

**Safety Net Institute
LOCAL EXTENSION CENTER
PUBLIC HOSPITAL SERVICE PARTNER CONTRACT**

This LEC Service Partner contract ("**Contract**") is made and entered into by and between the California Health Care Safety Net Institute, a non-profit corporation ("**LEC**"), and the County of San Bernardino on behalf of its Arrowhead Regional Medical Center, an agency, department or political subdivision of the State of California ("**Contractor**"), each a "**Party**" and collectively the "**Parties**."

RECITALS

- A. The California Health Information Partnership and Services Organization ("**CalHIPSO**") is a California non-profit corporation and the recipient of Award Numbers 90RC0031/34 entitled, "California Regional Extension Center: A Health IT Regional Extension Center for Northern/Southern California" ("**Award**"), from the Office of the National Coordinator for Health Information Technology ("**ONC**") at the United States Department of Health and Human Services ("**HHS**"). The Award is outlined in the program announcement under the CFDA No. 93.718.
- B. LEC is an independent entity who has been approved by CalHIPSO to serve as a Local Extension Center as a sub-recipient under the Award as outlined in an agreement between LEC and CalHIPSO.
- C. Contractor is a health care organization that employs primary care providers who are eligible to receive assistance REC services as outlined in this agreement and support the ability of these providers to achieve meaningful use as outlined in this agreement.
- 1. DEFINITIONS.** Whenever a term is capitalized in this Contract it will have the specific meaning below. Throughout this Contract the singular of defined terms shall include the plural and vice-versa.
- 1.1 "CalHIPSO" or "REC"** is the Regional Extension Center or primary recipient of the Award.
- 1.2 "Core Services"** means those services related to installing a CEHR and helping

Providers meet Stage 1 Criteria which are either described in Exhibit A as Core Services.

1.3 "Local Extension Center" or "LEC" means a sub-recipient of the Award subcontracted with CalHIPSO to provide REC Services to Practices and Providers.

1.4 "Provider or "Priority Primary Care Providers (PPC Providers)" means a California licensed MD, DO, NP, PA, or CNMW professional who has been entered into a Provider Enrollment Agreement with CalHIPSO.

1.5 "REC Services" means Core Services.

1.6 " Contractor" means a Public Hospital who is performing one or more of the REC services as outlined in Exhibit A of this Contract and has agreed to be paid on a "per milestone" basis pursuant to Section 5 of this Agreement. Contractors under this Contract are subject to federal audit provisions as outlined in Section 16 of this Contract and ARRA Compliance and Quarterly Reporting requirements as outlined in Exhibit C.

- 2. CONTRACTOR SERVICES.** Contractor shall provide the REC Services as identified in Exhibit A for per milestone payments detailed in Section 5.3. **Contractor may contract out to third parties for the provision of the REC Services** as long as the parties follow federally allowable cost guidelines and can substantiate expenses.
- 3. EFFECTIVE DATE.** This Contract shall not take effect, and neither Party shall be obligated to perform under it, until the latest date it is executed by both Parties, as indicated on the signature page of this Contract ("Effective Date").
- 4. AUTHORIZATION TO PROVIDE REC SERVICES.** Prior to receiving payment under this Contract, Contractor must provide evidence of completion of the Milestones as set forth in Section 5 below.

5. PAYMENT FOR CONTRACTOR'S SERVICES.

- 5.1** Contractor may not charge PPC Providers for Core Services and shall accept as compensation in full for such Core Services per provider milestone payments authorized in this Agreement.
- 5.2** Not more frequently than monthly, in arrears and upon receipt of Contractor's invoice and verification of achievement of Milestone, LEC shall pay Contractor, subject to the reimbursement caps in Sections 5.3 and 5.5 below.
- 5.3** The amounts paid to Contractor shall not exceed the amount authorized by CalHIPSO based on the verification of performance related to the achievement of the following milestones ("Milestones") below. All invoices for milestone credits earned prior to the execution of this contract must be submitted to the LEC by June 30, 2013 in order for payments to be processed. All invoices for additional

milestone credits earned between the execution of this contract and June 30, 2013 must be submitted by July 12, 2013 in order for payments to be processed. All invoices for additional milestone credits earned between June 30, 2013 and October 31, 2013 must be submitted by November 8, 2013 in order for payments to be processed.

