



CONTRACT NO. MA-042-17011367

FOR

**ELECTRONIC HEALTH RECORD SYSTEM MAINTENANCE
AND SUPPORT**

BETWEEN

**THE COUNTY OF ORANGE
HEALTH CARE AGENCY**

AND

NAPHCARE, INC.

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CONTRACT NO. MA-042-17011367**FOR****ELECTRONIC HEALTH RECORD SYSTEM MAINTENANCE AND SUPPORT**

This Contract Number MA-042-17011367 ("Contract"), for Electronic Health Record System Maintenance and Support is made and entered into this 1st day of July, 2017 ("Effective Date") between NaphCare, Inc. ("Contractor"), with a place of business at 2090 Columbiana Rd, Ste. 4000, Birmingham, AL 35216-2158 and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 200 Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506, which are sometimes individually referred to as "Party", or collectively referred to as "Parties_".

RECITALS

WHEREAS, County desires to obtain Electronic Health Record System Maintenance and Support; and

WHEREAS, Contractor agrees to render all the necessary skills, knowledge, material and labor to perform the services; and

WHEREAS, County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into Contract with Contractor for obtaining said services; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES**GENERAL TERMS AND CONDITIONS**

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This Contract, when accepted by Contractor either in writing or by commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee, hereinafter "Purchasing Agent".
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.

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- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received or inspected to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless the County, its elected and appointed officials, officers, employees, and agents from any claims, demands or liability of any kind or nature, including expenses and reasonable attorney fees, against the County that arise from the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Notwithstanding same, County hereby acknowledges that the electronic health record system is a support tool only and is expressly not to be relied upon to replace the judgment of medical professional.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right (Intellectual Property Right) of any third party. Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless the County, its elected and appointed officials, officers, employees, and agents from any claims, demands or liability of any kind or nature, including expenses and reasonable attorney fees, against the County that arise from a third party claim of Intellectual Property Right infringement.
- I. Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees shall it shall comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract, or any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of

certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

- N. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees, nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agent's, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of

the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage	\$1,000,000 per occurrence for owned, non-owned and hired vehicles
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Technology Errors & Omissions*	\$1,000,000 per claims made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT..**

- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bill and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the

work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

R. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.

S. ~~**Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.~~

Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties."

T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty six (36) hours of the start of the delay and Contractor avails itself of any available remedies.

U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

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- V. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. Freight FOB Destination:** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. Pricing:** The Contract amount shall include full compensation for providing all services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation shall be allowed therefor, unless otherwise provided for in this Contract.
- Y.** Intentionally left blank.
- Z Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of its own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing either or both of them. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- FF. Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation, enforceable in accordance with its terms.
- GG. Employee Eligibility Verification:** Contractor warrants that it fully complies with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for

the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract, except for any claims, demands or liability arising out of the sole negligence of the County. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability shall be apportioned as determined by the court. Neither Party shall request a jury apportionment.

II. Audits/Inspections: Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing company hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit shall be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County shall provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's Records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records.

Should Contractor cease to exist as a legal entity, Contractor's Records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to County's Project Manager.

JJ. Contractor Screening: Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.

a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).

b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).

c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database)."

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, together with its Attachments attached hereto and incorporated herein by reference, specifies the contractual terms and conditions by which County shall procure and receive services from Contractor. The detailed Scope of Work (SOW) is fully set forth and incorporated herein as Attachment A.
2. **Term of Contract:** This Contract shall be in effect from July 1, 2017 through June 30, 2020, renewable for two additional years. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties in accordance with Articles 5, 6, and 7.
3. **Precedence:** The Contract documents consist of this Contract, and its Attachments. In the event of a conflict between the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the Attachments.
4. **Pricing Structure:** Contractor agrees that no price/fee increases shall be passed along to County during the term of this Contract. Contractor may discount said prices anytime during the term of the Contract.
5. **Fiscal Appropriations – Subject to:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract shall be terminated without penalty to County.
6. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
7. **Termination**

A. Termination – Default: If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten (10) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, County may begin negotiations with a third-party contractor to provide services as specified in this Contract.

The right of either Party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with response to any previous default.

B. Termination – Orderly: After receipt of a termination notice from County, Contractor shall submit to County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination County agrees to pay Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party shall assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

8. **County Project Manager:** County shall appoint a Project Manager to act as liaison with Contractor during the term of this Contract. County's Project Manager shall coordinate the activities of County staff assigned to work with Contractor.

9. **Contractor Project Manager:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. The Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager.

Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager or any other Contractor's staff providing services to County under this Contract. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within three (3) business days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager. County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor's Project Manager providing services to County under this Contract.

10. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- b. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
- c. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.

11. **County of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;
- b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
- c. A certification that contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- c. A certification that contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and shall continue to so comply.

Failure of Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another contractor. In the event a Contract has been issued, failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from County shall constitute grounds for termination of the Contract.

12. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor; Contractor's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other

considerations which could be deemed to appear to influence individuals to act contrary to the best interests of County.

County of Orange Board of Supervisors' policy prohibits its public employees from engaging in activities involving conflicts of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

- 13. Conflict with Existing Law:** Contractor and County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with the interests of both Parties to the maximum extent reasonable.
- 14. Contractor Bankruptcy/Insolvency:** If Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of Contractor's insolvency, County may terminate this Contract.
- 15. Disputes – Contract:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor and County's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:
- a. Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - b. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the Purchasing Agent. If County fails to render a decision within ninety (90) days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of County's final decision or one (1) year following the accrual of the cause of action, whichever is later.

