

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND PROFESSIONAL RESEARCH CONSULTANTS, INC.  
FOR PATIENT SATISFACTION AND PATIENT EXPERIENCE SURVEY SERVICES**

This is an Agreement by and between the County of Santa Clara, a political subdivision of the State of California, d/b/a Santa Clara Valley Health and Hospital System ("County") and Professional Research Consultants, Inc. ("Contractor"), for provision of services to support the evaluation of patient satisfaction and patient experience at Santa Clara Valley Medical Center ("Agreement").

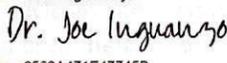
The parties agree to comply with the General Terms and Conditions contained in Sections 1 – 35 of this Agreement and provisions contained in Exhibit A: Scope of Service, Exhibit B: Compensation, Exhibit C: Insurance Requirements, Exhibit D: Business Associate Agreement, and Exhibit E: Security and Confidentiality Agreement, which are attached hereto and incorporated herein by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate originals.

**COUNTY OF SANTA CLARA**

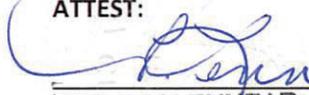
  
Date JAN 15 2019  
S. Joseph Simitian  
President  
Board of Supervisors

**CONTRACTOR**

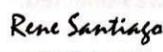
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Date 10/23/2018  
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President and Chief Executive Officer  
Professional Research Consultants, Inc.

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

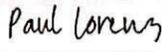
**ATTEST:**

  
Date JAN 15 2019  
TIFFANY LENNEAR  
Assistant Clerk of the Board of Supervisors

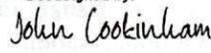
**Approved By:**

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Date 11/26/2018  
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Deputy County Executive  
Santa Clara Valley Health & Hospital System

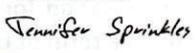
**Approved By:**

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Date 11/26/2018  
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Chief Executive Officer  
Santa Clara Valley Medical Center

**Approved By:**

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Date 11/26/2018  
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Chief Financial Officer  
Santa Clara Valley Health & Hospital System

**Approved as to form and legality:**

DocuSigned by:  
  
Date 11/21/2018  
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Deputy County Counsel

Approved: 01/15/2019

91076

JAN 15 2019

THEREFORE, COUNTY and CONTRACTOR agree as follows;

**1. Term**

This Agreement is effective from January 1, 2019 to and including December 31, 2021 unless terminated in accordance with Section 6. Thereafter, the County shall have the option to renew for two (2) additional one-year terms.

**2. Compensation and Payment**

- a. Contractor shall invoice County for work authorized by County and performed by Contractor under this Agreement as set forth in Exhibit A (Scope of Service) to the satisfaction of County according to the compensation schedule also set forth in Exhibit A (Scope of Service). Contractor's invoices shall be in a form that is acceptable to County and shall include all supporting data and documentation required by County.
- b. County shall inform Contractor of any disputed invoice and the parties shall use their best efforts to resolve such disputes expeditiously. Any undisputed portion of the invoice shall be paid without delay as set forth above. County shall not pay any disputed portion of any invoice until Contractor has resolved the dispute to the satisfaction of the County. After disputed charges are substantiated and approved, County shall make payment to the Contractor accordingly.
- c. The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

- 2.25% 10 Net 45 (provides 35 days of cash acceleration)
- 2.00% 15 Net 45 (provides 30 days of cash acceleration)
- 1.75% 20 Net 45 (provides 25 days of cash acceleration)
- 1.33% 25 Net 45 (provides 20 days of cash acceleration)
- 1.00% 30 Net 45 (provides 15 days of cash acceleration)
- Net 45 (full payment)

**Note:** Payment term will default to "Net 45 (full payment)", if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

- d. County does not guarantee any minimum compensation payable under this Agreement. The maximum annual compensation for all work performed under this Agreement shall not exceed \$839,000.00 for the term of this Agreement as stated in Exhibit B (Compensation).