5.3.1 Milestone 1 or M1: Enrollment of PPC Providers, based on the submission of a fully executed Provider Enrollment Agreement, appropriate documentation in Salesforce CRM and approval of Provider Enrollment by CalHIPSO. Milestone 1 Amount Authorized, not to exceed: \$33,000.00

5.3.2 Milestone 2 or M2: PPC Provider installation of and go-live status for a CEHR based on the attestation of the PPC Provider and the verification by CalHIPSO of the ability of the Provider to e-prescribe and generate a quality report, as defined by ONC. 34 Milestone 2 credits must be achieved by June 30, 2013. Milestone 2 Amount Authorized, not to exceed: \$34,000.00

5.3.3 Milestone 3 or M3: Achievement of Stage 1 Criteria by PPC Providers as verified by LEC under guidelines to be set forth by CalHIPSO. 17 Milestone 3 credits must be achieved by June 30, 2013. The remaining 17 Milestone 3 credits must be achieved by October 31, 2013. Milestone 3 Amount Authorized, not to exceed: \$34,000.00

5.4 The maximum amount payable under this Subcontract during the Term will not exceed \$101,000.00 and is subject to the verification of Milestones completed by Contractor and corresponding receipt of invoices each in the timeline noted above.

5.5 Contractor's financial management systems must comply with 45 CFR § 74.21. Contractor must maintain back-up documentation to verify expenses associated with their activities, which are subject to audit by LEC and/or CalHIPSO.

5.6 Amounts paid to Contractor that are determined by audit or otherwise to be unallowable will be deducted from subsequent payments due Contractor, or Contractor shall refund such amounts to LEC on demand.

5.7 LEC shall reimburse Contractor, in arrears, upon receipt of Contractor's invoice(s) and approval by LEC representative.

6. PERSONNEL MATTERS.

6.1 Compliance with Employment and Labor Laws. Contractor shall, at its own expense, comply with all applicable laws in performing REC Services, including, but not limited to, the National Labor Relations Act, the Americans With Disabilities Act, all applicable employment discrimination laws, overtime laws, tax laws, immigration laws, workers' compensation laws, occupational safety and health laws, and unemployment insurance laws and any regulations related thereto.

6.2 Payroll Taxes. Contractor shall pay all federal, state and local income taxes and other payroll taxes, as well as contributions for unemployment insurance, workers' compensation insurance, pensions, or annuities which it or its independent contractors now or may hereafter be required to deduct from the wages of Contractor Personnel and shall file all required returns related to such taxes, contributions and payroll deductions.

7. OBLIGATIONS OF THE PARTIES.

7.1 General Obligations. During the Term, each Party:

7.1.1 Shall conduct its business (including, without limitation, performance of its obligations under this Contract) in a manner that does not reflect unfavorably on the goodwill and reputation of the other Party, except with respect to third party reference requests of LEC regarding REC Services;

7.1.2 Shall refrain from engaging in deceptive, misleading or unethical practices detrimental to the other Party or Providers;

7.2 Nondisclosure.

7.2.1 Each Party acknowledges that, as a result of this Contract, it will gain access to Confidential Information. Having acknowledged the foregoing, each Party shall: (i) exercise the same degree of care and protection with respect to the other Party's Confidential Information that it exercises with its own Confidential Information, and no less than that required by law; and (ii) not directly or indirectly disclose, copy, distribute, republish or allow access to any Confidential Information of the other Party to a third party. Notwithstanding the above: (A) LEC may disclose Contractor's Confidential Information to CalHIPSO and to authorized employees or contractors of LEC or Providers; (B) Contractor may disclose LEC Confidential Information to Contractor Personnel who have a need to know and who have entered similar written confidentiality agreements with Contractor; and (C) any Party may disclose another Party's Confidential Information if so required by law (including court order or subpoena), provided that the owner of the Confidential Information may require the disclosing Party to request the appropriate court or governmental body to seal the record that will contain such Confidential Information. Unless otherwise authorized, upon the earlier to occur of (1) expiration or termination of this Subcontract or (2) request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party that disclosing Party's Confidential Information. The information furnished to any Party shall only be used and reproduced in connection with that Party's rights and obligations under this Subcontract.

7.2.2 If Confidential Information of a Party is required to be disclosed by the

receiving Party pursuant to law, regulation, judicial order or other legal process, the receiving Party may disclose such Confidential Information as legally required provided the disclosing Party is given advance prompt written notice and an opportunity to seek confidential treatment thereof and/or obtain a protective order therefore, and the receiving Party required to make such disclosure cooperates fully with the disclosing Party to protect the disclosing Party's Confidential Information.

7.2.3 Monetary damages may be inadequate to compensate for a breach of the confidentiality provisions contained herein. If such breach occurs, the injured Party may be entitled to such injunctive relief and any and all other remedies available at law or in equity. This Section in no way limits the liability or damages that may be assessed against a Party if another Party breaches any of the provisions of this Section.

8. COMPLIANCE WITH LAWS. In performing its respective obligations under this contract, each Party shall materially comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any governmental authority of competent jurisdiction (including, without limitation, all applicable export control laws, regulations, rules, orders and other requirements), to the extent applicable to its performance or obligations hereunder.

