



Hawk Data System
Indigenous Data Governance



SOFTWARE AS A SERVICE AGREEMENT

THIS AGREEMENT made the 31st day of August, 2018

BETWEEN: **ECENTER RESEARCH INC.** a Canadian company, having its registered office at
101HighStreet, Sutton, ON, L0E1R0

(the "**Contractor**")

AND: **SAN BENITO COUNTY** (on behalf of the California Small County Collaborative), with its
registered office at 1111 San Felipe Road, Suite 103, Hollister, CA 95023

(the "**Client**")

WHEREAS:

- A. The Contractor is the creator, developer and owner of a clinical information and population health analysis system "eInsight™" including customizations and modifications thereto (the "**Software**") as described in Schedule "A" also known as eBHS;
- B. The Client is a county/agency that provides health care services.
- C. The Client desires to have online access and rights to use a customized version of the Software (the "**Custom Software**") in accordance with this Agreement and the Contractor agrees to provide the Client with such access and rights in addition to consulting services in accordance with the terms and conditions of this Agreement;
- D. The Contractor is engaged as an independent contractor in information technology and software support and consulting.
- E. The parties hereto agree to govern their relationship in accordance with the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, it is agreed between the parties hereto as follows:

1. **SERVICES**

- 1.1 The Contractor shall develop and implement a customized version of the Software, the Custom

Software, and to be used by the Client and its Authorized Users in connection with the Client's consulting services it provides to its clients (the "**Permitted Purpose**"). For clarity, all references to Software in this Agreement shall include the term, Custom Software.

- 1.2 During the Term (as defined herein) the Contractor shall provide certain information technology consulting services (the "**Services**") in connection with certain deliverables under this Agreement (the "**Deliverables**"). For clarity, the development of the Custom Software is included as part of the Services delivered hereunder.
- 1.3 The Client may at any time request in writing (each, a "**Change Request**") changes to the Software Services or the Deliverables (each, a "**Change**"). Upon the Client's submission of a Change Request, the parties shall evaluate all Changes as soon as reasonably practicable, and in any case, within fifteen (15) days of receiving a Change Request, the Contractor shall provide the Client with a written proposal (a "**Change Proposal**") for implementing the requested Change setting forth:
 - a) a written description of the proposed Change to any Software Services or Deliverables;
 - a) any modifications to the schedule for completion of the Deliverables; and
 - b) any increase or decrease in Fees resulting from such proposed Changes.

Within five (5) days following the Client's receipt of the Change Proposal, the Client shall, by email (steve@ecenterresearch.com) to the Contractor, approve, reject or propose modifications to such Change Proposal. Upon the Client's approval of the Change Proposal, each of the parties shall execute such Change Proposal. An executed Change Proposal shall form part of this Agreement and the terms and conditions herein shall apply.

- 1.4 The Contractor agrees to ensure that the Software performance is such that Client and Client designees can perform Software related tasks to accomplish work with reasonable efficiency. Performance includes but is not limited to load time (for loading pages and forms), up time (for accessibility to the site to perform work). Reasonable times are defined by industry standards.

2. **AUTHORIZED USERS AND ACCESS CODES**

- 2.1 The Contractor permits the Client to grant access to the Software to the users set forth in Schedule "A" (the "**Authorized Users**"). For clarity, the Authorized Users include Counties within the State of California that use the Software for the specific purposes and in relation to the named projects set forth in Schedule "A". The parties acknowledge and agree that no Authorized User may utilize the Software for any other services or deliverables other than what is set forth under Schedule "A", unless agreed upon in writing by the Contractor. The Fees set forth hereunder are solely in relation to the Services and Deliverables, and any additional services offered to Authorized Users will be subject to separate fees as agreed upon between the parties by way of an amendment to this Agreement. The parties acknowledge and agree that upon request by the Contractor, the Client shall promptly submit an accurate, updated list of Authorized Users to the Contractor.