**3. Budget Contingency**

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

**4. Indemnification and Insurance Requirements**

a. **Indemnity:** Contractor will indemnify County as set forth in Exhibit C (Insurance Requirements).

b. **Insurance:** Without limiting the Contractor's indemnification of the County, the Contractor will provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the insurance coverages and provisions set forth in Exhibit C (Insurance Requirements). Contractor agrees that failure to provide evidence of such required insurance coverages and provisions will result in the County withholding payment until all such evidence is provided to the County.

**5. The Joint Commission**

Contractor acknowledges that SCVMC is accredited by The Joint Commission (TJC) on Accreditation of Healthcare Organizations. Contractor's performance under this Agreement shall comply with applicable TJC standards. Further, Contractor agrees to cooperate with and/or participate in any TJC review or survey as requested by the County and/or TJC.

**6. Termination**

Either party to this Agreement shall have the right to terminate this Agreement, at any time, without cause, by providing the other party with ninety (90) days' prior written notice in the manner described in Section 10. Termination shall take effect automatically upon the expiration of the ninety (90) day notice period.

**7. Status of Parties**

This is an Agreement by and between independent contractors and shall not be construed to create an employment, agency partnership, or joint venture relationship. Neither Contractor or its employees or agents shall be considered County employees, nor shall they be entitled to any of the benefits enjoyed by County employees, including, but not limited to, salary, vacation pay, sick pay, retirement, or workers' compensation, unemployment benefits, or any other County employee benefits. Neither party shall have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided for herein.

**8. Assignment**

This Agreement shall not be assigned, in whole or in part, without the prior written consent of the County.

**9. Contracting Principles**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally

responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County’s request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

**10. Notices**

All notices required by this Agreement shall be deemed given when in writing and delivered personally, or five (5) days after deposited in the United States mail, postage prepaid, return receipt request, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section.

To COUNTY:  
Paul E. Lorenz, Chief Executive Officer  
Santa Clara Valley Medical Center  
751 S. Bascom Avenue  
San Jose, CA 95128

To CONTRACTOR:  
Jose M. Inguanzo, Ph.D  
President and Chief Executive Officer  
Professional Research Consultants, Inc.  
11326 P Street  
Omaha, NE 68137-2316

**11. Entire Agreement**

This Agreement, including all Exhibits, represents the entire agreement of the parties and supersedes any previous agreements between the parties relating to the same subject matter.

**12. Amendments**

This Agreement may only be amended by a written instrument signed by the parties.

**13. Binding Effect**

This Agreement shall be binding upon and shall inure to the benefit of Contractor and its successors and assigns, and upon the County and its successors and assigns.

**14. Governing Law, Venue**

This Agreement shall be construed and enforced in accordance with the laws of the State of California without considering choice of law rules. The parties agree to submit to the jurisdiction of the federal and state courts located in the County of Santa Clara. The parties agree that venue shall be Santa Clara County for all purposes.

**15. Compliance With All Laws, Including Non-Discrimination, Equal Opportunity, and Wage Theft Prevention**

15.1 Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

- 15.2 Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- 15.3 Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- 15.4 Definitions: For purposes of this Subsection, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.
- 15.5 Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

- 15.6 Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- 15.7 Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection g., except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.
- 15.8 Pay Equity Notification: Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.
- 15.9 Material Breach: Failure to comply with any part of this Subsection shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions: (i) Suspend or terminate any or all parts of this Agreement. (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law. (iii) Offer Contractor an opportunity to cure the breach.
- 15.10 Subcontractors: Contractor shall impose all of the requirements set forth in this Subsection on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

**16. County Data**

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not,

without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.