9. INCORPORATION BY REFERENCE. The following requirements are hereby incorporated into this Contract by this reference, and Contractor shall comply with them in all respects:

9.1 All provisions of the Award (whether set out in full or incorporated by reference) that are applicable to this Contract (including without limitation the applicable provisions of the grant program legislation and program regulations cited in the Award, including all its special terms and conditions described in Exhibit C);

9.2 Special terms and conditions issued under the American Recovery and Reinvestment Act, 2009 (P.L. 111-5), Title XIII ("ARRA");

9.3 The restrictions on expenditure of federal funds in appropriations acts to the extent those restrictions are pertinent to this Subcontract, and (iv) 45 CFR Parts 74 and 92, as applicable.

10. HIPAA. With respect to Providers, CalHIPS and the LEC are "Business Associates" and each provider is a "Covered Entity" as such terms are defined under the Health Insurance Portability and Accountability Act of 1996 and rules and regulations promulgated there under ("HIPAA"). Contractor is a subcontractor to LEC and covenants to comply with comprehensive privacy and security policies and procedures related to individually identifiable health information. Contractor shall be bound by the obligations of a Business Associate subcontractor; as such obligations are more specifically defined in the HIPAA Business Associate Exhibit attached hereto as Exhibit B.

- 11. PROCUREMENT.** Contractor shall comply with the applicable procurement standards at 45 CFR 74.40 through 74.48 and perform and document some form of cost or price analysis with every procurement action.
- 12. COPYRIGHT.** Any copyrightable works made by Contractor using federal funds provided under this Contract shall be the sole and exclusive property of Contractor provided that LEC, CalHIPSO and the federal funding agency shall have a royalty-free, non-exclusive worldwide license to use, reproduce, and distribute these works and the right to license others to do the same. LEC and CalHIPSO use of proprietary material developed by Contractor and not reimbursed under this contract will be subject to distribution restrictions as requested in writing by Contractor, provided that any such material will be provided to LEC, CalHIPSO and ONC for audit purposes. Contractor shall incorporate the requirements of this clause in all contracts with Contractor Personnel.
- 13. PATENTS AND INVENTIONS.** The provisions of 37 CFR part 401, including the standard patent rights clause at 37 CFR Sec. 401.14, are made a part hereof by reference and Contractor will comply with the applicable provisions thereof. Contractor shall notify LEC of any invention, improvement or discovery that is subject to the foregoing regulations.
- 14. AUDIT AND INSPECTION.** Contractor shall preserve and retain all of its financial records and supporting documentation and all other records, documents, papers and other materials pertinent to this Contract for three years from the date of final payment, except that records relating to any audit, appeal, claim or litigation arising out of this Contract shall be retained until such matters are finally resolved or the retention period ends, whichever is later. Contractor shall make the foregoing financial and other records and materials available to CalHIPSO and the funding agency, if any, at any reasonable time for audit, examination, excerpt and transcription. Contractor shall incorporate the requirements of this clause in all contracts with Contractor Personnel.
- 15. RIGHT TO AUDIT-FEDERAL SPONSORING AGENCY.** If the value of this Contract is greater than \$10,000, CalHIPSO, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representative, may have access to any books, documents, papers, or records of the Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transactions, which Contractor shall preserve and make available for a minimum of three years after final payment.
- 16. AUDIT FILING COMPLIANCE.** Contractor shall comply with the federal audit requirements of OMB Circular A-133, including providing a copy of its reporting package to LEC and CalHIPSO. Contractor shall take appropriate and timely action to follow up and correct all audit findings.
- 17. INDEMNIFICATION.** Contractor shall indemnify, defend, and hold harmless LEC, its directors, officers, members, employees, contractors and agents, and the funding agency, if any, from and against any and all claims, losses, damages, costs, expenses or other

liability arising out of or connected with Contractor's services under this Contract, including but not limited to any accident or injury to persons or property or any liability for intellectual property infringement.

18. INSURANCE. Contractor shall maintain in full force and effect at its own cost and expense during the term of this Contract, and shall provide a certificate of insurance upon request to verify, the following insurance coverages in the following amounts:

18.1 Commercial General Liability insurance, including independent contractors coverage, written on a broad form basis in a combined single limit of one million dollars (\$1,000,000) per occurrence with an aggregate of not less than three million dollars (\$3,000,000);

18.2 Errors and Omissions insurance in amounts not less than one million dollars (\$1,000,000) per claim and not less than three million dollars (\$3,000,000) in the aggregate;

18.3 Business Automobile Liability insurance covering owned and non-owned vehicles with a combined coverage limits of at least \$300,000 per occurrence and \$1 million aggregate.

18.4 Contractor will obtain an endorsement naming LEC and its officers, directors, employees, contractors and agents as additional insureds, but only insofar as activities under this contract are concerned.

