302

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
December 3, 2012

SUBJECT: Approval of TAGNOS as Sole Source vendor for automated software and Real Time Location Services (RTLS) solution for tracking and managing the patients' experience.

RECOMMENDED MOTION: Move that the Board of Supervisors:

1) Authorize the Chairman of the Board to approve the Sole Source Procurement of Automated software and RTLS (Real Time Location Services) solution from TAGNOS

2) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement up to ten percent the maximum contract amount

(cont. on page 2)

Ellie Bennett For *Doug Bagley*

Ellie Bennett, Chief Operating Officer
for Douglas D. Bagley, Hospital Director

FINANCIAL DATA				
	Current F.Y. Total Cost:	$ 72,233.00	**In Current Year Budget:**	Yes
	Current F.Y. Net County Cost:	$ 0	**Budget Adjustment:**	No
	Annual Net County Cost FY:	$ 0	**For Fiscal Year:**	12/13

SOURCE OF FUNDS: Enterprise Funds	Positions To Be Deleted Per A-30	☐
	Requires 4/5 Vote	☐

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature
BY: *Debra Cournoyer*
Debra Cournoyer

Prev. Agn. Ref.: | **District:** 5 | **Agenda Number:**

3-34

(left margin, vertical text)
FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
DATE

Mark Bell, Assistant Director — Purchasing Concurrence

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

SUBJECT: Approval of TAGNOS as Sole Source vendor for Automated software and RTLS (Real Time Location Services) solution for tracking and managing the patients' experience.

BACKGROUND:

The Tagnos system is an automated software and RTLS solution for tracking and managing the patients' experience. Having real-time, accurate information on how long our patients are waiting to be seen as well as their total time spent in the clinics will allow RCRMC to better serve our patients while maximizing the use of resources (both staff and rooms).

While there are several companies providing asset tracking technologies, Tagnos solution is unique in the "patient management" space. The patented Tagnos solution provides an innovative software platform that engages the patient, family, admitting staff, clinicians, hospital administration as the patient is making progress in the flow. The proprietary rules-engine is capable of identifying meaningful actionable events based on patient movement and trigger-points - resulting in a total "hands-free" system. The software relays and broadcasts HIPAA-sanitized "patient-status" information without the need for manual phone-calls. Tagnos is also the only company providing a unique queuing dashboard that enables communicating "expected time for service" to the patient and family, resulting in better patient experience. Tagnos provides sophisticated analytics on various time-stamp reporting and real-time patient census to optimize staff productivity and room utilization. In order to accurately capture room level information, it is crucial to leverage Generation2 IR technology which is more reliable than WIFI, ultrasound, and other RTLS technologies. The only way to accurately capture room utilization is to have this room level capability.

A second alternative to using RTLS technology to tag patients and capture real-time information is to hire consulting firms to come in and do this work manually. The challenge with this alternative is the lack of sustainability in change. With the technology in place, we will be able to "hardwire" new processes in place and continually communicate with our patients where they are in the process of care. The proactive alerts provided by Tagnos will help our clinicians to act in real time and make decisions and changes as issues are occurring and not after the fact.

RCRMC has used consultants in the past to capture this information, but it is retrospective and does not allow us to sustain changes. Furthermore, most of the RTLS companies are in the asset/equipment management business only and do not have the ability to effectively tag and manage patient flow. Awarepoint uses zigbee technology which does not give room level detail. Aeroscout uses WIFI technology which allows for "bleeding" through walls, meaning it is not possible to know which room a patient is located in.

The proprietary rules-engine is capable of identifying meaningful actionable events based on patient movement and trigger-points - resulting in a total "hands-free" system. The software relays and broadcasts HIPAA-sanitized "patient-status" information without the need for manual phone-calls. Tagnos is also the only company providing a unique queuing dashboard that enables communicating "expected time for service" to the patient and family, resulting in better patient experience.

RCRMC is requesting this system to:
    a. Increased productivity of staff due to better management of patient flow
    b. Decreased labor costs due to more productive staff
    c. Increased patient satisfaction due to shorter wait times and faster throughput
    d. Increased capacity to see more patients in a more timely fashion
    e. Enhanced communication between patients, staff, physicians, and departments

SUBJECT: Approval of TAGNOS as Sole Source vendor for Automated software and RTLS (Real Time Location Services) solution for tracking and managing the patients' experience.

PRICE REASONABLENESS:
The vendor has provided a 50% discount off of both the hardware and software subscription fees. There is an upfront charge to install the hardware of $42,233 (includes 500 patient tags, 8 data hubs, and 103 room and hallway monitors – one time fee. Reoccurring discounted fees of $5,000 per month for TAGNOS solution for initial contract term of one year, with renewal option up to two additional years.