- 2.2 The Contractor will permit the Client to have access to and use the Software only over the Internet using access codes assigned by the Contractor. Access codes will be deemed Confidential Information (as defined herein) of both parties.
- 2.3 The Client shall be responsible for all actions of the Authorized Users in connection with the Software. The Client will ensure that its Authorized Users use the Services in accordance with the terms and conditions of this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement, and only use the Software for lawful purposes. The Client will be liable for any Authorized User's breach of this Agreement, be solely responsible for moderating any content posed by Authorized Users and advising Authorized Users what they may and may not post through the Software by means of the Client's own policies.
- 2.4 If the Client becomes aware of any actual or threatened activity by any party whatsoever, including without limitation, an Authorized User, prohibited by this Agreement, the Client shall, and shall cause any applicable Authorized Users to immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate and remedy its effects (including permanently erasing from the applicable systems and destroying any information and data to which they have gained unauthorized access); and (b) notify the Contractor of any such actual or threatened activity and take all measures as reasonably requested by the Contractor to stop such activity and mitigate and remedy its effects, including by resetting access credentials.
- 2.5 Without limiting the indemnification provisions set forth in Section 15 of this Agreement, the Client hereby acknowledges that responsibility for all communications with others or between Authorized Users using the Software is the sole and exclusive responsibility of the Client and that the Contractor will not be held responsible in any way for any copyright infringement or violation, or the violation of any other person's rights or the violation of any laws, including but not limited to the infringement or misappropriation of copyright, trademark, or other property rights of any person or entity arising or relating to the use of the Software. The Client agrees to indemnify and hold harmless the Contractor from and against any and all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with any Authorized User's use of the Software.

3. SYSTEM REVISIONS

- 3.1 The Contractor may revise the Software features and functions at any time, with best efforts to maintain existing service levels for the client.

4. MONITORING OF CLIENT'S USE

- 4.1 The Contractor may internally monitor the Client's usage of the Software to ensure compliance with the terms of this Agreement.

5. TERM

- 5.1 The initial term of this Agreement will commence as of the 1st day of October, 2018 and will continue until June 30, 2019 unless terminated sooner or extended in accordance with the terms of the agreement. Thereafter, the Agreement shall automatically renew for

additional 12 month renewal terms unless either party provides written notice of non-renewal at least sixty (60) days prior to the end of the then-current term (the initial term and any renewal term, collectively, the "Term").

6. FEES AND PAYMENT TERMS

- 6.1 The Client will pay the Contractor the fees set forth and more particularly described in Schedule "A" to this Agreement (the "Fees") in accordance with the terms and conditions set forth herein. For clarity, the total Fees payable under this Agreement, subject to a Change Request, is set forth under Schedule "A".
- 6.2 The Contractor agrees to render to the Client an invoice on a an annual basis (unless otherwise noted as a fixed term agreement)
- 6.3 The Contractor shall provide the Invoices no less than 30 days prior to the renewal date. The Client shall pay the Fees under each Invoice within 30 days. Where the Client fails to pay the amounts owed under an Invoice in accordance with the instructions set forth therein by the due date set forth therein, the Contractor may suspend the Services, in its sole discretion.
- 6.4 Each of the Invoices referenced in Section 6.2 must set forth in reasonable detail the following information, as applicable:
 - a) description of the Fees payable under such invoice;
 - b) sufficient detail with respect to the hours worked in connection with the Deliverables.
- 6.5 Subject to the terms of a Change Proposal, or as otherwise agreed upon in writing between the parties by way of email, in the event that the Fees are increased as a result of a Change, such increase in Fees shall be allocated and payable in equal proportions under each remaining Invoice of the Term.

7. RESTRICTIONS AND RESPONSIBILITIES OF THE CLIENT

- 7.1 The Client shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations and conventions in connection with its use of the Software and provision of the Services.
- 7.2 The Client shall not, and shall not permit any other person to (except for its Authorized Users), access or use the Custom Software except as expressly permitted hereunder. For clarity, the Client shall not:
 - a) copy, modify or create derivative works or improvements of the Software or any materials provided by the Contractor in connection therewith;
 - b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any other aspect of the Services to any person, including on or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;