**17. Data Ownership, Confidentiality, and HIPAA Compliance**

- 17.1 Any information provided to or developed by Contractor and its Providers in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of County except as may otherwise be required by law. Contractor shall not, without County's written permission consent, use or disclose County information or data other than in the performance of its obligations under this Agreement.
- 17.2 During the term of its Agreement and any mutually agreed upon extension thereof, Contractor shall use every effort to (1) require authorized user to enter user identification codes and passwords prior to gaining access to the County data, and (2) control access by any end user to County data.
- 17.3 If any County data is lost or damaged due to the negligent acts or omissions of Contractor and its Providers while working in any Information Systems such as Electronic Medical Record, Contractor shall use every effort to assist in replacing or regenerating such data at no additional cost to County.
- 17.4 All patient information shall be treated as confidential by Contractor. County employee information, financial information and proprietary information are also confidential. Contractor shall comply with the terms set forth in Exhibit E (Security and Confidentiality Agreement).
- 17.5 County will permit Contractor and the authorized representatives of Contractor, during normal business hours and as often as reasonably requested, to visit and inspect at the expense of Contractor, books, records and, subject to all applicable laws related to the confidentiality of medical records, all records of patients treated by Contractor, for purposes

of monitoring the quality and amount of professional services rendered by Contractor pursuant to this Agreement. Subject to all applicable laws related to the confidentiality of medical records, Contractor will have the right to make copies of, at Contractor's sole expense, all medical records of patients treated by Contractor for any purpose related to the performance of Contracted Services hereunder and permitted by law.

- 17.6 The parties acknowledge that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Privacy Regulations promulgated there under establish certain rights, obligations and duties in relation to the use and disclosure of individually identifiable health information. County shall ensure that its Notice of Privacy Practices, required under the HIPAA Privacy Regulations, meets all of the applicable requirements for notices of privacy practices set forth in the HIPAA Privacy Regulations. County acknowledges and represents that its Notice of Privacy Practices will cover Contractor. Contractor will be subject to all of County's policies and procedures related to complying with HIPAA and the HIPAA Privacy Regulations and will be adequately trained in the requirements of such policies. County further represents that it will maintain the designated record set, as that term is defined in HIPAA and the HIPAA Privacy Regulations, for all Contracted Services provided by the Contractor pursuant to this Agreement and that it will be solely responsible for complying with the individual rights provisions under the HIPAA Privacy Regulations with respect to the designated record set.

**18. Intellectual Property Rights**

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registerable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.

Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

**19. Intellectual Property Indemnity**

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided by Contractor pursuant to this Agreement infringe upon any intellectual property rights of

third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in Exhibit C of this agreement.

**20. Ownership Rights to Materials/Restrictions On Use**

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

**21. California Public Records Act**

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

**22. Compliance**

Contractor shall comply with all applicable federal, state and local laws, rule and regulations

("Laws") that are in effect at the inception of this Agreement and that become effective during the term of this Agreement, including, without limitation, HIPAA. The parties shall execute any amendments necessary to implement such laws. Contractor shall be considered a "Business Associate" of the County for the purpose of HIPAA and Contractor agrees to the terms set forth in Exhibit D (Business Associate Agreement).

**23. Third-Party Beneficiaries**

The obligations created by this Agreement shall be enforceable only by the parties hereto, and no provision of this Agreement is intended to, nor shall any provision be construed to, create any rights for the benefit of or enforceable by any person to whom services are provided, by Contractor or by any other third party.

**24. Conflict of Interest**

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that to the best of Contractor's knowledge, it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall require that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

## **25. Dispute Resolution**

25.1 All disputes arising in connection with the performance by any party under this Agreement shall be subjected to the provisions of this Section. Time is of the essence in the resolution of disputes. The parties shall act immediately to resolve informally such disputes.