- 16. Notices:** Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' routine exchange of information and cooperation during the term of the work and services, and shall be deemed to have been duly given (a) upon actual in-person delivery, if delivery is by direct hand; or (b) upon delivery agreed to as the actual day of receipt or no greater than five (5) calendar days after being mailed (the date of mailing shall count as the first day), whichever occurs first by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the appropriate party at the following address or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid:

For Contractor: Name: NaphCare, Inc.

Address: 2090 Columbiana Rd, Ste. 4000
Birmingham, AL 35216-2158

Attn: Byron P. Harrison, MS
Phone: 205-552-1732

E-mail: Byron.harrison@naphcare.com

For County: Name: County of Orange
Health Care Agency/Purchasing
Address: 200 W. Santa Ana Blvd., Suite 650
Santa Ana, CA 92701
Attn: Ana Figueroa
Title: Deputy Purchasing Agent
Phone: 714-834-2170
Fax: 714-834-2657
E-mail: afigueroa@ochca.com

CC: Name: County of Orange
Health Care Agency/Information Technology
Address: 200 W. Santa Ana Blvd., Suite 1000
Santa Ana, CA 92701
Attn: Richard Hassan
Title: County Project Manager
Phone: 714-834-2052
E-mail: Rhassan@ochca.com

17. **News/Information Release:** Contractor agrees that it shall not issue any news releases or upload County logos or other information onto any website in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval from County through County's Project Manager. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both parties.
18. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 *et seq.*
19. **Validity:** The invalidity in whole or in part of any article or provision of this Contract shall not void or affect validity of any other article or provision of this Contract.
20. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
21. **Parking:** County shall not provide free parking.
22. **Amendments – Changes/Extra Work:** Contractor shall make no changes to this Contract without County's written consent. In the event that there are new or unforeseen requirements, County with Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, Contractor's ability to deliver services, or the project schedule, Contractor shall give County written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by County and Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by County-assigned buyer, shall require the mutual consent of all Parties, and may be subject to approval by County Board of Supervisors. Nothing herein shall prohibit Contractor from proceeding with the work as set forth in this Contract.

- 23. Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project Manager and Contractor's Project Manager shall meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
- 24. Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County. County acknowledges that Contractor has and retains exclusive ownership of the electronic health record system and all intellectual property and proprietary rights therein.
- 25. EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom County pays \$600 or more or with whom County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

- 26. Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
- 27. Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or shall be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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- 28. Software – Protection:** County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this Contract only and shall be held in confidence. All proprietary data shall remain the property of Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of Contractor. County shall ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. County agrees that it shall take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of licensed programs and optional materials.
- 29. Software – Maintenance:** The correction of any residual errors in any software products which may be discovered by Contractor or by County shall be considered maintenance. Such maintenance shall be performed by Contractor without additional charge for the duration of this Contract. Suspected errors discovered by County in the software products shall be handled by the following procedure:
- a. A listing of the output and a copy of the evidential input data in machine-readable format shall be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.
 - b. Errors in the software product as verified by Contractor shall be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

Contractor shall be available to assist County in isolating and correcting error conditions caused by County's particular hardware or operating system at rates specified in this Contract. If Contractor is called upon by the state to correct an error caused by County's negligence, modification by County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, Contractor reserves the right to charge County for such service on a time and material basis at rates in accordance with the Contract.

- 30. Software License:** Contractor hereby grants to County of Orange and County accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the electronic health record system in this Contract, hereinafter referred to as "software products." The license granted above authorizes County to use the software products in machine-readable form on a single computer system, designated in writing by County to Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to Contractor, County may re-designate the CPU in which the software products are to be used and must do so if the re-designation is permanent.

When encryption/CPU ID authorization codes are required to operate the software products, Contractor shall provide all codes to County with shipment of the software. In the case of an inoperative CPU, as defined above, Contractor shall provide a temporary encryption/CPU ID authorization code to County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, Contractor shall issue to County within twenty four (24) hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

- 31. Software Installation:** The installation date for the software products shall be established in accordance with the provisions below:

- a. If County elects to install the software products, County shall have thirty (30) days from the date of receipt of the software products to initially install and evaluate the software. The date of expiration of this period shall hereafter be known as the "installation date." Contractor shall be responsible for providing criteria and test data necessary to check out the software products.
- b. If installation by Contractor is required by County, Contractor shall have up to thirty (30) days from the effective date of this Contract to provide initial installation and evaluation of the software products on County's designated CPU. Contractor shall issue written notice of the fact that the software products are operational, and the date of said notice shall be known as the "installation date." It shall be at Contractor's discretion to determine the criteria and tests necessary to allow Contractor to issue a notice to the effect that the system is operational.

County agrees to provide such access to its computer system as may be required by Contractor to properly install and test the software products. County further agrees to provide, at no cost to Contractor, systems and production support as may be required by Contractor during installation. If installation by Contractor is required by County, Contractor shall provide such installation on County's equipment at the rates specified in this Contract.

- 32. Software – Acceptance Testing:** Acceptance testing may be required as specified for all Contractor-supplied software as specified and listed in the Contract or order, including all software initially installed. Included in this clause are improved versions, including new releases, of this software, any such software which has been modified by Contractor to satisfy County requirements, and any substitute software provided by Contractor in lieu thereof, unless the Contract or order provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with Contractor's technical specifications and meets County's performance specifications.