- c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Software including without limitation, r any other aspect of the Services or any part thereof;
- d) bypass or breach any security device or protection used in connection with the Software, other than by an Authorized User through the use of his or her own then-valid access credentials;
- e) input, upload, transmit or otherwise provide to or through the Software any information or material that are unlawful or injurious, or contain, transmit or activate any harmful code;
- f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Software, or any other aspect of the Services;
- g) remove; delete, alter or obscure any trade-marks, warranties or disclaimers of copyright, trade-mark, patent or other intellectual property or proprietary rights notices from the Software;
- h) access or use the Software or any aspect thereof in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property rights or other rights of any third party, including by any unauthorized access to, misappropriation, use, alteration, destruction, or that violates any applicable law;
- i) otherwise access or use the Software or any other aspect thereof beyond the scope of the authorization granted under this Agreement; and
- j) without limiting the foregoing, provide access to the Software to any additional end-users without the Contractor's written consent, including without limitation, any Counties in any jurisdiction for any reason whatsoever.

8. CLIENT DATA & PRIVACY

- 8.1 Without limiting the foregoing, unless it receives the Client's prior written consent, the Contractor shall not:
 - a) access, process, or otherwise use data in electronic form input or collected through the Software by the Client (the "**Client's Data**"); and
 - b) intentionally grant any third party access to the Client's Data, except subcontractors or employees of the Contractor, as the case may be, that are subject to a non-disclosure agreement, and have already signed and are subject to the requirements of a Business Associates Agreement (BAA) allowing them to work with protected health information.
- 8.2 Notwithstanding the foregoing, the Contractor may disclose the Client's Data as required by applicable law or by proper legal or governmental authority. The Contractor shall give the Client prompt notice of any such legal or governmental demand.
- 8.3 Each of the parties agree to employ security measures in accordance with applicable industry practice and in compliance with all applicable laws and regulations to mitigate against

unauthorized disclosure of any personal information of any party.

- 8.4 The Client recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Software, the Client assumes such risks. The Contractor offers no representation, warranty, or guarantee that the Client's Data will not be exposed or disclosed through the actions of third parties.

9. CONTRACTOR'S CONFIDENTIAL INFORMATION

- 9.1 The "Contractor's Confidential Information" means:

- a) any information of a proprietary or confidential nature, including but not limited to, financial and business information relating to the Contractor which is communicated to the Client at any time;
- b) any business systems, methodologies or computer programs of the Contractor, including without limitation the Software; and,
- c) any other information or data received by the Client from the Contractor that is identified by the Contractor as proprietary or confidential.

- 9.2 The Client acknowledges that the Contractor's Confidential Information is confidential and constitutes a valuable asset of the Contractor. Unless otherwise provided under this Agreement, the Client shall:

- a) exercise at least the same degree of care and discretion with respect to the Contractor's Confidential Information as it exercises protecting its own confidential information;
- b) take all necessary steps including without limitation instruction of its employees, contractors and agents to ensure that the confidentiality of the Contractor's Confidential Information is maintained;
- c) not disclose, publish, display or otherwise make available to other persons any of the Contractor's Confidential Information, or copies thereof; and
- d) except as required or permitted in the performance of this Agreement, not duplicate, copy or reproduce any of the Contractor's Confidential Information without the Contractor's prior written consent.

- 9.3 This Section 9 does not apply to or include information that:

- a) is or becomes publicly available through no act or omission by the Client;
- b) is available to the Client from some source other than the other party without a breach of confidence with the other party;
 - (i) is general computer technology, ideas, concepts or tools;
 - (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;

- (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or
- (iv) the disclosure of which may be required to be made by a court of competent jurisdiction.