25.2 If the parties, through their respective authorized designees, cannot mutually resolve a dispute within seven (7) days after written notification by any party to the other parties of the existence of such dispute, then the following procedure shall apply:

(i) Each party shall appoint one person to act as an impartial mediator in an attempt to resolve such dispute. Each of the mediators shall have sufficient knowledge and experience to understand such dispute but shall not be a person who performs services under the Agreement. The mediators shall be known as the Dispute Resolution Group;

(ii) The Dispute Resolution Group shall convene at SCVMC, or at another location agreeable to all parties, not later than twelve (12) days following notification of the existence of such dispute and shall meet for a maximum of four (4) four-hour sessions during the subsequent seven (7) business days in an attempt to reach a resolution of such dispute which is acceptable to the parties. At such sessions, the Dispute Resolution Group may allow the parties to present arguments and other information regarding such dispute. Legal counsel shall be permitted to present arguments;

(iii) In the event that at such sessions, the Dispute Resolution Group fails to reach a resolution of such dispute, which is acceptable to all parties, then each party, may assert its other rights and remedies as provided under this Agreement, or provided by law;

(iv) Each party shall bear its own costs of mediation, including the cost of the mediator appointed by that party.

25.3 Nothing in this Section is intended to delay either party's right to suspend, cancel or terminate the Agreement, in accordance with applicable provisions herein.

## **26. Waiver**

No delay or failure to require performance of any provision of this Agreement shall constitute waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

**27. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be in original, but all of which together shall constitute one and the same instrument.

**28. Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

**29. Force Majeure**

Neither party shall be liable nor deemed to be in default for any delay, interruption or failure in performance under this Agreement deemed resulting, directly or indirectly, from Acts of God, civil or military authority, war, accidents, fires explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, riots, civil disturbances, strike or other work interruptions by either party's employees, or any similar or dissimilar cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. In the event County determines that County facilities have been entirely or substantially destroyed by any of the above, this Agreement may be terminated by either party upon ten (10) days written notice to the other.

**30. County No-Smoking Policy**

Contractor and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

**31. Food and Beverage Standards**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

**32. Use of Names and Logos**

Neither party to this Agreement shall be permitted to use the other's name, logo or corporate identity for any purpose without prior written consent for the party whose name, logo or corporate identity is to be used. If either party provides such consent, the party using the name, logo or corporate identity agrees to discontinue such use upon thirty (30) days' prior notice from the consenting party.

**33. Assignment of Clayton Act, Cartwright Act Claims**

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (14 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

**34. Contract Execution Policy**

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

**35. Living Wage**

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- (a) Suspend, modify, or terminate the Direct Services Contract.
- (b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

**Exhibit A**  
**Scope of Service**

**I. Background**

Santa Clara Valley Medical Center (“SCVMC”) requires the completion of patient satisfaction and patient experience surveys that are mandated by the Center for Medicare and Medicaid Services and The Joint Commission in order to understand the quality of care, and make improvements as necessary. Professional Research Consultants, Inc. (“Contractor”) is able to provide telephone survey services for SCVMC patients. Contractor shall provide patient satisfaction and patient experience survey services as follows:

1. Contractor shall provide those services set out in Exhibit A (Scope of Service) for SCVMC and/or other County Facility designated by County.
2. Contractor shall comply with any and all federal, state, and local laws and regulations applicable to the provision of or payment for Contracted Services, including but without limitation, laws relating to regulation and licensure of medical space and occupancy of such space and other organizations that have established standards applicable to the provision of the Contracted Services.
3. Contractor shall comply with the provisions of the governing instruments of Santa Clara Valley Medical Center (SCVMC), including, without limitation, the SCVMC bylaws and rules and regulations, as each may be amended from time to time, and such policies, procedures, and protocols related to provision of the Contracted Services, as may from time to time be established, including any quality assurance and utilization review policies. Such instruments, policies, procedures, and protocols (“Policies”) may be amended from time to time by SCVMC without prior approval of Contractor.
4. At all times during the term of this Agreement, Contractor shall maintain appropriate skills, competency, and obtain continuing education commensurate with the type of services that are being provided hereunder.