19. TERM. The term of this Contract shall be from the Effective Date through October 31, 2013, but in no event shall be in effect beyond January 31, 2014 unless renewed by LEC. This contract may terminate sooner in accordance with Section 20 of this Contract.

20. TERMINATION. Either Party may terminate the Contract, with or without cause, on thirty (30) days advance written notice to the other Party. If either Party terminates the Contract, LEC shall reimburse Contractor for any milestones earned prior to receipt of notice of termination, and for milestones earned after receipt of the notice of termination (which LEC has agreed to in writing in advance that Contractor shall perform) and prior to the actual termination of the agreement.

21. DISPUTES AND ARBITRATION. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the arbitrator's award may be entered in any court having jurisdiction. The arbitration will be held in Alameda County, California. Each Party consents to the exclusive personal jurisdiction and venue of the courts, state and federal, located in Alameda County, California.

22. MISCELLANEOUS

22.1 Governing law. The validity, construction, and effect of this Contract shall be

governed by the laws of the United States of America and the State of California.

22.2 Attachments. All exhibits, schedules and other attachments to this Contract are hereby incorporated into the Contract and made a part of it as if fully set forth herein.

22.3 Force Majeure. If either Party is prevented, hindered or delayed in the performance or observance of any of its obligations there under by reason of any act of God, war, riot, civil commotion, explosion, fire, government action, epidemic, or other circumstance beyond its control, but specifically excluding labor and union-related activities (“**Force Majeure Event**”), and such delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the affected Party through the use of commercially reasonable alternate sources, work-around plans, or other means, then such Party shall be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party uses its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; provided, however, that Contractor shall not have the right to charge LEC for any additional expenses incurred by Contractor as a result of any Force Majeure Event. Any Party so delayed in its performance shall use commercially reasonable efforts to immediately notify the other by telephone (to be confirmed in writing as soon as reasonably possible) and describe the circumstances causing such delay. Such notice shall include a detailed description of the affected Party’s functions or obligations affected by such a delay, as well as details of any work-around plans, alternate sources or other means the affected Party is using or shall use to minimize or circumvent the delay in performance of the affected Party’s obligations hereunder. If any Force Majeure Event prevents, hinders or delays performance of a Party’s obligations hereunder for more than ninety (90) calendar days, the Party not prevented from performing may, at its option, terminate the Contract.

22.4 Binding Nature and Assignment. Subject to all other provisions herein contained, this Contract shall be binding on, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns. Except as set forth in this Section, Contractor may not assign or transfer this Contract by operation of law or otherwise without the prior written consent of LEC, including by way of: (a) any merger of Contractor in or with another entity; or (b) any consolidation, restructuring or reorganization. Notwithstanding the foregoing, upon the prior written consent of LEC, Contractor may assign this Contract if such assignment shall not materially affect the level of REC Services provided to LEC, as determined solely by LEC. Any attempted or purported assignment or transfer in violation of this Section shall be null and void. Nothing in this Contract, express or implied, shall give to any person other than the Parties and their permitted assigns and successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Contract.

22.5 Media Releases. Contractor shall not make any public announcement, media

release, press conference or similar publicity relating to any aspect of this Contract without providing prior written notice to LEC and CalHIPSO. All publications, press announcements, posters, oral presentations at meetings, seminars and any other information-dissemination format produced by Contractor must acknowledge funding received from CalHIPSO and the ONC under the Award.

22.6 Standard of Care. Contractor shall, at all times, act with good faith and diligence with respect to Contractor's obligations hereunder.

22.7 Severability. If any provision of this Contract is or becomes illegal, invalid or unenforceable, such provision shall be deemed stricken from this Contract and its illegality, invalidity or unenforceability shall not affect the remainder of the provisions of this Contract, which shall remain in full force and effect. The Parties shall endeavor in good faith negotiations to replace any illegal, invalid or unenforceable provision with a valid, legal and enforceable provision, the economic effect of which comes as close as possible to the economic effect of the illegal, invalid or unenforceable provision.

22.8 Waiver. No delay or omission by a Party to exercise any right occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by a Party of any of the covenants, conditions or agreements to be performed by the other Parties shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

22.9 No Oral Modifications and Entire Agreement. No Party shall be bound by any conditions, definitions, understandings or representations with respect to the subject matter of this Contract other than as expressly provided herein, or as duly set forth on or subsequent to the Effective Date in writing and signed by a proper and duly authorized representative of the Party to be bound thereby. This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.

22.10 Notices. Wherever under this Contract one Party is required to give notice to the others, such notice shall be deemed effective: (a) five (5) calendar days after deposit in the United States Mail, postage prepaid, certified or registered mail, return receipt requested; (b) three (3) calendar days after deposit with a national overnight courier; or (c) upon delivery if delivered in person or by messenger, in each case, addressed to the addresses for notices set forth on the signature page hereof (or such other addresses as any Party may be notified of as described above).