10. TERMINATION

- 10.1 Either party may terminate this Agreement immediately without notice upon the institution of insolvency, bankruptcy, or similar proceedings by or against the other party, any assignment or attempted assignment by the other party for the benefit of creditors or any appointment or application for such appointment of a receiver for the other party.
- 10.2 If either party fails to comply with any of the material terms and conditions of this Agreement, including without limitation, the payment of the Fees, the non-defaulting party may terminate the Agreement and any and all rights upon 15 days' written notice to the defaulting party specifying any breach, unless within the period of such notice, all breaches specified therein are remedied by the defaulting party. In the event that such breaches have been remedied by the defaulting party within the period of notice, the non-defaulting party shall have no claims for damages, compensation, loss of profit, allowance in relation to such breach.
- 10.3 The parties hereto acknowledge and agree that upon any such termination under sections 10.1 and 10.2 of this Agreement, the Contractor will have no further liability or obligation hereunder arising out of such termination.
- 10.4 In the event that this Agreement is terminated for any reason whatsoever, the Client will immediately return to the Contractor any materials provided by the Contractor under this Agreement.
- 10.5 Return, Transfer and Removal of Data and other Assets

Upon termination of this Agreement, Contractor shall return to County all County furnished assets in Contractor's possession. Additionally, upon termination of this Agreement, Contractor shall ensure that any and all of Client's Data maintained by Contractor is extracted in a commercially recognized format prior to the termination date, and that said data is securely transmitted or delivered to Client or Client's designee.

11. RELATIONSHIP OF THE PARTIES

- 11.1 The parties acknowledge and agree that:
 - a) the relationship between the parties is, for all purposes of independent contractor and principal rather than employer and employee;
 - b) the Contractor shall not be eligible for, and shall not participate in, any employee pension, health, welfare or other fringe benefit plan, of the Client. No worker's compensation insurance shall be obtained by the Client to cover the Contractor; and
 - c) the Contractor is solely responsible for the payment of all income taxes or other taxes

attributable to any compensation paid to the Contractor pursuant to this Agreement and during the Term and is solely responsible for deducting and remitting from such compensation and payments all withholding taxes, income taxes, Canada Pension Plan deductions, employment insurance deductions and all other deductions required by any applicable statute.

12. EXPENSES

- 12.1 The Client shall reimburse the Contractor for all expenses incurred by the Contractor in the course of carrying out the Services so long as the expenses are authorized in advance by the Client.

13. PROPRIETARY RIGHTS AND INTELLECTUAL PROPERTY

- 13.1 The Contractor shall retain ownership and all right, title, and interest to the background technology and the intellectual property in and related to the Software and any materials thereof, including but not limited to all related software used to provide the Software, all graphics, user interfaces, logos, trademarks, know-how, trade secrets, copyrights, patentable inventions, notes, designs, technical data, ideas, research, reports, documentation and other information related thereto and created by the Contractor (the "**Intellectual Property**"), provided that the Client shall retain ownership of the Client's Marks.

"**Client's Marks**" means any existing trademarks, service marks, logos and names.

- 13.2 Without limiting Section 13.1, the parties acknowledge and agree that:
- a) the Contractor is the creator, developer and sole owner of the Software, including customizations and modifications thereto; and
 - b) this Agreement gives the Client online access to and use of the Software which resides on a data center controlled by the Contractor; it does not grant the Client any license or rights to the Intellectual Property in or to the Software or any of its components. The Client recognizes that the Software and its components are protected by copyright and other laws.
- 13.3 The Client shall not represent itself as an owner, creator or developer of the Software or any aspect of the Software Services or Deliverables, or any component of the Contractor's Intellectual Property.
- 13.4 The Parties hereto acknowledge and agree that any and all pre-existing, present or future intellectual property owned by the Client, including without limitation all patient/client data both raw and derived, graphics, user interfaces, logos, trademarks, know-how, trade secrets, copyrights, patentable inventions, notes, designs, technical data, ideas, research, reports, documentation and other information related thereto and created by the Client (collectively, the "**Client's Intellectual Property**")

14. WARRANTIES, EXCLUSIONS AND LIMITATIONS

14.1 Mutual Warranties –Each of the Contractor and the Client represents and warrants to the other party that:

- a) it is duly organized and validly existing under applicable law;
- b) it has all right and authorization, and has obtained all consents necessary to execute, deliver and perform this Agreement;
- c) nothing in this Agreement, nor the performance of any obligations hereunder, will conflict with such party's constating documents, any law or any other person's rights, or violate any agreement to which that party is a party to or is otherwise bound; and
- d) there are no pending suits or actions threatened against such party that would affect the performance of its obligations under this Agreement.