**II. Service Description**

Contractor shall provide patient satisfaction and patient experience survey services as follows:

- A. Telephone Patient Satisfaction and Patient Experience Surveys** – Contractor will provide telephone interview survey services for the following surveys which include, but are not limited to:
- a. Clinician and Group Surveys – Consumer Assessment of Healthcare Providers and Systems (CG-CAHPS)
  - b. Hospital – Consumer Assessment of Healthcare Providers and Systems (HCAHPS)
  - c. Hemodialysis CAHPS
  - d. Emergency Department CAHPS
  - e. Inpatient Non-HCAHPS Neonatal Intensive Care Unit (NICU)
  - f. Inpatient Non-HCAHPS Pediatrics (PEDI)

- g.** Acute Rehabilitation Units
- h.** Medical Surgical Units
- i.** Mother Infant Care Center (MICC)
- j.** CAHPS for MIPS Study
- k.** Other Studies as mandated by CMS

**B. Sample Sizes for Analyzing Survey Data**

The number of completed telephone interviews will be in the range of 25,000-35,000 interviews for the contract period. It is preferred to have sample sizes large enough to generate estimates at the physician level (for selected surveys), unit level, and hospital level. The surveys will be conducted in English, Spanish, and Vietnamese.

**C. Duties**

Patient Survey Services are to be conducted on a continual basis. Contractor will include the following in each survey study:

- a. Survey maintenance;
- b. Telephone Surveys. Using the approved survey instruments, Contractor shall conduct telephone surveys of SCVMC patients concerning their interaction and experience with SCVMC for the purpose of evaluation and quality and performance improvement. Contract will conduct voice recordings and submit them to County;
- c. Access to Real Time Data. Contractor shall provide authorized County personnel with access to survey results (Data), which Contractor shall add to the website as each interview is completed. Contractor shall make Data accessible on a continuous basis throughout the term of the Agreement;
- d. Data management;
- e. Reporting.
  - i. Data Reporting. Contractor shall provide County with Data via online internet technology, including all responses to every survey question, including the actual number and percentages of the total sample for each question. Contractor shall provide County with survey results as interviews are conducted.
  - ii. Situational reporting. Contractor shall provide County with fax or email notification within twenty-four (24) hours of any telephone interview detailing a patient experience deemed by Contractor to deserve immediate attention by County. Permission by the patient to contact County is to be documented within the notification.
  - iii. Benchmark comparison reporting. Contractor shall provide written peer group comparisons to Contractor's national norms. County Data is included in Contractor's normative database; survey data obtained from County and shared with other clients shall not identify either the source or specific patient information; and
- f. Release of Recordings
  - i. Contractor agrees to provide copies of the Recorded Interviews, or portions of interviews

extracted from Recorded Interviews, from Santa Clara Valley Medical Center's survey or surveys, whether such surveys have been completed, are currently ongoing, or are conducted in accordance with a future agreement, if such Recorded Interviews are available, to Santa Clara Valley Medical Center upon request from Santa Clara Valley Medical Center from time to time.

- ii. Santa Clara Valley Medical Center agrees to use the Recorded Interviews only in accordance with all applicable laws and further agrees to indemnify Contractor from and against any claim or cause of action arising out of Santa Clara Valley Medical Center's use of the Recorded Interviews whether such claim or cause of action is based in contract, tort, or other common law, or on violation of HIPAA, HITECH, or any other federal, state, or local law or regulation, as applicable.
- iii. The release of Recorded Interviews may be terminated by either Party at any time upon written notice to the other Party; provided, however, that Santa Clara Valley Medical Center's obligations under paragraphs 2 above shall survive termination of this Agreement as to Recorded Interviews already provided to Santa Clara Valley Medical Center.

**D. Analytical Reports**

Contractor shall submit quarterly (when sample size is large enough) and annual analytical reports, and other analyses requested by the County, for each survey with graphic presentation of results, and annual key driver analysis. The annual report should include an executive summary, key findings, interpretative analyses, and recommendations. These reports should include peer group comparison, if feasible.

**E. Management of Customized Survey Instruments**

Contractor will work with County staff to maintain customized survey instruments and to review and modify surveys approved by SCVMC CEO or designee. Survey instruments will be developed for each study using standardized surveys provided by Contractor and customized by County staff in collaboration with Contractor; studies to include Inpatient, Outpatient and Emergency Department. Additional studies may be identified and authorized by the SCVMC Chief Operating Officer (COO) or designee, at a later date.

