in violation of the rules, regulations, policies, contracts or laws pertaining to any third party and/or governmental payer program, or which are prohibited by rules of professional conduct ("Governmental Rules and Regulations"), including but not limited to the following:
- i. knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment;
 - ii. knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment;
 - iii. failing to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on the Provider's own behalf or on behalf of another, with intent to fraudulently secure such benefit or payment; or
 - iv. knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration
 - 1. in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid, or
 - 2. in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid. Each party acknowledges that this list is not an exhaustive or complete list of all governmental requirements and each party represents and warrants to the other that each will endeavor, to the best of their knowledge, to educate, to seek information, and/or to make themselves aware of these governmental requirements.
- d. **Changes in the Law**. In the event of any changes in law or regulations implementing or interpreting any federal or state law relating to the subject matter of fraud and abuse or to payment-for-patient referral, including the laws referenced above, the parties shall use all reasonable efforts to revise this Agreement to conform and comply with such changes. In the event that the parties cannot revise this Agreement in a manner which will conform and comply with such changes and preserve to the extent

possible the intent of the parties in entering into this Agreement, then either party may terminate those portions of the Agreement which cannot be revised to conform and comply with such changes and the intent of the parties.

16. **BOOKS AND RECORDS.** For the purpose of section 1861(v)(1)(1) of the Social Security Act, as amended, and any regulations promulgated pursuant thereto:
- a. Until the expiration of four years after the furnishing of professional services pursuant to this Agreement, COUNTY shall make available, upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and books, documents and records of the Provider that are necessary to certify the nature and extent of costs of professional services rendered pursuant to this Agreement; and
 - b. Until the expiration of four years after the furnishing of professional services pursuant to this Agreement, CONTRACTOR shall make available, upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and books, documents and records of the Provider that are necessary to certify the nature and extent of costs of professional services rendered pursuant to this Agreement; and
 - c. If CONTRACTOR carries out any of the duties of this Agreement through a subcontract with a value or cost of \$10,000.00 or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of professional services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of costs of professional services rendered pursuant to such subcontract.
 - d. If COUNTY is requested to disclose books, documents or records pursuant to this paragraph for purpose of an audit, COUNTY shall notify CONTRACTOR of the nature and scope of such request and the COUNTY shall make available, upon written request of CONTRACTOR, all such books, documents or records. This paragraph shall pertain solely to the maintenance and disclosure of specified records and shall have no effect on the right of the parties to this Agreement to make assignments or delegations.

- e. If CONTRACTOR is requested to disclose books, documents or records pursuant to this paragraph for purpose of an audit, CONTRACTOR shall notify COUNTY of the nature and scope of such request and the CONTRACTOR shall make available, upon written request of COUNTY, all such books, documents or records. This paragraph shall pertain solely to the maintenance and disclosure of specified records and shall have no effect on the right of the parties to this Agreement to make assignments or delegations.
17. **DRUG-FREE WORK PLACE.** CONTRACTOR shall provide a drug-free work place and shall comply with the requirements of the Drug-Free Work Place Act of 1990 (Government Code section 8350 et seq.).
18. **CULTURAL COMPETENCE.** CONTRACTOR and COUNTY shall use a set of professional skills, behaviors, attitudes, and policies in their systems that enable the system, or those participating in the system, to work effectively in meeting the cross-cultural needs of patients.
19. **INDEPENDENT CONTRACTOR.** CONTRACTOR is an independent contractor in the performance of its services and obligations under this Agreement. This Agreement is not intended to constitute a partnership or joint venture. Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits.
20. **INTEREST OF PUBLIC OFFICIALS.** No officer, agent, or employee of COUNTY during his/her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
21. **DISPUTE RESOLUTION.**

The parties acknowledge their desire for a long-term and mutually beneficial business relationship and, to that end, agree to attempt to resolve any disagreements or disputes promptly and in good faith, and to make themselves available for business discussions intended to facilitate the resolution of such disagreement or dispute.

If the parties are unable to arrive at a mutually satisfactory solution through good faith business discussions, they shall first engage in mediation using the services of the American Health Lawyers Alternative Dispute Resolution Service or another dispute resolution service that is mutually acceptable to the parties. The parties shall share the costs of mediation equally.