14.2 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS-IS" AND THE CONTRACTOR HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, AND CONTRACTOR SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE SERVICES OR ANY PRODUCTS OR RESULTS THEREOF WILL (A) MEET THE CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS; (B) OPERATE WITHOUT INTERRUPTION; (C) ACHIEVE ANY INTENDED RESULT; (D) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES; OR (E) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD PARTY MATERIALS ARE PROVIDED "AS – IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN THE CLIENT AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THIRD PARTY MATERIALS.

14.3 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR USE OF THE SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCLUSIVE OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS, DAMAGES ARISING FROM A PARTY'S VIOLATION OF LAW, A PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR EACH PARTY'S BREACH OF ITS SECURITY OBLIGATIONS HEREUNDER (INCLUDING ALL DAMAGES ARISING FORM A SECURITY INCIDENT), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY SUCH DAMAGES PAYABLE BY EITHER PARTY TO THE OTHER PARTY HEREUNDER EXCEED AN AMOUNT EQUAL TO TOTAL FEES SET FORTH IN SCHEDULE A HERETO, AS AMENDED BY CHANGE REQUEST, IF APPLICABLE.

THE LIMITATIONS OF LIABILITY AND DAMAGES EXCLUSIONS IN THIS SECTION ABOVE DO NOT APPLY TO THE CLIENT'S VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 9, OR THE CLIENT'S MISAPPROPRIATION OF THE CONTRACTOR'S INTELLECTUAL PROPERTY.

15. INDEMNIFICATION

15.1 The Client shall defend, indemnify, and hold harmless the Contractor and the Contractor's Affiliates (as defined below) against any "**Indemnified Claim**", meaning any third party claim or proceeding arising out of or related to the Client's alleged or actual use of, misuse of, or failure to use the Software, including without limitation:

- a) claims by the Client's employees or subcontractors;
- b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information;
- c) claims related to the Client's violation of any applicable laws;
- d) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Software through the Client's account (if applicable);
- e) claims that use of the Software through the Client's account harasses, defames, or defrauds a third party or violates any federal or provincial laws; and
- f) claims in connection with any breach by the Client's Authorized Users, or any third party on behalf of the Client, in connection with this Agreement.

15.2 The Contractor shall defend or settle any claim, suit, or proceeding brought by an unaffiliated third party against the Client and/or their respective officers, directors, employees and agents (collectively, the "**Client Indemnified Parties**") to the extent such claim (a) alleges that the use of the Service in accordance with this Agreement infringes such third party's patent rights, copyrights or trademarks, or misappropriates such third party's trade secrets, (b) relating to a violation by Contractor or its agents of applicable law, (c) relating to Contractor or its agents' breach of the confidentiality or security obligations contained in this Agreement including, without limitation, all damages that arise from or relate to a Security Incident, or (d) relating to Contractor's failure to return Customer Data to the Client in accordance with this Agreement (collectively, a "**Claim**"). Contractor shall indemnify the Client Indemnified Parties and hold the Client Indemnified Parties harmless from and against all settlement amounts or damages (including reasonable attorneys' fees) awarded by a court of competent jurisdiction against a Client Indemnified Party as a result of such Claim, except where such Claim is caused by the negligence or willful misconduct of the Client or an Authorized User.

16. SEVERABILITY

16.1 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

17. GOODFAITH

- 17.1 Each of the Parties acknowledge to one another that each respectively intends to perform its obligations as specified in this Agreement in good faith.

18. WAIVER OF CONTRACTUAL RIGHT

- 18.1 The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

19. BENEFIT

- 19.1 This Agreement shall enure to and be binding upon the parties hereto and their respective successors and assigns.

20. AMENDMENTS

- 20.1 No amendment of this Agreement or waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment.

21. ASSIGNMENTS

- 21.1 This Agreement shall not be assigned in whole or in part by the Contractor or the Client without the prior written consent of the other party and any assignment made without that consent is void and of no effect.

22. THE GOVERNING LAW

- 22.1 This Agreement and all matters arising hereunder shall be construed in accordance with and be governed by the laws of the State of California and the parties to this Agreement hereby irrevocably submit and attorn to the exclusive jurisdiction of California.