**F. Training and Education**

Training and education shall be provided by the Contractor at the request of the County for the purpose of enhancing the use of the survey instruments and data. Training and education shall be provided by the Contractor's staff at a location determined by the County with participants and content identified by the County and may include:

- a. Research methodology, sample plans, philosophy of service recovery vs. service excellence, interpretative analyses of patient satisfaction, and understanding scores and reports, program development and evaluation.
- b. Classes to orient managers to use of the internet site and services. The number of classes to be provided will ensure sufficient training for as many managers as deemed necessary by the County.

- c. Contractor shall provide the County with training plan and content in advance of training sessions for review and approval. County shall determine group size and identify participants.

**G. Interim Databases**

Contractor must provide authorized personnel access to real time interim databases.

**H. Performance Standards**

- a. Contractor will conduct surveys using agreed upon survey tools on a continuing basis to achieve the mutually agreed upon sample size.
- b. Contractor will enter data onto secure website and ensure accessibility by County staff.
- c. Contractor will submit SCVMC CAHPS data to external accreditation and regulatory agencies as required in a timely manner.
- d. Contractor will provide analyses and reports on a regularly scheduled basis.
- e. Contractor will provide guidance and advice to County staff as needed or requested.

## Exhibit B Compensation

### 1. Rates

Contractor shall bill for patient satisfaction and patient experience survey services as defined in Exhibit A (Scope of Service) for services actually provided at the following rates:

Study Type	Price Per Interview	Annual Base Fee
CG-CAHPS Study	\$14.50	N/A
HCAHPS Study	\$17.50	\$1,000.00
*Hemodialysis CAHPS	\$17.50	\$1,000.00
Patient Loyalty Study	\$15.00	\$6,000.00
Expanded Inpatient Loyalty Study	\$17.50	N/A
Expanded Primary Care/Obstetric Patient Loyalty Study	\$17.50	N/A
CAHPS for MIPS Study	\$4,800 - flat rate annual study fee	N/A

\*Contractor will waive the annual administrative fee for the Hemodialysis CAPHS study until County begins submitting the study data to CMS.

### 2. Billing

- a. Invoices will be submitted within ninety (90) days of the completion of the quarterly surveys and reporting.
- b. Payment will be made quarterly upon completion of the quarterly reports. Partial prepayment prior to completion of job is not permitted. Itemized invoices for each project must list:
  - i. Type of study conducted and the total number of completed interviews;
  - ii. Itemized cost per study; and
  - iii. Itemized list of direct costs.
- c. Payment will be made upon receipt of survey/study results that are in a form acceptable to the County.

**Exhibit C**  
**INSURANCE REQUIREMENTS**  
FOR STANDARD CONTRACTS ABOVE \$100,000  
(rev. 9/2016)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

- 4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

- F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

**Exhibit D**  
**BUSINESS ASSOCIATE AGREEMENT**

WHEREAS, County of Santa Clara (“County” or “Covered Entity”) is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information (“PHI”) to **Professional Research Consultants, Inc.** “Business Associate” pursuant to the terms of the Agreement and this Business Associate Agreement (“BAA”); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with 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 regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable law; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to the BAA, the parties agree as follows:

**I. Definitions**

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. (“HIPAA”) and the implementing regulations and with 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 regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

**Privacy Breach** Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

**Business Associate** is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

**Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

**Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103].

**Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.

**Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

## II. Duties & Responsibilities of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and the BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- b. Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and the BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information within 10 calendar days of discovery, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- d. Appropriate Safeguards.** Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement and the BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e) (2) (ii) (B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing any access, use or disclosure of Protected Information not permitted by the Agreement and BAA, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b)]. All reports to Covered

Entity pursuant to this section shall be sent to the Covered Entity Compliance Officer by facsimile and U.S. mail using the following contact information:

Compliance & Privacy Officer  
Santa Clara Valley Health & Hospital System  
2325 Enborg Lane, Suite 260  
San Jose, CA 95128  
Facsimile 408.885.6886  
Telephone 408.885.3794

The breach notice must contain: (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) the location of the breached information; (3) a description of the types of PHI that were involved in the breach, (4) Safeguards in place prior to the breach; (5) Actions taken in response to the breach; (6) any steps individuals should take to protect themselves from potential harm resulting from the breach, (7) a brief description of what the business associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches, and (8) contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R Section 164.410] Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- f. Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e) (2) (ii) (D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e) (1)).
- g. Access to Protected Information.** Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e) (2) (ii) (E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. Electronic PHI.** If Business Associate receives, creates, transmits or maintains EPHI on behalf of Covered Entity, Business Associate will, in addition, do the following:

- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
  - (2) Document and keep these security measures current and available for inspection by Covered Entity.
  - (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides EPHI, agrees to implement reasonable and appropriate safeguards to protect it.
  - (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."
- i. **Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to the County for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.
- j. **Accounting Rights.** Promptly upon any disclosure of Protected Information for which Covered Entity is required to account to an individual, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, and the HITECH Act, as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business

Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in the Agreement, including this BAA.

- k. Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- l. Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- m. Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- n. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with the BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### III. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) A finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section II of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii) (2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

### IV. General Provisions

- a. **Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the County for any breach of Business Associate's privacy or security obligations under the Agreement, including any fines and assessments that may be made against SCVHHS or the Business Associate for any privacy breaches or late reporting.
- b. **Disclaimer.** The County makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement and/or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the

County must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information.

Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. The County may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or BAA when requested by the County pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

- d. Assistance in Litigation of Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.
- e. No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Effect on Agreement.** Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.
- g. Interpretation.** The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. The BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.
- h. Survivorship.** The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.



**EXHIBIT E**  
**Santa Clara Valley Health & Hospital System**  
**Security and Confidentiality Agreement**

As an employee of, or volunteer, student, Physician, or other person doing business with Santa Clara Valley Health and Hospital System (hereinafter "the Provider"), and as a condition of my employment or other relationship, I agree to the following:

1. I am responsible for complying with the Provider's HIPAA Policies and Procedures and with applicable patient privacy laws. I acknowledge that I have received a copy of the Provider's HIPAA Policies and Procedures, or have been provided with access to these policies on the Provider's intra-net site at <http://www.valleypages/centralsvcshipaa.htm>.
2. I will treat all information received in the course of my employment with the Provider, which relates to the patients of the Provider, as confidential and privileged information.
3. I will not access protected health information unless I have a need to know this information in order to perform my job.
4. I will not disclose information regarding the Provider's patients to any person or entity, other than as necessary to perform my job, and as permitted under the Provider's HIPAA Policies and Procedures.
5. I will not disclose other types of confidential information (e.g., employee information, financial information, proprietary information, etc.) to any person or entity, other than as necessary to perform my job, and as permitted under Provider's Policies and Procedures.
6. I will not log on to any of the Provider's computer systems that currently exist or may exist in the future using a password other than my own.
7. I will safeguard my computer password and will not post it in a public place, such as the computer monitor or a place where it will be easily lost, such as on my nametag.
8. I will not allow anyone, including other employees, to use my password to log on the computer.
9. I will log off the computer as soon as I have finished using it.
10. I will not use Internet e-mail to transmit protected health information unless I am instructed to do so by my Privacy Officer.
11. I will not take protected health information from the premises of the Provider in paper or electronic form without first receiving permission from my immediate supervisor or Privacy Officer.

12. Upon cessation of my employment with the Provider, I agree to continue to maintain the confidentiality of any information I learned while an employee, and agree to turn over any keys, access cards, or any other device that would provide access to the Provider or its information.

I understand that violation of this agreement may result in disciplinary actions. I also understand that violation of patient privacy laws may subject me to civil or criminal liability.