If the parties are unable to resolve their dispute through mediation, they shall submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall be conducted before a single arbitrator in a location mutually agreed upon by the parties or in Hollister, CA if they are unable to agree to a location. In no event will the arbitrator have the power to exceed the scope of this Agreement with regard to limitations on warranties or damages. Judgment on an arbitration award that is consistent with this Agreement may be entered in any state or federal court of competent jurisdiction. The parties shall share the costs of arbitration equally.

Except for mediation and arbitration fees, which shall be shared by the parties, each party shall bear its own attorneys fees and other expenses associated with resolution of any dispute.

22. **WAIVER.** A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by CONTRACTOR or COUNTY.
23. **ENTIRE AGREEMENT.** This Agreement constitutes the complete understanding of the parties and supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter contained herein, and no other agreement, statement, or promise relating to the subject matter of this Agreement shall be valid or binding. In the event of any direct conflict between the body of this Agreement and its schedules or exhibits, the body of the Agreement shall control. This Agreement may not be modified, amended, or changed except by a writing or writings signed by the duly authorized representative of the parties.
24. **CONTROLLING LAW.**
 - a. **Laws of California Control** The terms and conditions of this Agreement and all its Exhibits and rights and duties hereunder shall be governed by and construed in accordance with the laws of the State of California.
 - b. **Rules of Interpretation** no provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision and this Agreement shall be construed as if jointly prepared by the parties.
25. **VENUE.** If either party files a lawsuit to enforce any provision of this Agreement, the proper venue for such a lawsuit shall be the San Benito County Superior Court.
26. **PARTIAL INVALIDITY.** Should any portion of this Agreement be held unenforceable or inoperative for any reason, such invalidity shall not affect any

other portion of this Agreement, but the remainder shall be as effective as though such ineffective portion had not been contained herein.

27. **GENDER.** Words used in the masculine shall apply to the feminine where applicable, and vice versa. Any personal pronoun shall include any gender or number according to the context.
28. **ASSIGNMENT.** This Agreement and the rights and obligations hereunder are not assignable by either party. Notwithstanding the foregoing, CONTRACTOR shall have the right to utilize subcontractors, provided such subcontractors comply with the provisions of this agreement. The use of a subcontractor will not release CONTRACTOR from its obligations hereunder.
29. **NOTICES.** All notices, offers, elections, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid, and properly addressed to the party at the party's address below, or any other address that any party may designate by written notice to the other.

CONTRACTOR: Kings View Corporation
Attn: Leon Hoover, CEO
7170 N. Financial Drive, Suite 110
Fresno, CA 93720
(559) 256-0100 ext. 3011

COUNTY: San Benito County Behavioral Health
Attn: Alan Yamamoto, LCSW
Mental Health Director
1131 San Felipe Road
Hollister, CA 95023
(831) 636-4020

30. **INTERPRETATION.** The language in all parts of this Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against either party, and any ambiguities shall not be strictly construed for or against either party.

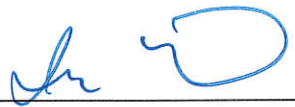
IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement on the day and year set forth above.

"COUNTY"
COUNTY OF San Benito

By _____

Date: _____

APPROVED AS TO LEGAL FORM
COUNTY COUNSEL

By  _____

Date: 6-30-16

.....

"CONTRACTOR"
KINGS VIEW CORPORATION

By  _____
Leon Hoover, CEO Kings View

Date: 6/9/2016

EXHIBIT A

SAN BENITO COUNTY

ELECTRONIC HEALTH RECORD SYSTEM (EHR)

SCOPE OF SERVICES

This Scope of Services is applicable to the utilization of the current Cerner behavioral health software. It is not intended to address issues relative to office application documents, files and network support.

At the time of termination, CONTRACTOR agrees to provide a copy of current system with all necessary data files, structures and associated tables.

CONTRACTOR shall comply with the privacy and security provisions of the Health Information Portability and Accountability Act of 1996 (HIPAA) and HITECH Act public law 111-005 and all related State and Federal Regulations for the maintenance and storage of system data and files.

CONTRACTOR shall provide the following services:

A. Cerner Support

1. CONTRACTOR supports (as defined in this scope of work) the following Cerner Software products currently in use or planned by COUNTY:
 - Client Data System
 - Scheduling System
 - Assessment & Treatment Planning System
 - Doctor's Home Page & E-Prescribing System
2. CONTRACTOR will provide consultative services to COUNTY concerning current and new MIS design for Client Data, Scheduler and ATP – Assessments, Treatment Plans and Progress Notes when requested by COUNTY as needed.