23. CONSIDERATION

- 23.1 The parties acknowledge and agree that this Agreement has been executed by each of them in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged.
- 23.2 The parties waive any and all defenses relating to an alleged failure or lack of consideration in connection with this Agreement.

24. DISPUTE RESOLUTION

- 24.1 If a dispute arises out of, or in connection with this Agreement, the parties agree to meet to pursue resolution through negotiation or other appropriate dispute resolution process before resorting to litigation.
- 24.2 All information exchanged during this meeting or any subsequent dispute resolution process,


shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the dispute resolution process.

25. EXECUTED IN COUNTERPARTS

- 25.1 This Agreement may be executed in counterparts and may be delivered by fax or email and such signatures shall be deemed to be effective as an original signature.

IN WITNESS WHEREOF the parties
have signed this Agreement as of the
date first written above.

- 13 -

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL
 9-6-18
DEPUTY COUNTY COUNSEL DATE

SAN BENITO COUNTY (on behalf of
the California Small County
Collaborative)

Per: _____
Authorized Signatory(s)

Date: _____

ECCENTER RESEARCH INC.

Per:  _____
Authorized Signatory

Date: September 4, 2018

To accept this agreement, please initial each page, sign above, and email to steve@ecenterresearch.com.
You will receive an executed copy once signed by eCenter Research authorized personnel.

SCHEDULE "A"

Deliverables

1. Data Center - USA enterprise dedicated server infrastructure – 1 Load balancer, 2 enterprise 4 cores web servers, 2 enterprise 4 cores data base servers, data back up fees, server management/maintenance fees, server software fees, HIPAA SSL certificate (military grade 256 bit encryption) fees, HIPAA “Safe Harbour” Database Column Level Transparent Encryption License fees = \$5,000/a x 2 counties = \$10,000/a USD
2. Enterprise system licensing and HelpDesk support for up to 10 users per county (Minimum bank of 10 users per county required) - \$6,000/a x 2 counties = \$12,000/a USD
3. Project Management/Consulting (external/internal meetings, documenting specifications, communications/coordination, consulting, etc) - \$12,500/a x 2 counties = \$25,000/a USD
4. Additional one time costs include 2 Health Plan reports (\$16,000), 2 Project Management Plan reports (\$16,000), 3 simple data collection set up (\$11,400), 1 complex data collection set up (\$7,600) = \$51,000 USD
5. Additional system customization, new data collections, new report as required based on Change Management requirements billed at \$250/hr (cost shared across counties). **Note: there is a current credit of \$28,800 USD that can be used for ongoing change management or additional staff licenses during this contract term.**
6. Online eBHS system training of new WPC county staff is included at no cost (covered in initial training fee)
7. Signed Business Associate Agreements (BAA) with Mariposa and San Benito Counties (attachments)
8. Contract term is October 1, 2018 to June 30, 2019, total fees = \$98,000 USD



BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT made the 31st day of August, 2018.

This Agreement ("Agreement") is made and entered into as of the date of contract between eCenter Research Inc. ("Business Associate"), and San Benito County ("Covered Entity").

WHEREAS, Business Associate is in the business of providing clinical information and population health analysis through software as a service eINSIGHT ("Offering")

WHEREAS, Covered Entity wishes to engage, or has engaged, Business Associate in connection with said Offering,

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

1. Definitions. Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the Privacy Rule, Security Rule, and HITECH Act.

- a. **Agent.** "Agent" shall have the meaning as determined in accordance with the federal common law of agency.
- b. **Breach.** "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.
- c. **Business Associate.** "Business Associate" shall mean eCenter Research Inc.
- d. **Covered Entity.** "Covered Entity" shall mean San Benito County, including its affiliates, agencies, providers, and subsidiaries where applicable.
- e. **Data Aggregation.** "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR §164.501.
- f. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- g. **Electronic Health Record.** "Electronic Health Record" shall have the same meaning as the term in Section 13400 of the HITECH Act.
- h. **Health Care Operations.** "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR §164.501.
- i. **HITECH Act.** "HITECH Act" shall mean The Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009 ("ARRA" or "Stimulus Package"), specifically DIVISION A: TITLE XIII Subtitle D—Privacy, and its corresponding regulations as enacted under the authority of the Act.
- j. **Individual.** "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).
- k. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- l. **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.
- m. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

- n. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- o. **Security Rule.** "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, Subparts A and C.
- p. **Subject Matter.** "Subject Matter" shall mean compliance with the Privacy and Security Rules, and with the HITECH Act, and its corresponding regulations.
- q. **Unsecured Protected Health Information.** "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402.