22.11 Captions and Headings. The division of this Contract into Sections and the insertion of captions and headings are for convenience of reference only and shall not affect the construction or interpretation of this Contract. The terms "this Contract," "herein," "hereof," "hereunder" and any similar expressions refer to this

Contract and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Contract.

22.12 Attorneys' Fees. In any dispute or controversy between Parties in connection with this Contract, any exhibit or schedule attached hereto, or in connection with the interpretation or enforcement of any provision hereof or thereof, each Party in such dispute or controversy will be responsible for its own legal fees and related costs.

IN WITNESS WHEREOF, the Parties have executed this Local Extension Center Service Partner Contract as of the day and year written below.

LEC

Contractor

By _____

By _____

Name Melissa Stafford Jones

Name Janice Rutherford

Title President/CEO, CAPH

Title Chair, Board of Supervisors

Date May 29, 2013

Date _____

Address:

Address:

70 Washington St. Suite 215
Oakland, CA 94607

400 North Pepper Avenue
Colton, CA 92324-1819

Service Partner Number: 0159PH

EIN: 95-6002748

DUNS: 75100599

Tel: 510-874-7100
Fax: 510-874-7111

Tel: 909-580-6150
Fax: 909-580-6196

Exhibit A – REC Services

Description of services required to be provided to achieve per provider/per milestone payment.

Service	Description of Service	Included in Milestone Payment
1. Direct Outreach Activities	Support the LEC in outreach to providers through various means, including on-site visits, provider meetings, and other venues.	X
2. Indirect Outreach	Disseminate approved LEC outreach and educational materials to support LEC outreach activities.	X
3. Enrollment Assistance	Support the LEC in acquiring information necessary for provider enrollment agreement and deliver signed agreements to LEC for processing into Sales Force CRM	X
1. Practice Assessment	Analyze practice readiness for EHR implementation and/or achievement of Stage 1 Meaningful Use criteria. . Assess the current state of resources within Practice to support CEHR implementation and achieve Stage 1 Criteria. Provide Practice with a high level, standardized Practice service plan (PSP) to prepare Practice for key steps and roles/responsibilities in the implementation of electronic health records and/or achievement of Stage 1 Meaningful Use. Practice Service Plan shall clearly outline additional fees, if any, that may be charged by Subcontractor for Additional Services.	X
2. Vendor Selection	Assist Providers in selecting a vendor for CEHR software and integrated practice management system (if needed). Help match Providers' needs to one of several CEHR vendor bundles offered through CalHIPSO' s group purchasing programs or other vendor options. Provide general support and high level guidelines if the Practice chooses a vendor that is not part of the group purchasing program. If provider has an existing EHR, analyze vendor ability to meet ONC Certification and provide recommendation for practice vendor option.	X
3. Project Planning	Develop a high-level project schedule to prepare practice for sequencing of events including target date to achieve Milestone 2 and Milestone 3, and roles/responsibilities of EHR Vendor, LEC, Service Partners, Practice and other vendors.	X
4. Project Monitoring	Monitor CEHR implementation process, in conjunction with CEHR vendor project manager. Provide high-level coaching, consultation, and troubleshooting, based on the Practice Service Plan.	X
5. Project Management	Full scope project management	NA
6. Application Training	Provide application training for the CEHR implementation process in conjunction with CEHR vendor.	NA
7. Workflow Redesign	Assist providers and organizations in adapting and transitioning paper-based processes to technology enabled processes pre and post-CEHR to ensure achievement of Stage 1 Meaningful Use Criteria	X
8. System Configuration/ customization	In conjunction with CEHR vendor personnel, provide consultation on system configuration and/or customization.	X
9. Infrastructure Development	Assist Practices in upgrading hardware, network and other devices to meet the requirements of the new CEHR system.	NA
10. Interface/HIE Planning	Identify HIE and interfaces needed to assist Practices in meeting Stage 1 Criteria as necessary.	X
11. Coordination of Interface/HIE Development	Act as intermediary between EHR vendor and lab, pharmacies, hospitals and other data exchange partners to develop, test and monitor interfaces.	NA
12. Support EHR Milestone 2	Support ability of provider to use operational CEHR to prescribe electronically and run a quality report	X

Achievement		
13. Stage 1 Meaningful Use Readiness Assessment/ Gap Analysis	Assist Practices in identifying their capacity to achieve Stage 1 Meaningful Use Criteria and develop plan to address any deficiencies noted. Assist practices in collecting data appropriately so that meaningful use measures are accurate and reportable.	X
14. Stage 1: Meaningful Use Attestation Reporting	Assist eligible Providers in producing the required evidence and attestations to CMS demonstrating Stage 1 Meaningful Use.	X