3. CONTRACTOR will maintain a LIVE, TRAIN and TEST version of Cerner on CONTRACTOR'S servers.
4. CONTRACTOR will advise on and load Cerner promotions:
 - a. Write and provide COUNTY to the best of CONTRACTOR'S abilities a thorough risk-benefit analysis for all Cerner promotions based on supplied documentation from Cerner Software to include:
 - Summary of the purpose(s)
 - List of known and potential risks
 - List of known and potential benefits
 - Reporting implications
 - Identify any additional report functionality
 - b. Test Cerner promotions and work out known bugs.
 - c. Load promotions only with COUNTY authorization and in accordance to Cerner Software policy and procedures. COUNTY will provide CONTRACTOR with list of COUNTY staff allowed to authorize installation of promotions.
 - d. COUNTY is aware failure to load all Cerner promotions in sequence and as supplied by Cerner could impact CONTRACTOR'S ability to meet scope of services as discussed in Exhibit A and Cerner support.
5. CONTRACTOR will provide assistance with MIS customization including workflow redesign, keying guides, management forms, WYSIWYG design and development, training materials and other assistance as it relates to Client Data, Scheduler and ATP – Assessments, Treatment Plans and Progress Notes as needed and requested by COUNTY.
6. CONTRACTOR will provide the following forms of documentation:
 - a. Develop manuals for AR and State Reporting delineating CONTRACTOR and COUNTY tasks and responsibilities.
 - b. Provide Risk/Benefit Analysis of Cerner Promotions (see B.4 above).

- c. Provide COUNTY with Kings View Status Report as mutually agreed. Report format, content and frequency will be determined and modified as needed by mutual agreement.
- d. Document COUNTY'S system schema as it relates to Kings View provision of services and at the discretion of COUNTY'S Information Technology management.
- e. Special Projects (audits, state reviews, other ad hoc requests) as needed by COUNTY including the following:
- f. Consultation and assistance with special projects
- g. Data/Reports
- h. Participate in Meetings/Calls

7. Status Reporting

- a. Meet quarterly at mutually agreed time with COUNTY to identify problems/issues and agree to solutions.
- b. Complete Kings View Status Report (see 6.c above)

B. General Cerner Support Responsibilities

- 1. CONTRACTOR will monitor and maintain network connections between CONTRACTOR'S server and the COUNTY site.
- 2. CONTRACTOR shall facilitate a storage and backup system by utilizing CONTRACTOR'S MIS staff, Fresno storage facility and off-site tape backup processes. CONTRACTOR shall comply with the privacy and security provisions of the Health Information Portability and Accountability Act of 1996 (HIPAA) and all related State and Federal regulations for the maintenance and storage of system data and files.
- 3. CONTRACTOR will use all reasonable efforts to work with Cerner software and COUNTY to adhere to California compliance requirements set forth by California Department of Mental Health and California Department of Alcohol and Drug Programs.
- 4. CONTRACTOR will work jointly with COUNTY to obtain certification of compliance with all applicable Medicare, Medi-Cal and HIPAA billing

requirements and regulations.

5. CONTRACTOR will maintain management forms and related data tables for State reporting, billing and security.
6. CONTRACTOR will provide specialized reporting as required by COUNTY/State as a result of mandatory audit/reporting requirements. CONTRACTOR will provide customized reporting formats, forms, and update data tables as required for COUNTY'S operation, and CONTRACTOR will generate reports for COUNTY as requested.
7. CONTRACTOR will use all reasonable efforts to see that all local, state and federal requirements are met with the times lines set by those agencies.
8. CONTRACTOR and COUNTY will mutually agree upon an Activity Deadline Calendar for the purpose of defining the roles, responsibilities and processes for each party.
9. CONTRACTOR will notify COUNTY of all upgrades or modifications to system which affect billing or other operational functions.
10. Develop a Disaster Plan that addresses at a minimum a detailed back up plan for two crisis scenarios:
 - 1) Power outage beyond 1 work day and
 - 2) Corruption of data.