2. Obligations and Activities of Business Associate.

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information, as provided for in the Security Rule and as mandated by Section 13401 of the HITECH Act.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. Business Associate further agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, and in a manner as prescribed herein.
- d. Business Associate agrees to report to Covered Entity any security incident, including all data Breaches or compromises, whether internal or external, related to Protected Health Information, whether the Protected Health Information is secured or unsecured, of which Business Associate becomes aware.
- e. If the Breach, as discussed in paragraph 2(d), pertains to Unsecured Protected Health Information, then Business Associate agrees to report any such data Breach to Covered Entity within ten (10) business days of discovery of said Breach; all other compromises, or attempted compromises, of Protected Health Information shall be reported to Covered Entity with twenty (20) business days of discovery. Business Associate further agrees, consistent with Section 13402 of the HITECH Act, to provide Covered Entity with information necessary for Covered Entity to meet the requirements of said section, and in a manner and format to be specified by Covered Entity.
- f. If Business Associate is an Agent of Covered Entity, then Business Associate agrees that any Breach of Unsecured Protected Health Information shall be reported to Covered Entity **immediately** after the Business Associate becomes aware of said Breach, and under no circumstances later than one (1) business day thereafter. Business Associate further agrees that any compromise, or attempted compromise, of Protected Health Information, other than a Breach of Unsecured Protected Health Information as specified in 2(e) of this Agreement, shall be reported to Covered Entity within ten (10) business days of discovering said compromise, or attempted compromise.
- g. Business Associate agrees to ensure that any Agent, including a subcontractor, to whom Business Associate provides Protected Health Information, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate further agrees that restrictions and conditions analogous to those contained herein shall be imposed on said Agents and/or subcontractors via a written agreement, and that Business Associate shall only provide said Agents and/or subcontractors Protected Health Information consistent with Section 13405(b) of the HITECH Act. Further, Business Associate agrees to provide copies of said written agreements to Covered Entity within ten (10) business days of a Covered Entity's request for same.

- h. Business Associate agrees to provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet Covered Entity's requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least three (3) business days in advance of requesting such access. Business Associate further agrees, in the case where Business Associate controls access to Protected Health Information in an Electronic Health Record, to provide similar access in order for Covered Entity to meet its requirements under Section 13405(c) of the HITECH Act. These provisions do not apply if Business Associate and its employees, subcontractors and Agents have no Protected Health Information in a Designated Record Set of Covered Entity.
- i. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees, subcontractors and Agents have no Protected Health Information from a Designated Record Set of Covered Entity.
- j. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures (collectively "Compliance Information"), relating to the use or disclosure of Protected Health Information, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, Security Rule, and the HITECH Act. Business Associate further agrees, at the request of Covered Entity, to provide Covered Entity with demonstrable evidence that its Compliance Information ensures Business Associate's compliance with this Agreement over time. Business Associate shall have a reasonable time within which to comply with requests for such access and/or demonstrable evidence. In no case shall access, or demonstrable evidence, be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
- k. Business Associate agrees to maintain necessary and sufficient documentation of disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 CFR §164.528.
- l. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Business Associate shall provide said documentation in a manner and format to be specified by Covered Entity. Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than three (3) business days after Business Associate's receipt of such request.
- m. Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate shall redirect the Individual to the Covered Entity.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule, or the privacy provisions of the HITECH Act, if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

c. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Business Associate agrees that such Data Aggregation services shall be provided to Covered Entity only wherein said services pertain to Health Care Operations. Business Associate further agrees that said services shall not be provided in a manner that would result in disclosure of Protected Health Information to another covered entity who was not the originator and/or lawful possessor of said Protected Health Information. Further, Business Associate agrees that any such wrongful disclosure of Protected Health Information is a direct violation of this Agreement and shall be reported to Covered Entity *immediately* after the Business Associate becomes aware of said disclosure and, under no circumstances, later than three (3) business days thereafter.