- 33. Software – Documentation:** Contractor agrees to provide to County, County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to County in its use of the equipment or software provided hereunder. County shall designate the number of copies for production use and the number of copies for disaster recovery purposes and shall provide this information to Contractor.

If additional copies of such documentation are required, Contractor shall provide such manuals at the request of County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. Contractor agrees to provide such additional manuals at prices not in excess of charges made by Contractor to its best customers for similar publications.

Contractor further agrees that County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. County agrees to include Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by Contractor.

- 34. Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by Contractor and are made available to other licensees, they shall be made available to County at County's option, provided such versions are operable on the same computer hardware configuration.

**35. Compliance with County Information Technology Policies and Procedures:
Policies and Procedures**

Contractor, its subcontractors, Contractor personnel, and all other agents and representatives of Contractor, shall at all times comply with and abide by all Information Technology (IT) policies and procedures of County that are provided or made available to Contractor that pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in addition to all other available rights and remedies of County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following:

Security and Policies

All performance under this Contract shall be in accordance with County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods, and all applicable HIPAA privacy and security regulations with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

Information Access

County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure agreement and concerning access protection and data security in the form provided by County. County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and Contractor shall take all commercially reasonable measures that comply with HIPAA security and privacy regulations to secure such mechanisms. Contractor shall provide each Contractor personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.

Enhanced Security Procedures

County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

Breach of Security

Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.

Conduct on County Premises

Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

Security Audits

Each Contract year, County may perform or have performed security reviews and testing. Such reviews and testing shall ensure compliance with all pertinent County security standards as well as any HCA/Environmental Health requirements such as federal tax requirements or HIPAA.

(SIGNATURE PAGE FOLLOWS)

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Contractor's Name: NaphCare, Inc.

Print Name Title

Signature Date

Print Name Title

Signature Date

If the company is a corporation two signatures are required: one signature by the Chairman of the Board, President, or any Vice President; and one signature by the Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. If signed by one authorized individual only, a copy of the corporate resolution or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her signature alone is required.

County of Orange, a political subdivision of the State of California

Print Name Title

Signature Date

Approved as to Form
Office of the County Counsel
County of Orange, California

County Counsel Deputy

ATTACHMENT A SCOPE OF WORK

A. BACKGROUND

Correction Health Services (CHS) provides medical and mental health services for adult inmates housed within the County Jails, and medical services for youths housed within the detention facilities and Orangewood Children and Family Center. In order to maintain a high level of patient care, CHS utilizes TechCare, an electronic health record system (EHR), to assist in meeting that goal.

B. OBJECTIVE

Establish a software maintenance and support Contract with Contractor for the servicing of their EHR system, TechCare. Services shall include all applicable updates, 24/7 support and software licenses.

C. SYSTEM COMPONENTS

Software License:

County license to include all facilities: Intake and Release Center (IRC), Men's Jail, Women's Jail, James Musick, Theo Lacy, Juvenile Health, Orangewood Child Center and Public Health TB Clinic. Software license includes unlimited users/providers.

Complete EHR product, features, software updates, and modules listed below:

- Electronic Health Records
- Customizable Reports
- Off-site Medical Scheduling
- CIWA-Ar Detoxification Tool
- Chronic Care Management
- Grievance Tracking
- Quality Assurance
- Screening Tools (Intake, TB, Mental Health)
- Dental (Screening, Evaluation)
- Mental Health (Screening, Evaluation, Suicide Alerts)
- Pharmacy (Electronic Drug Orders, Electronic Medication Administration Records)
- Off-Site Medical Services Tracking
- Discharge/Re-Entry Support and Documentation
- Interface Connections with Ancillary Services
- Sick Calls
- Flags
- Queues/Dashboards (Provider, Nurse, Pharmacy)
- Alerts
- Detailed, Compliance Supporting, Logging

Interface Maintenance & Support:

- Adult / Sheriff Jail Management System Interface
- Juvenile / Probation Juvenile Management System Interface
- Social Services / Orangewood Child Management System Interface
- University of California Irvine Lab Interface
- Public Health Lab Interface

- Cerner Mental Health Interface
- Dental X-Ray Image Interface
- Picture Archiving and Communication System Interface
- Correctional Institution Pharmacy System Interface
- ARxium Medication Dispensing Interface
- SureScripts Automated Medication Reconciliation Services Interface:

SureScripts Medication Reconciliation Service aggregates and delivers medication histories into the correctional care workflow by accessing the SureScripts National Database of medication history. Subscription to this service shall provide the following:

- o Elimination of complex intake medication question replaced by simple workflow triggers for the reconciliation process
 - o Exclusion of determining the filling pharmacy or maintaining inconsistent manual reconciliation processes for pharmacies
 - o Streamlining of manual reconciliation process with instant, automated results directly in the TechCare application
 - o Improvement of clinical care with accurate information based on the original order, not what a patient remembers
 - o Reduction of adverse patient outcomes and potential litigation by continuing medication therapies faster following intake
 - o Access to the SureScripts service using the Medication Reconciliation Tab, in the TechCare Dashboard, or loading a patient's chart in TechCare and selecting the Reconcile Medications option from the Medical Menu.
 - o Information from SureScripts can be saved to the patient's chart
 - o Fully integrated solution, no need to access a web-portal or other system to get immediate results
 - o Supported solely by the TechCare Team using existing support processes
 - o Customized to existing workflows and queues including alteration to the intake and dashboard workflows
 - o Access controlled by TechCare permissions allowing access to the service
 - o Only Charged if a patient match is found
- Electronic Prescribing of Controlled Substances (EPCS) and Retail ePrescribing:

Laws governing controlled substances are stringent and require a "wet-ink" signature on paper for medications in this class. The EPCS solution will eliminate the need for a "wet-ink" signature by aggregating any controlled substance orders for provider approval, via a portal accessible through TechCare. Once approved, the orders are securely sent to the pharmacy system/vendor or retail pharmacy as selected. In addition, the following are benefits of the EPCS and Retail ePrescribing solution:

- o The need to print and sign controlled substance orders is eliminated entirely
- o Conforms to DEA reporting requirements for controlled substances
- o Utilizes TechCare Drug Categories to automate processes
- o Integrates with existing pharmacy system, without workflow modifications
- o Allows sending any medication orders to retail pharmacies for continuity of care

Ongoing Services:

- Unlimited on-site and remote training
- Monthly conference calls

- Quarterly on-site visits
- Annual user group conferences
- Monthly software releases

Future Systems:

- Compatibility with any future jail management systems
- Affordable Care Act or any other regulation-based change management and updates
- Federal / State regulatory compliance, accreditation and renewal
- Future jail sites within Orange County

Information Access and 3rd Party Licensure:

- MediSpan Drug Database
- CPT database
- ICD-9/10
- DSM-V Codes
- Electronic Prescribing

Disaster Recovery Services:

Contractor shall support and maintain a single disaster recovery repository of data for the TechCare EHR system, at a Contractor’s disaster recovery location, which shall be accessible by CHS staff during a catastrophic outage. At a minimum, the data maintained by the Contractor in replica form for the County will include SQL Databases for all production instances of the application. At the County’s discretion, flat file data (scanned medical files) may be maintained by Contractor in replica form. The recovery point objective (RPO) is 30 minutes and is directly determined by the connectivity and throughput of the connection between the County’s and Contractor’s datacenters. Connectivity between datacenters may be provided by a private, Point to Point connection or a Secure VPN over Internet connection. The private Point to Point connection is the financial responsibility of the County. Internet connectivity utilized by a Secure VPN is the financial responsibility of both the County and Contractor at their respective datacenter locations. In order to achieve the RPO, the connection speed of either option should be a minimum of 20Mbps. The recovery time objective (RTO) in response to a DR scenario is 4 hours.

Support Requirements:

Support Tiers:

Health Care Agency (HCA) shall be the initial line of contact for system users. The HCA Service Desk shall diagnose, resolve, and escalate problems that clearly relate to HCA areas of responsibility. Problems that cannot be resolved by HCA shall be referred to the Contractor. Support for TechCare shall be structured in three (3) Tiers. HCA shall be responsible for Tier Zero (0), Tier One (1) and Tier Two (2); Contractor shall be responsible for Tier three (3).

Tier Definitions

Responsible Party/Tier	Responsibilities
HCA TechCare Super Users Tier Zero (0)	First line of support during normal working hours shall: <ul style="list-style-type: none"> • Assist TechCare users with general computer and application questions. • If Tier Zero (0) is unable to answer the question, it will be referred to Tier One (1)

Responsible Party/Tier	Responsibilities
HCA\IT Service Desk Tier One (1)	Secondary line of support during normal work hours shall: <ul style="list-style-type: none"> • Resolve service tickets involving system access problems, passwords, system downtime and errors • Provide user assistance for TechCare and any related third party software. • If Tier One (1) is unable to resolve the problem, it shall be referred to Tier Two (2) or Tier Three (3) as appropriate • HCA after hours support shall facilitate communications between Contractor and end user in the event an issue arises after hours
HCA\IT Network HCA\IT Software Support Tier Two (2)	Tertiary line of support during normal working hours shall: <ul style="list-style-type: none"> • Troubleshoot all hardware and network problems • Troubleshoot all database integrity and performance problems • Restore data from backup, routine maintenance, software updates and enhancements • Maintain all required third party software licenses • Coordinate problem resolution between all third-party contractors not related to TechCare If Tier Two (2) is unable to resolve the problem, it shall be referred to Tier Three (3)
Contractor Support Tier Three (3)	Quaternary line of support during normal work hours shall: <ul style="list-style-type: none"> • Provide 24/7 support to diagnose and resolve application errors • Resolve problems with TechCare including all core functionality, interfaces and other middleware proposed by Contractor • Resolve problems with any third party software that has been embedded or integrated with TechCare

**ATTACHMENT B
COMPENSATION AND INVOICING**

I. COMPENSATION

This is a fixed price Contract not to exceed the amount of \$1,845,000 for the first Term of Contract. Contractor agrees to accept the specified compensation as full remuneration for performing all services and furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the responsibility of Contractor which may arise or be encountered in the execution of the services until their acceptance; for risks connected with the services; and for performance by Contractor of all of its duties and obligations hereunder. The fixed price shall include the fee and all expenses related to the performance of work and services required to meet the tasks and deliverables in the Scope of Work of Attachment A.

II. PAYMENT TERMS

Contractor shall submit invoices to the address below. Payment of invoices shall be net thirty (30) days after the receipt of an acceptable invoice submitted in accordance with the terms set forth herein. The invoice shall be verified and approved by County's Project Manager, and shall be subject to routine processing requirements of County. Invoices shall not be paid if services have not been appropriately provided as determined by County's Project Manager.