C. Monthly Medi-Cal Billing and Accounts Receivable (A/R) Cycle Support for CMHC and Cerner software:

1. CONTRACTOR will provide all month-end processes for the completion of A/R and Medi-Cal Billing Processes at CONTRACTOR'S MIS office, and provide support and assistance to COUNTY staff for Month-end A/R and Billing Processes for all requirements set forth by California Department of Mental Health and California Department of Alcohol and Drug Programs.
2. CONTRACTOR will provide training and support to program staff for program processes required in the month-end process.
3. CONTRACTOR will use all reasonable efforts to have its system

comply with all State billing and statistical reporting requirements for timely, accurate and complete processing of electronic claims or files. COUNTY will be the SOLE party responsible for ensuring timeliness, accuracy and the complete entry of data by COUNTY staff necessary for CONTRACTOR to submit electronic claims or files.

4. CONTRACTOR will perform data review to ensure HIPAA compliance for electronic submittal to State, Medicare or other third party payer in preparation for CONTRACTOR electronic data submission. CONTRACTOR will post electronic Explanation of Benefits (EOB) electronic files from State, Medicare or other third party payer in accordance with Cerner Software policy and procedures.
5. CONTRACTOR will perform data review to ensure data from COUNTY'S software meets requirements for electronic submission to California Outcomes Measurement System (CalOMS) and Client and Service Information (CSI).
6. CONTRACTOR will maintain call log identifying consequential issues referred for help and provide management with trend report. Routine questions will not be tracked.
7. CONTRACTOR will assist and monitor EOB (HIPAA 835) – Explanation of Benefits denials and report back to COUNTY management monthly with status updates.
8. When CONTRACTOR makes changes to existing information systems software that results in a need for consultation or training of county employees, the associated costs will be paid by the CONTRACTOR.

D. Ongoing Support of Application Service Provider (ASP) Storage Facility and Network Connectivity

1. CONTRACTOR will provide hosting and support of behavioral health software in a HIPAA compliant facility.
2. CONTRACTOR will provide access up to 40 concurrent users for utilization of Cerner Software via 2X.
3. CONTRACTOR will notify COUNTY in advance of all upgrades or

modification to the Data Center servers and software which affect the EHR, billing or operations, except in cases where immediate action is required to protect data, hardware or personnel.

4. CONTRACTOR will monitor and maintain network connections between CONTRACTOR'S Fresno Data Center and the COUNTY site.
5. When COUNTY makes changes to COUNTY owned hardware or network infrastructure the COUNTY may request technical support services from CONTRACTOR. These requested services will be provided by CONTRACTOR and paid for by COUNTY at a daily rate per staff plus expenses as outlined in Exhibit "B". All services will be pre-authorized via Purchase Orders by County Mental Health Director.
6. CONTRACTOR will have in place a Disaster Recovery Plan utilizing eVault to provide a 1 hour response from time of notification by Kings View Information Technology to eVault of a data center catastrophic event. COUNTY will be provide with a copy of Disaster Recovery Plan developed by CONTRACTOR.
7. CONTRACTOR will have in place Cyber Liability coverage to insure against accidental, willful or criminal breaches of PHI – Protective Health Information.

E. COUNTY Staff Support

1. CONTRACTOR will maintain a help desk as support to COUNTY staff relative to behavioral health software in order to attend to user inquiries and problems. Help desk support shall be available to COUNTY staff Monday through Friday from 8:00 a.m. until 5:00 p.m., excluding COUNTY holidays. COUNTY will designate staff members who will be authorized to access help desk support on behalf of COUNTY staff.
2. COUNTY staff will be provided with access to CONTRACTOR'S MIS seven days a week, 24 hours a day.
3. CONTRACTOR will provide remote support as needed via Cell Messaging and Email after normal business hours, including all

holidays.

4. CONTRACTOR will provide COUNTY staff with 24 hours advance notice when planned system maintenance time is required.

F. One Time/First Year Services

1. Connection Topology/Transition Support

In cooperation with, and under the direction of the Information Technology Manager or designee of COUNTY, CONTRACTOR will develop a connection topology between CONTRACTOR'S and COUNTY'S networks. CONTRACTOR will provide as-needed support to facilitate changes to existing technology infrastructure for both hardware and software. CONTRACTOR will pass through all COUNTY-exclusive reoccurring charges to COUNTY.