e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

4. Obligations and Activities of Covered Entity.

a. Covered Entity shall notify Business Associate of the provisions and any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such provisions and limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that the changes or revocation may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, and also notify Business Associate regarding restrictions that must be honored under section 13405(a) of the HITECH Act, to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.

d. Covered Entity shall notify Business Associate of any modifications to accounting disclosures of Protected Health Information under 45 CFR §164.528, made applicable under Section 13405(c) of the HITECH Act, to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.

e. Covered Entity shall provide Business Associate, within thirty (30) business days of Covered Entity executing this Agreement, a description and/or specification regarding the manner and format in which Business Associate shall provide information to Covered Entity, wherein such information is required to be provided to Covered Entity as agreed to by Business Associate in paragraph 2(e) of this Agreement. Covered Entity reserves the right to modify the manner and format in which said information is provided to Covered Entity, as long as the requested modification is reasonably required by Covered Entity to comply with the Privacy Rule or the HITECH Act, and Business Associate is provided sixty (60) business days notice before the requested modification takes effect.

f. Covered Entity shall provide Business Associate, within thirty (30) business days of Covered Entity executing this Agreement, a description and/or specification regarding the manner and format in which Business Associate shall provide information to Covered Entity, wherein such information is required to be provided to Covered Entity as agreed to by Business Associate in paragraph 2(l) of this Agreement. Covered Entity reserves the right to modify the manner and format in which said information is provided to Covered Entity, as long as the requested modification is reasonably required by Covered Entity to comply with the Privacy Rule or the HITECH Act, and Business Associate is provided sixty (60) business days notice before the requested modification takes effect.

5. Term and Termination.

- a. Term. The Term of this Agreement shall be effective as of the date of signed contract for services [Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- b. Termination for Cause by Covered Entity. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Termination for Cause by Business Associate. Upon Business Associate's knowledge of a material breach of this Agreement by Covered Entity, Business Associate shall give Covered Entity written notice of such breach and provide reasonable opportunity for Covered Entity to cure the breach or end the violation. Business Associate may terminate this Agreement, and Covered Entity agrees to such termination, if Covered Entity has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Business Associate shall report the violation to the Secretary.
- d. Effect of Termination.
 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall **return or destroy all** Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or Agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. Entire Agreement.

- a. This Agreement supersedes all other prior and contemporaneous written and oral agreements and understandings between Covered Entity and Business Associate regarding this Subject Matter. It contains the entire Agreement between the parties.
- b. This Agreement may be modified only by a signed written agreement between Covered Entity and Business Associate.
- b. All other agreements entered into between Covered Entity and Business Associate, not related to this Subject Matter, remain in full force and effect.

7. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH Act means the section as in effect or as amended.

b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.

c. Survival. The respective rights and obligations of Business Associate under Section 5(d) of this Agreement shall survive the termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.

e. Severability. If any provision or provisions of this Agreement is/are determined by a court of competent jurisdiction to be unlawful, void, or unenforceable, this Agreement shall not be unlawful, void or unenforceable thereby, but shall continue in effect and be enforced as though such provision or provisions were omitted.

9. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile or electronically authenticated signatures shall be accepted and enforceable in lieu of original signatures.

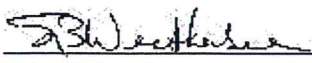
IN WITNESS WHEREOF the parties have signed this agreement as of the date first written above.

SAN BENITO COUNTY

Per: _____
Authorized Signatory


Date: _____

ECENTER RESEARCH INC.

Per: 
Authorized Signatory

Date: September 4, 2018

To accept this agreement, please initial each page, sign above, and email to steve@ecenterresearch.com.
You will receive an executed copy once signed by eCenter Research authorized personnel.

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL
 9-6-18
DEPUTY COUNTY COUNSEL DATE