Billing shall cover only those services not previously invoiced. Contractor shall reimburse County for any monies paid to Contractor for services not provided or when services do not meet the Contract requirements. Payment made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

III. PAYMENT (ELECTRONIC FUNDS TRANSFER) - INVOICING INSTRUCTIONS

County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.

1. Invoices and all supporting documentation shall be submitted to County's Project Manager as follows:
 - County of Orange Health Care Agency/Accounts Payable
 - PO Box 689
 - Santa Ana, CA 92702
2. Contractor shall provide a two-part invoice on Contractor's letterhead for services rendered. Each invoice shall have a number and shall include the following information:
 - a. Contractor's name and address, and remittance address (if different)
 - b. Contractor's Tax Identification Number or Employer's Identification Number
 - c. County agency name and service address
 - d. Master Agreement Number
 - e. Description and date services provided
 - f. Amount of Payment Requested

The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.

**ATTACHMENT C
PRICING**

	Year 1	Year 2	Year 3	Year 4	Year 5
Period of Service	07/01/2017– 6/30/2018	07/01/2018– 06/30/2019	07/01/2019– 06/30/2020	07/01/2020– 06/30/2021	07/01/2021– 06/30/2022
Invoice Date	7/01/2018	7/01/2019	7/1/2020	7/01/2021	7/01/2022
Software License & Maintenance Support	\$510,000	\$510,000	\$510,000	\$510,000	\$510,000
*Professional Services/Feature Development	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
Total	\$615,000	615,000	615,000	615,000	615,000

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
<u>Period of Service</u>	<u>07/01/20170</u> <u>6/30/2018</u>	<u>07/01/2018</u> <u>06/30/2019</u>	<u>07/01/20190</u> <u>6/30/2020</u>	<u>07/01/20200</u> <u>6/30/2021</u>	<u>07/01/20210</u> <u>6/30/2022</u>
<u>Software License & Maintenance Support</u>	<u>\$510,000</u>	<u>\$510,000</u>	<u>\$510,000</u>	<u>\$510,000</u>	<u>\$510,000</u>
<u>**SureScripts: Initial Integration Services with Medication History Reconciliation Services (One-Time Payment)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$7,500</u>	<u>\$0</u>	<u>\$0</u>
<u>SureScripts: Support and Maintenance Fee (\$13,500/quarterly includes 6,000 results)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$54,000</u>	<u>\$54,000</u>
<u>SureScripts: Overage Fee(result >6,000\$2.00/result)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$6,000</u>	<u>\$6,000</u>
<u>EPCS and Retail ePrescribing (One-Time Payment)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$10,000</u>	<u>\$0</u>	<u>\$0</u>
<u>Annual EPCS and Retail ePrescribing, Per-Provider(70) cost:\$1,750</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$122,500</u>	<u>\$122,500</u>
<u>*Professional Services/Feature Development</u>	<u>\$105,000</u>	<u>\$105,000</u>	<u>\$105,000</u>	<u>\$105,000</u>	<u>\$105,000</u>
<u>Total</u>	<u>\$615,000</u>	<u>\$615,000</u>	<u>\$632,500</u>	<u>\$797,500</u>	<u>\$797,500</u>

*Professional Services/Feature Development: For any services falling outside of Scope of Work. As of February 22, 2017, the County has an approximate total of 1,800 pre-paid hours remaining from the original contract. Following exhaustion of these pre-paid hours, the County may pre-purchase additional hours at a rate of \$125 per hour or be invoiced for additional hours used in arrears at a rate of \$150 per hour.

ATTACHMENT D**BUSINESS ASSOCIATE CONTRACT****A. GENERAL PROVISIONS AND RECITALS**

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-042-17011367 that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-042-17011367, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-042-17011367.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-17011367 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained,

transmitted, used, or disclosed pursuant to the Contract MA-042-17011367.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.

2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County , if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA

Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect Contractor’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA 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.

10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-042-17011367, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is

completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-042-17011367, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it

becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI ,PHI by either party, the other party shall notify the other such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County Privacy Officer at:

County Privacy Officer		HCA Information Technology Security Officer
<p>Linda Le, CHPC, CHC, CHP County Privacy Officer OCIT CEO SECURITY 1501 E. St. Andrews Place Santa Ana, CA 92705 Office: (714) 834-4082 E-Mail: linda.le@ceoit.ocgov.com privacyofficerinbox@ceoit.ocgov.com</p>		<p>David Castellanos (714) 834-3433 200 W. Santa Ana Blvd., 10th Floor Santa Ana, CA 92701 dcastellanos@ochca.com</p>
Contractor Privacy Officer		
<p>Bradley J. Cain, General Counsel NaphCare, Inc. 2090 Columbiana Road, Suite 4000 Birmingham, Alabama 35216 Office: (205) 536-8534. E-Mail: Brad.cain@naphcare.com legaldepartment@naphcare.com</p>		

a. Either party's notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.

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3. Contractor's notification shall include, to the extent possible:
 - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;
 - b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - (1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - (4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - (5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
 4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.
 5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
 6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
 7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to

permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County the other party for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-042-17011367, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract MA-042-17011367, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-17011367 is feasible.