2. Implementation and Conversion Consultation Services:

- a. CONTRACTOR will provide on-site implementation services/training for Cerner Software Client Data. Travel, lodging and meals will be invoiced separately as used.
- b. CONTRACTOR will provide on-site implementation services/training for ATP (Assessments, Treatment Plans and Progress Notes). Travel, lodging and meals will be invoiced separately as used.
- c. CONTRACTOR and COUNTY will mutually agree to develop procedures to resolve claims submitted under 4010 HIPAA 837P transaction format prior to January 1, 2012 and paid and/or denied under 5010 HIPAA 835 transaction format after January 1, 2012. These procedures cannot be developed until the State issues policies on how to process such transactions before December 31, 2011.

EXHIBIT B
SAN BENITO COUNTY
ELECTRONIC HEALTH RECORD SYSTEM (EHR)
ANNUAL BUDGET

Scope of Services Item	
A. Cerner Support	\$21,627
B. General Cerner Support Responsibilities	\$16,883
C. Monthly A/R Billing and State Reporting	\$27,988
D. Application Service Provider (ASP) Storage Facility and Network Connectivity	\$31,952
E. Helpdesk	\$12,644
Total	\$111,094

ON-SITE TRAINING/CONSULTING DAYS

As needed: Per Diem rate is \$125.00 per staff
plus travel and hotel.

EXHIBIT C
SAN BENITO COUNTY
CERNER SUPPORT AGREEMENT

ANNUAL RECCURING COSTS

\$25,771 plus sales tax

- a. Support Agreement: \$24,216
- b. Annual Visual Data Flex Subscription 28 Concurrent Users: \$405
- c. Annual Database Driver Subscription 28 Concurrent Users: \$1150
- d. Recurring annual cost start at the contract effective date.

Exhibit D - BUSINESS ASSOCIATE Agreement

This is a Business Associate Agreement between Contractor and Customer. It is incorporated by reference into agreements between Contractor and Customer.

Recitals

Customer is a "covered entity" as that term is used in Title II of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and implementing regulations enacted by the United States Department of Health and Human Services (codified at 45 CFR Parts 142 and 160-164). (The law and implementing regulations are collectively referred to hereafter as "HIPAA".)

Contractor provides services to Customer to assist Customer in its health care operations. It is necessary for Contractor to receive protected health information maintained by Customer to enable Contractor to provide those services. Contractor is a "Business Associate" of Customer as that term is used under HIPAA.

As required by HIPAA, the parties are entering this agreement related to the use and disclosure of protected health information.

1. Use and Disclosure of Protected Health Information

1.1 Access to Protected Health Information.

Contractor will have the right to access protected health information created or received by Customer as necessary to enable it to perform the services described in this Agreement. Contractor will limit access to protected health information by its employees or agents to that which is necessary to enable them to perform services on behalf of Customer.

1.2 Use of Protected Health Information. Contractor will only use the protected health information for the purpose of performance of the services to Customer; as needed for the proper management and administration of the business of Contractor; and as required to carry out the legal responsibilities of Contractor.

1.3 Disclosure of Protected Health Information. Contractor will not disclose protected health information to third parties, except as follows:

- As necessary to perform the services described in this Agreement;
- As required by law;
- As permitted by the individual who is the subject of the protected health information or the personal representative of that individual;

- To subcontractors who provide services to Contractor in connection with its work on behalf of Customer and require access to protected health information to perform those services, provided that Contractor enters a written agreement with the subcontractor in which the subcontractor agrees to abide by the terms of this Agreement.
- When required for the proper management and administration of Contractor, to persons or organizations that must have access to protected health information to provide service to Contractor, if those persons or organizations agree in writing to maintain the confidentiality of the protected health information as required by law, not to re-disclose the protected health information except as required by law, and to inform Contractor of any unauthorized use or disclosure of the information.

1.4 Individual Permission to Disclose Protected Health Information. It is understood that an individual's written consent or authorization is not ordinarily required under HIPAA to allow Contractor to use or disclose protected health information needed to enable Contractor to perform services for Customer. However, if HIPAA or other applicable provisions of state or federal law require Customer or Contractor to obtain written consent or authorization from an individual to permit Contractor to use or disclose individually identifiable health information, Customer will provide Contractor with a copy of the properly executed legal document permitting such use and disclosure. Customer will promptly inform Contractor of any actions by an individual to change or revoke written permission required to permit Contractor to use or disclose protected health information.