EXHIBIT B: BUSINESS ASSOCIATE SUBCONTRACTOR ADDENDUM - 2013

1. Definitions

- 1.1 Breach shall have the meaning given under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.**
- 1.2 Business Associate shall have the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.**
- 1.3 Common ownership** exists if the Subcontractor possesses greater than a five percent (5%) ownership or equity interest in an entity.
- 1.4 Control** exists if the Subcontractor has the power, directly or indirectly, significantly to influence or direct the actions or policies of an entity.
- 1.5 Covered Entity** shall have the meaning given to such term under 45 C.F.R. § 160.103.
- 1.6 Data Aggregation** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- 1.7 Designated Record Set** shall have the meaning given to such term 45 C.F.R. § 164.501.
- 1.8 Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- 1.9 Electronic Health Record** shall have the meaning given to such term under 42 U.S.C. § 17921(5).
- 1.10 Health Care Operations** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- 1.11 Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- 1.12 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. § 160.103. Protected Health Information includes Electronic Protected Health Information.
- 1.13 Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 1.14 Subcontractor** shall include, as applicable, Subcontractor and any entities under common ownership or control of Subcontractor, whether for-profit or non-profit, including, without limitation, any providers or suppliers.

1.15 Unsecured PHI shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”).

2. Obligations of Subcontractor

2.1 Permitted Uses and Disclosures. Subcontractor shall not use or disclose PHI other than as permitted or required by this Addendum or as permitted or required by law, including but not limited to the Privacy Rule. To the extent that Subcontractor carries out obligations of CalHIPSO, Practices or Providers under the Privacy Rule, Subcontractor shall comply with the requirements of the Privacy Rule that apply to CalHIPSO, the Practice or the Provider in the performance of such obligations. Further, Subcontractor shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CalHIPSO, Practices or Providers. However, Subcontractor may use or disclose PHI (i) for the proper management and administration of Subcontractor and (ii) to carry out the legal responsibilities of Subcontractor. If Subcontractor discloses PHI to a third party, Subcontractor must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Addendum 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 Subcontractor of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

2.2 Prohibited Uses and Disclosures under HITECH. Notwithstanding any other provision in this Addendum, Subcontractor shall comply with the following requirements: (i) Subcontractor shall not use or disclose PHI for fundraising or marketing purposes; (ii) Subcontractor shall not disclose PHI to a health plan; (iii) Subcontractor shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CalHIPSO, Practices or Providers and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2), and 45 C.F.R. 164.502(a)(5); however, this prohibition shall not affect payment by CalHIPSO to Subcontractor for services provided to CalHIPSO.

2.3 Appropriate Safeguards. Subcontractor shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted or required by this Addendum or other applicable laws. Subcontractor shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of such PHI. Subcontractor shall comply with each of the requirements of 45 C.F.R. §§ 164.308, 164.310, and 164.312 and the policies and procedures and documentation requirements of the HIPAA Security Rule set forth in 45 C.F.R. § 164.316.

2.4 Mitigation. Subcontractor shall mitigate, to the extent practicable, any harmful effect that is known to Subcontractor of a use or disclosure of PHI in violation of this Addendum.

2.5 Reporting of Improper Access, Use or Disclosure. Subcontractor shall promptly report to CalHIPSO in writing of any access, use or disclosure of PHI not permitted by this

Addendum, or applicable laws; and any security incident, as defined in the Security Rule, of which it becomes aware. Subcontractor shall, following the discovery of any Breach of Unsecured PHI, notify CalHIPSO in writing of such breach without unreasonable delay and in no case later than forty-eight (48) hours after discovery. The notice shall include the following information if known (or can be reasonably obtained) by Subcontractor: (i) contact information for the individuals who were or who may have been impacted by the Breach (*e.g.*, first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery (as defined in 42 U.S.C. § 17932(c)); (iii) a description of the types of Unsecured PHI involved in the Breach (*e.g.*, names, social security numbers, date of birth, addresses, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Subcontractor has done or is doing to investigate the Breach and mitigate harm to the individuals impacted by the Breach.