2. Upon termination of the Contract MA-042-17011367, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

b. Contractor shall retain no copies of the PHI.

c. In the event that Contractor determines that returning or destroying the PHI is

not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract MA-042-17011367.

ATTACHMENT E

OCHCA SECURITY REQUIREMENTS AND GUIDELINES FOR CONTRACTORS AND APPLICATION SERVICES PROVIDERS



County of Orange
Health Care
Agency

**Security
Requirements and
Guidelines for
Application
Vendors and
Application
Service Providers**

02/2017

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1. Overview

Security Requirements and Guidelines for Application Vendors and Application Service Providers

This document provides a high-level overview of application security related guidelines and requirements set forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-implemented applications and application service providers who provide hosted services.

These requirements and guidelines are consistent with regulatory privacy and security requirements and guidelines as well as supportive of OCHCA's position and practices on risk management in terms of appropriately safeguarding OCHCA's information assets.

The sections below are comprehensive and may apply in whole or in part based on specific implementation and scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This information will be reviewed, validated and documented by OCHCA Security prior to any contract being finalized.

Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA's systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security Standards, and Sarbanes-Oxley (SOX). Vendors must also commit to ensuring compliance with all future local, state and federal laws and regulations related to privacy and security as they pertain to the application or service.

2. General Security Requirements

- The application/system must meet the general security standards based upon ISO 17799 – Code of Practice for Information Security and ISO 27799 – Security Management in Health Using ISO 17799.
- The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.
- For applications hosted by OCHCA, OCHCA will routinely apply patches to both the operating system and subsystems as updated releases are available from the operating system vendor and

or any third party vendors. The vendors must keep their software current and compatible with such updated releases in order for the application to operate in this environment.

- Vendors must provide timely updates to address any applicable security vulnerabilities found in the application.
- OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and manage the health and performance of the application server, network connectivity, power etc. The application must function appropriately while the monitoring tools are actively running.
- All application services must run as a true service and not require a user to be logged into the application for these services to continue to be active. OCHCA will provide an account with the appropriate security level to logon as a service, and an account with the appropriate administrative rights to administer the application. The account password must periodically expire, as per OCHCA policies and procedures.
- In order for the application to run on OCHCA server and network resources, the application must not require the end users to have administrative rights on the server or subsystems.

3. Encryption

- Application/system must use encryption to protect sensitive data at rest wherever technically possible (e.g. SQL TDE Encryption).
- All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level. This requirement pertains to any regulated data in motion such as website access and file transfers.
- All electronic files, where applicable, that contain OCHCA data must be encrypted when stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes). The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- All encryption methods used for data storage and transmission must be disclosed by the vendors.

4. Network Application Documentation

- Vendors must provide documentation related to the configuration of the application including methods of secure implementation and port requirements.

5. Access Management

- Application/system must control access to and within the system at multiple levels (e.g. per user, per user role, per area, per section of the chart) through a consistent mechanism of identification and authentication of all users in accordance with the 'Role Based Access Control' (RBAC) standard.
- Application/system must support measures to define, attach, modify and remove access rights for all classes of users.
- Application/system must support measures to enable and restrict access to the whole and/or sections of the technology solution in accordance with prevailing consent and access rules.
- Application must have the ability to create unique user accounts.
- Application must support session timeouts or automatic logoff after 20 minutes of inactivity.
- The application must provide functionality to automatically disable or lock accounts after 60 days of inactivity.

6. Password Management

- Application must support password management measures including but not limited to password expiration, account lockout and complex passwords.
- Passwords expiration must be set to 90 days and the system must prevent the use of the previous 4 passwords.
- Accounts must be locked after five unsuccessful login attempts.
- The password must be at least 8 characters in length and a combination of letters, numbers, and special characters with at least 3 of the four following categories.
 - ◆ Uppercase letters (A through Z)
 - ◆ Lowercase letters (a through z)
 - ◆ Numeric digits (0 through 9)
 - ◆ Special Characters (! @ # \$ % ^ & etc.)

7. Audit Capabilities

Auditing and logging capabilities will permit HCA to identify, and possibly reverse, unauthorized or unintended changes to application.

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- Application must support the identification of the nature of each access and/or modification through the use of logging.
 - Application must employ audit capabilities to sufficiently track details that can establish accountability for each step or task taken in a clinical or operational process.
 - All audit logs must be protected from human alteration.
 - Access to logs must be limited to authorized users.
 - The application must employ basic query tools and reports to easily search logs.
 - OCHCA record retention policies must be followed. [Currently OCHCA requires that this period be at least six years from the time the record was initiated.](#)
 - Logging and auditing functionality must include the following:
 - ◆ Record of who did what to which object, when and on which system.
 - ◆ Successful/unsuccessful log-in and log-out of users.
 - ◆ Add, modify and delete actions on data/files/objects.
 - ◆ Read/view actions on data classified as restricted/confidential.
 - ◆ Changes to user accounts or privileges (creation, modification, deletion).
 - ◆ Switching to another users access or privileges after logging in (if applicable).

8. Protection from Malicious Code

- For cloud hosted solutions, vendors must utilize antivirus/antispymware software on servers and monitor to prevent malicious code which may lead to a compromise of OCHCA's data.
- For local hosted solutions, vendors must ensure that the application appropriately supports the use of antivirus/antispymware software.

9. Remote Support Functionality

- Provider must conform to OCHCA Vendor Remote Access Policy.