1.5 Restrictions on use or disclosure of protected health information. Customer will notify Contractor of any restriction to the use or disclosure of protected health information to which Customer has agreed in accordance with 45 CFR 164.522. Contractor will follow any such restrictions.

1.6 Report of unauthorized use and disclosure of protected health information. In the event that Contractor becomes aware of any use or disclosure of protected health information that is not authorized by this Agreement, it will immediately report that event to Customer.

2. Rights of Individuals

Contractor recognizes that HIPAA and state law grants individuals rights related to protected health information about them. Contractor agrees to the following provisions for the protection of those individuals' rights.

2.1 Procedure.

(a) Customer will have primary responsibility for responding to individuals who wish to exercise their rights under HIPAA or other provisions of law. Contractor will cooperate with Customer in responding to requests by individuals who wish to exercise their rights under HIPAA.

(b) Any requests made directly to Contractor about records that belong to Customer will be referred to the Privacy Officer of the Customer. Customer will communicate with the individual and attempt to fulfill individual requests without involving Contractor. Customer will inform Contractor of any actions Contractor is required to take in response to an individual's request. Contractor will follow the direction of Customer relating to information that is in Contractor's possession and not otherwise available to Customer or the individual. Contractor will respond in a timely manner to all requests, as required by HIPAA.

(c) Contractor staff time devoted to responding to customer inquiries, including provision of an individual's access to records, amendment of records, accounting of disclosures, auditing of records, or like HIPAA related services, is a service, which may be charged to Customer.

2.2 Confidential Communications. Contractor does not communicate directly with individuals who are the subject of records maintained by its Customers. However, Contractor agrees to provide confidential communications to individuals with whom it may communicate, consistent with the requirements of 45 CFR 164.522.

2.3 Access to Records. As directed by Customer, Contractor will give individuals access to their "designated record set" (meaning protected health information used to make decisions about individuals) in accordance with 45 CFR 164.524. Contractor may charge a reasonable fee for copying or preparing a summary of the designated record set.

2.4 Amendment of Record. As directed by Customer, Contractor will add information to the designated record set of an individual, and forward the additional information to third parties when that information could have a material impact on a decision about the individual, all as required by 45 CFR 164.526.

2.5 Accounting of Disclosures. As directed by Customer, Contractor will make available the information required to provide individuals an accounting of disclosures in accordance with 45 CFR 164.528.

3. Security of Protected Health Information

3.1 Applicability. The terms and conditions of this Part 3 of the Business Associate Agreement between Contractor and Customer are required as is acting as an ASP hosting service for Customer.

3.2 Safeguards. Contractor will establish and maintain appropriate administrative, physical and technical safeguards to prevent unauthorized use or disclosure of protected health information. Contractor will follow generally accepted principles for the security of information systems to ensure the availability, integrity and confidentiality of protected health information maintained on its computer systems or transmitted electronically.

3.3 HIPAA Security Rule. In operation of its ASP hosting service, Contractor will abide by the terms of the final HIPAA rule pertaining to the security of health information systems (the Security Rule).

4. General Requirements

4.1 DHHS access to records. Contractor will make its internal practices, books, and records relating to the use and disclosure of protected health information available to the United States Department of Health and Human Services (DHHS) for purposes of enabling DHHS to determine Customer's compliance with HIPAA.

4.2 Return or destruction of protected health information. At termination of the Agreement, Contractor will, if feasible, return all copies of all protected health information to Customer, or destroy any such information that it maintains in any form, provided customer has instructed Contractor accordingly and paid a reasonable fee. Any electronic media used to store protected health information shall then be delivered to Customer, destroyed, or rendered unreadable. If such return or destruction is not feasible or a fee is not paid, Contractor will continue to follow the terms of this Agreement with regard to access, use and disclosure of the protected health information.

4.3 Termination for cause. Contractor agrees that if Customer determines that Contractor has violated a material term of this Agreement, Contractor will take reasonable steps to end such violation within thirty (30) days. If Contractor's efforts are unsuccessful, Customer may then, at its option, either: (a) immediately terminate its Agreement with Contractor and discontinue their business relationship or (b) if termination of the Agreement is not feasible, report Contractor's breach or violation to the Secretary of the Department of Health and Human Services.

4.2 Effective Date. This Agreement is effective upon execution of this Agreement.