- 2.6 Subcontractor's Subcontractors and Agents.** Subcontractor shall ensure that any agents or subcontractors to whom it provides PHI agree in writing to the same restrictions and conditions that apply to Subcontractor with respect to such PHI, including without limitation, the duty to notify Subcontractor of the discovery of any Breach of Unsecured PHI without unreasonable delay and in no event later than forty-eight (48) hours after discovery.
- 2.7 Access to PHI.** To the extent Subcontractor maintains a Designated Record Set on behalf of Practices, Providers or CalHIPSO, Subcontractor shall make PHI it maintains or maintained by its agents or subcontractors in Designated Record Sets available to Practices, Providers and CalHIPSO for inspection and copying within ten (10) calendar days of a request by a Practice, Provider or CalHIPSO to enable the Practice, Provider or CalHIPSO to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524, including, but not limited to, 45 C.F.R. § 164.524. Subcontractor shall notify CalHIPSO within five (5) business days of receipt of any request for access to PHI.
- 2.8 Amendment of PHI.** To the extent Subcontractor maintains a Designated Record Set on behalf of a Practice, Provider or CalHIPSO, within thirty (30) calendar days of receipt of a request from a Practice, Provider or CalHIPSO, or an individual for an amendment of PHI or a record about an individual contained in a Designated Record Set, Subcontractor or its agents or subcontractors shall make any amendments that a Practice, Provider or CalHIPSO directs or agrees to in accordance with the Privacy Rule. Subcontractor shall notify CalHIPSO within five (5) business days of receipt of any request for amendment to PHI.
- 2.9 Accounting Rights.** Within thirty (30) calendar days of notice by Subcontractor of a request for an accounting of disclosures of PHI, Subcontractor and its agents or subcontractors shall make available to Practices, Providers and CalHIPSO the information required to provide an accounting of disclosures to enable a Practice, Provider or CalHIPSO to fulfill their obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528, and their obligations under the HITECH Act, including but not limited to 42 U.S.C. § 17935(c), as determined by a Practice, Provider or CalHIPSO. The provisions of this subparagraph 2.9 shall survive the termination of this Addendum. The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any twelve (12) month period.

For subsequent accountings within a twelve (12) month period, Subcontractor may charge the individual or party requesting the accounting a reasonable fee based upon Subcontractor's labor costs in responding to the request and a cost-based fee for the production of non-electronic media copies, so long as Subcontractor informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. Subcontractor shall notify CalHIPSO within five (5) business days of receipt of any request by an individual or other requesting party for an accounting of disclosures.

2.10 Governmental Access to Records. Subcontractor shall make its internal practices, books and records relating to the use and disclosure of PHI available to CalHIPSO, its Customers, and to the Secretary for purposes of determining Subcontractor's compliance with HIPAA.

2.11 Minimum Necessary. Subcontractor (and its agents or subcontractors) shall request, use and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Subcontractor understands and agrees that the definition of "minimum necessary" is in flux, and so Subcontractor agrees to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary." Notwithstanding the foregoing, Subcontractor must limit its (and its agents or Subcontractors) uses and disclosures of PHI to be consistent with Customer minimum necessary policies and procedures as furnished to Subcontractor.

3. Term and Termination

3.1 Term. The term of this Addendum shall be effective as of the Effective Date and shall terminate when all of the PHI provided by CalHIPSO, Practices or Providers to Subcontractor, or created or received by Subcontractor on behalf of CalHIPSO, Practices or Providers, is destroyed or returned to CalHIPSO, Practices or Providers, as applicable.

3.2 Termination.

(a) **Material Breach by Subcontractor.** Upon any material breach of this Addendum by Subcontractor, as determined by CalHIPSO, CalHIPSO shall provide Subcontractor with written notice of such breach and such breach shall be cured by Subcontractor within thirty (30) business days of such notice. If such breach is not cured within such time period, CalHIPSO may immediately terminate this Addendum.

(b) **Effect of Termination.** Upon termination of this Addendum for any reason, Subcontractor shall, at the option of CalHIPSO or its Customers, return or destroy all PHI that Subcontractor or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by Practices, Providers or CalHIPSO, Subcontractor shall continue to extend the protections of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If a Practice, Provider or CalHIPSO elects destruction of the PHI, Subcontractor shall certify in writing to Practice, Provider and CalHIPSO that such PHI has been destroyed.

4. **Indemnification; Limitation of Liability.** To the extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Practices, Providers and CalHIPSO from any and all liability, claim, lawsuit, injury, loss, expense or damage resulting from any material breach of the representations, duties and obligations of Subcontractor under this Addendum. This provision shall survive the termination of the Addendum.
5. **Assistance in Litigation.** Subcontractor shall make itself and any subcontractors, employees or agents assisting Practices, Providers and CalHIPSO in the performance of its duties available to the Practices, Providers and CalHIPSO to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against a Practice, Provider or CalHIPSO, or any directors, officers or employees of a Practice, Provider or CalHIPSO based upon a claim of violation of HIPAA, the HITECH Act, or other laws related to security and privacy, except where Subcontractor or its subcontractor, employee or agent is named as an adverse party. Subcontractor shall be provided with reasonable notice of any assistance required by this section and shall be entitled to the same hourly fee and reimbursement for costs as in effect under the engagement letter. Subcontractor shall be provided with reasonable notice of any assistance required by this section. Notwithstanding the foregoing, Subcontractor and any subcontractors, employees or agents shall provide this assistance at no charge in the event the litigation or administrative proceedings relate to a material breach by Subcontractor of this Addendum.
6. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving; amendment of this Addendum 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, privacy, or confidentiality of PHI. Subcontractor shall provide to Practices, Providers and CalHIPSO satisfactory written assurance that Subcontractor will adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CalHIPSO may terminate this Addendum upon thirty (30) days written notice in the event (i) Subcontractor does not promptly enter into negotiations to amend this Addendum when requested by CalHIPSO pursuant to this Section or (ii) Subcontractor does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI that CalHIPSO, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.
7. **Interpretation.** The provisions of this Addendum shall prevail over any other agreement between the parties hereto that may conflict or appear inconsistent with any provision in this Addendum. This Addendum 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 Addendum 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. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of any other agreements between the parties shall remain in force and effect.
8. **Regulatory References.** A reference in this Addendum to a section of regulations means the section as in effect or as amended, and for which compliance is required.