10. HCA Data Usage

- During the course of any implementation and subsequent support and life cycle management, any OCHCA data that the vendors have access to in any manner shall be considered confidential unless otherwise designated in writing.
- Vendors must not use or disclose OCHCA's data other than as permitted or as required by contract or law.

- The vendors must agree to use appropriate safeguards to prevent the unauthorized use or disclosure of OCHCA's data during any time that the data is stored or transported in any manner by vendors.
- After the end of any appropriate use of OCHCA's data within the vendors' possession, such data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

11. Cloud Solutions

Application Service Providers hosting OCHCA data must meet the following additional requirements and are required to comply with and provide deliverables noted below:

- **SSAE 16.** SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance certificate.
- **Network Intrusion Detection and Prevention.** All systems that are accessible via the internet must actively use a network based intrusion detection and prevention solution.
- **Workstation/Laptop Encryption.** All workstations, laptops and mobile devices that process and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- **Jurisdiction and Location of OCHCA Data.** To protect against seizure and improper use by non-United States (US) persons and government entities, all data / information stored and processed for OCHCA must reside in a facility under the legal jurisdiction of the US.
- **Patch Management.** All workstations, laptops, and other systems that access, process and/or store OCHCA data must have appropriate security patches installed. Application Service Providers must utilize a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a minimum, all applicable patches must be installed within 30 days of vendor release.
- **Application Access.** All systems accessible via the internet must employ security controls to prevent access to the application via an asset not approved or owned by the county.
- **Risk Assessment.** Application Service Providers hosting data for HIPAA covered services must conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on the latest version of NIST SP 800-30 (http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf). Upon request, the Risk Assessment findings and remediation strategy must be shared with OCHCA.
- **NIST.** To ensure compliance with HIPAA, Application Service Providers shall implement appropriate security safeguards by following National Institute of Standards and Technology (NIST) guidelines.

12. Policies

Vendors must have formal, published IT security policies that address how they manage and maintain the internal security posture of their own or sub-contracted infrastructure. The vendor shall also clearly demonstrate that additional security features are in place to protect systems and data in the unique environment of the service provider model: namely, security issues associated with storing County-owned data on a remote server that is not under direct County control and the necessity of transferring this data over an untrusted network.

Vendors must provide, to the extent permissible, all relevant security policies and procedures to the County for review and validation. All documentation must be provided in electronic format for the County's review.

These policies must include, but not be limited to, the following:

- **IT Staff Usage Agreement.** All vendor employees performing services for the County must sign and agree to an IT usage agreement within their own organization as part of an overall security training and awareness program. At a minimum, vendor employees must sign a statement of understanding within their own organization regarding Internet dangers, IT security, and IT ethics and best practices,
- **IT Security Policies and Procedures.**
- **IT Operations Security Policy.** Written standards for operational security for any facilities where the County data, staff or systems shall exist. These documents must include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
- **Data Management Security Policy.** Policy for the safeguarding and management of all data provided by the County or accessed by vendor as part of implementation and ongoing maintenance. This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of duties.
- **Security Incident Notification and Management Process.** A detailed document that outlines the contact names and order and escalation of events that will occur in the case

of a security breach concerning the County staff, data, or systems. This document must be updated immediately upon any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the vendor must:

- Bear the cost of compliance for any required changes to security infrastructure, policies and procedures to comply with existing regulations, unless such change is unique to the County.
- Comply with reasonable requests by the County for audits of security measures, including those related to identification and password administration.
- Comply with reasonable requests by the County for onsite physical inspections of the location from which the vendor provides services.
- Provide the County with any annual audit summaries and certifications, including but not limited to HIPAA, ISO or SOX audits, as applicable.
- Designate a single point of contact to facilitate all IT security activities related to services provided to the County, with the allowance of appropriate backups. Such contact(s) must be available on a 7/24/365 basis.

13. Business Continuity / Disaster Recovery Plans

Application Service Providers must have a viable risk management strategy that is formally documented in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP plan(s) must identify recovery strategies within the application service areas, outline specific recovery methods and goals, and provide the mutually agreed upon recovery time and point objectives.

14. Backup and Restore

The vendor must provide their routine Backup and Restore policy and procedure which includes their backup data security strategy. These procedures shall allow for protection of encryption keys (if applicable) as well as a document media destruction strategy including media management tasks (i.e., offsite vaulting and librarian duties).

15. Staff Verification

For any employee a vendor contemplates using to provide services for the County, the vendor shall use its standard employment criteria as used for similar services provided to other customers in evaluating the suitability of that employee for such roles.

At a minimum, subject to the requirements of applicable law, such criteria must include the information as outlined below for each employee:

- **Relevant Skills, Licenses, Certifications, Registrations.** Each service employee must possess the educational background, work experience, skills, applicable professional licenses, and related professional certifications commensurate with their position. The County may, at any time and at its sole discretion, request that the vendor demonstrate compliance with this requirement as applicable to the nature of the services to be offered by the vendor's employee. The County may, at its sole discretion, also request the vendor's certification that the vendor employee has undergone a chemical/drug screening, with negative results, prior to granting access to the County facilities.
- **Background Checks.** In accordance with applicable law, the vendor must, at the County's request, obtain as a condition of employment, a background investigation on any vendor employee selected to work for the County. The security and background investigation shall include criminal record checks, including records of any conviction in the U.S. or other relevant jurisdiction where the employee resides. Costs for background investigations must be borne by the vendor.

At a minimum, subject to the requirements of applicable law, the vendor must:

1. Ensure that all vendor service employees performing applicable services or supporting the vendor's duties and obligations under a County agreement: (i) have not been convicted of any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and (ii) have not been on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business.
2. Follow such verification procedures as may be reasonably specified by the County from time to time. If either the vendor or the County becomes aware that any vendor employee has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or has been included on any such list of persons or entities convicted

of such crimes, then the vendor shall promptly remove the employee from providing services to the County and prohibit that employee from entering any facilities at which services are provided.

3. Annually certify to the County that, to the best of its knowledge, none of the service employees have been convicted of any felony involving fraud, theft, dishonesty or a breach of trust under any laws.

16. IT Physical Security and Access Control

The vendor must establish processes and procedures for physical access to and control of their own facilities that are, at a minimum, consistent with relevant industry-specific best practices.

Vendor employees are expected to:

- Comply with facility access procedures, using procedures such as sign-in/sign-out requirements and use of assigned ID badges.
- Scan ID badges, where applicable, at any secure door and/or entrance and exit gates, including any door or gate that may already be open.
- Refrain from using recordable media in conjunction with County-owned equipment.
- Comply with check-in/check-out requirements for materials and/or equipment.
- Adhere to the facility's established emergency, safety and evacuation procedures.
- Report any unsafe conditions to the facility's safety representative.
- Report any access violations or security threats to the facility's local security administrator.

17. IT Security Compliance and Training

The vendor must ensure that all vendor employees comply with security policies and procedures and take all reasonable measures to reduce the opportunity for unauthorized access, transmission, modification or misuse of the County's data by vendor employees.

The vendor must ensure that all vendor employees are trained on security measures and practices. The vendor will be responsible for any costs related to such training.

At a minimum, the vendor is expected to:

- Ensure that a formal disciplinary process is defined and followed for vendor employees who violate established security policies and procedures.
- Proactively manage and administer access rights to any equipment, software and systems used to provide services to the County.
- Define, maintain and monitor access controls, ranging from physical access to logical security access, including a monthly review of vendor employees' access to systems used to provide services to the County.

The vendor shall monitor facilities, systems and equipment to protect against unauthorized access.

At a minimum, the vendor is expected to:

- Monitor access to systems; investigate apparent security violations; and notify the County of suspected violations, including routine reporting on hacking attempts, penetrations and responses.
- Maintain data access control and auditing software and provide adequate logging, monitoring, and investigation of unusual or suspicious activity.
- Initiate immediate corrective actions to minimize and prevent the reoccurrence of attempted or actual security violations.
- Document details related to attempted or actual security violations and provide documentation to the County.
- Provide necessary documentation and evidence to the County in connection with any legal action or investigation.

18. Security Testing Recommendations

The vendor should perform a series of steps to verify the security of applications, some of which are noted below. This section will not be validated by the County, but reflects best practices that the vendor should consider and follow.

1. Look for vulnerabilities at various layers of the target environment. In the lowest layer, the vendor's testing team should look for flaws in the target network environment, including

any routers and firewalls designed to control access to the web server and related target components. The team should attempt to determine whether such filters provide adequate protection at the network layer of the target hosts that the team can reach across the Internet.

2. Look for flaws in the Internet-accessible hosts associated with the target infrastructure, including the web server. This host-based component of the test will analyze which network-accessible services are available on the target hosts across the Internet, including the web server process. The testing team should look for incorrect configuration, unpatched or enabled services, and other related problems on the target hosts.

This review performed by the vendor should include but not be limited to:

- The web application (i.e., the software that interacts with users at their web browsers; typically custom-crafted code created by the web development team)
- The web server application (the underlying software that sends and receives information via HTTP and HTTPS, typically off-the-shelf software such as Microsoft's IIS or the open-source Apache software)
- Any separate backend application servers that process information from the web application
- The backend database systems that house information associated with the web application.
- Infrastructure diagrams.
- Configuration host review of settings and patch versions, etc.
- Full code review.
- Identification and remediation of well-known web server, code engine, and database vulnerabilities.
- Identification and remediation of any server and application administration flaws and an exploitation attempt of same.
- Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities.
- Analysis of data communications between the application and databases or other backend systems.
- Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access.

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- Analyses of user and group account authentication and authorization controls to determine if they can be bypassed.
 - Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic.
 - Identification of areas where error handling is insufficient or reveals too much sensitive information.
 - Identification of opportunities to write to the host file system or execute uploaded files.
 - Identification of product sample files, application debugging information, developer accounts or other legacy functionality that allows inappropriate access.
 - Determination as to whether or not fraudulent transactions or access can be performed.
 - Attempts to view unauthorized data, especially data that should be confidential.
 - Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted.
 - Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

Vendor Deliverables

The following items are to be provided by the vendor:

- OCHCA Security Requirements and Guidelines for Application Vendors and Application Service Providers - Questionnaire
- Business Continuity Plan Summary (as related to service provided)
- SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance certificate
- Network Diagram that demonstrates vendor network and application segmentation including the security controls in place to protect HCA data
- IT Security Staff Usage Policy
- IT Security Policies and Procedures
- IT Operations Security Policy
- Data Management Security Policy
- Security Incident Notification and Management Process

- Security Contact Identification (24x7x365)
- Staff Related Items
 - Pre-Employment Screening Policy/Procedure
 - Background Checking Procedure
 - Ongoing Employment Status Validation Process
 - Staff Roster and Duties