Exhibit C: REQUIRED ARRA REPORTING

Department of Health and Human Services Standard Terms and Conditions American Recovery and Reinvestment Act of 2009 Division A Funds Revised July 6, 2009

1. HHS Standard Terms and Conditions

HHS grantees must comply with all terms and conditions outlined in their grant award, including grant policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements, and requirements imposed by program statutes and regulations and HHS grant administration regulations, as applicable, unless they conflict with or are superseded by the following terms and conditions implementing the American Recovery and Reinvestment Act of 2009 (ARRA) requirements below. In addition to the standard terms and conditions of award, recipients receiving funds under Division A of ARRA must abide by the terms and conditions set out below. The terms and conditions below concerning civil rights obligations and disclosure of fraud and misconduct are reminders rather than new requirements, but the other requirements are new and are specifically imposed for awards funded under ARRA. Recipients are responsible for contacting their HHS grant/program managers for any needed clarifications.

2. Limit on Funds

None of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604)

3. ARRA: One-Time Funding

Unless otherwise specified, ARRA funding to existent or new awardees should be considered one-time funding.

4. Civil Rights Obligations

While ARRA has not modified awardees' civil rights obligations, which are referenced in the HHS' Grants Policy Statement, these obligations remain a requirement of Federal law. Recipients and sub recipients of ARRA funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of REC Services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or <http://www.hhs.gov/ocr/civilrights/>.

5. Disclosure of Fraud or Misconduct

Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://www.oig.hhs.gov/fraud/hotline/>

6. Responsibilities for Informing Sub-recipients

Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

7. Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (Recovery Act) as required by Congress and in accordance with 45 CFR 74.21 and 92.20 "Uniform Administrative Requirements for Grants and Agreements", as applicable, and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SFSAC.

8. Quarterly ARRA Reports to Prime Recipient

Quarterly ARRA reports are due to LEC no later than each of the following dates during the Subaward period of performance: September 15th, December 15th, March 15th, June 15th

Contractor shall use the forms included herein where appropriate to meet its reporting obligations.

Data to be Reported

A. Jobs Retained/Created: Contractor shall provide estimated employment impact of the Recovery Act funded work.

a. A brief description of the types of jobs created and jobs retained in the United States and outlying areas. “Job created” is a new position created and filled, or an existing unfilled position that is filled, that is funded by the Recovery Act. “Job retained” is an existing position that is now funded by the Recovery Act. A funded job is defined as one in which the wages or salaries are either paid for or will be reimbursed with Recovery act funding. This description may rely on job titles, broader labor categories, or the contractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

b. An estimate of the number of jobs created and jobs retained paid from Recovery funds during the current reporting quarter in the United States and outlying areas. The estimate of the number of jobs created or retained by the Recovery Act should be expressed as “full-time equivalents” (FTE). FTE is calculated as all hours worked and funded by Recovery Act during the current quarter divided by the total number of quarterly hours in a full-time schedule, as defined by the recipient or federal contractor. For recipients of assistance agreements that must comply with OMB Circular A-21, Cost Principles for Educational Institutions, an alternative calculation based upon the allocable and allowable portion of activities expressed as a percentage is acceptable to estimate jobs created and retained. For more information on how to perform this calculation, please see [OMB Guidance M10-08](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf) (found at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf).

c. A job must be counted as either a job created or a job retained; it cannot be counted as both.

d. A brief description of the methodology used to calculate Jobs Created/Retained FTE estimates

e. **Reporting for Quarter _____ in Year 20_____**

JOBS CREATED

Job Titles (list titles, i.e. Graduate Assistant) List FTE (range 0.01-1.00 -i.e. .25, .50)

<i>Please insert more rows as needed.</i>	
Describe how you calculated the FTE(s)	

JOBS RETAINED

Job Titles (list titles, i.e. Graduate Assistant) List FTE (range 0.01-1.00 -i.e. .25, .50)

<i>Please insert more rows as needed.</i>	