FINANCIAL IMPACT:
Hospital Enterprise Funds

REVIEW/APPROVAL:
County Counsel and County Purchasing

REGIONAL MEDICAL CENTER
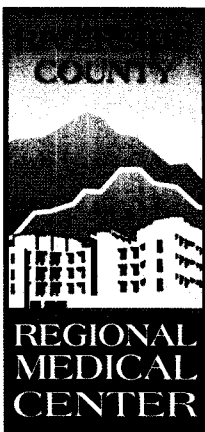
December 4, 2012

To: Purchasing Agent

From: Douglas Bagley, Chief Executive Officer
              Riverside County Regional Medical Center

Subject: Sole Source Procurement; Request for: TAGNOS - automated software and RTLS
              (Real Time Location Services) solution for tracking and managing the patients'
              experience.

The below information is provided in support of my Department requesting approval for a sole source.
Outside of a duly declared emergency, the time to develop a statement of work or specifications is not
in itself justification for sole source.

1. **Supply/Service being requested:** Automated software and RTLS (Real Time Location Services)
   solution for tracking and managing the patients' experience.   Having real-time, accurate
   information on how long our patients are waiting to be seen as well as their total time spent in
   the clinics will allow us to better serve our clients while maximizing the use of our resources
   (both staff and rooms).

2. **Supplier being requested:** TAGNOS

3. **Alternative suppliers that can or might be able to provide supply/service:** While there are
   several companies providing asset tracking technologies, Tagnos solution is unique in the
   "patient management" space. The patented Tagnos solution provides an innovative software
   platform that engages the patient, family, admitting staff, clinicians, hospital administration as
   the patient is making progress in the flow. The proprietary rules-engine is capable of identifying
   meaningful actionable events based on patient movement and trigger-points - resulting in a
   total "hands-free" system. The software relays and broadcasts HIPAA-sanitized "patient-status"
   information without the need for manual phone-calls. Tagnos is also the only company
   providing a unique queuing dashboard that enables communicating "expected time for service"
   to the patient and family, resulting in better patient experience. Tagnos provides sophisticated
   analytics on various time-stamp reporting and real-time patient census to optimize staff
   productivity and room utilization. In order to accurately capture room level information, it is
   crucial to leverage Generation2 IR technology which is more reliable than WIFI, ultrasound, and
   other RTLS technologies. **The only way to accurately capture room utilization is to have
   this room level capability.**

A second alternative to using RTLS technology to tag patients and capture real-time information is to hire consulting firms to come in and do this work manually. The challenge with this alternative is the lack of sustainability in change. With the technology in place, we will be able to "hardwire" new processes in place and continually communicate with our patients where they are in the process of care. The proactive alerts provided by Tagnos will help our clinicians to act in real time and make decisions and changes as issues are occurring and not after the fact.

4. **Extent of market search conducted:** RCRMC has used consultants in the past to capture this information, but it is retrospective and does not allow us to sustain changes. Furthermore, most of the RTLS companies are in the asset/equipment management business only and do not have the ability to effectively tag and manage patient flow. Awarepoint uses zigbee technology which does not give room level detail. Aeroscout uses WIFI technology which allows for "bleeding" through walls, meaning it is not possible to know which room a patient is located in.

5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** The proprietary rules-engine is capable of identifying meaningful actionable events based on patient movement and trigger-points - resulting in a total "hands-free" system. The software relays and broadcasts HIPAA-sanitized "patient-status" information without the need for manual phone-calls. Tagnos is also the only company providing a unique queuing dashboard that enables communicating "expected time for service" to the patient and family, resulting in better patient experience.

6. **Reasons why my department requires these unique features and what benefit will accrue to the county:**
    - Increased productivity of staff due to better management of patient flow
    - Decreased labor costs due to more productive staff
    - Increased patient satisfaction due to shorter wait times and faster throughput
    - Increased capacity to see more patients in a more timely fashion
    - Enhanced communication between patients, staff, physicians, and departments

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The vendor has provided a 50% discount off of both the hardware and software subscription fees. There is an upfront charge to install the hardware of $42,233 (includes 500 patient tags, 8 data hubs, and 103 room and hallway monitors – one time fee. Reoccurring discounted fees of $5,000 per month for Tagnos solution for initial contract term of one year, with renewal option up to two additional years.

8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** Ongoing monthly subscription fee is $5000 per month; includes all costs associated with software upgrades, maintenance, and support.

9. **Period of Performance:** Until June 30, 2013 with the ability to renew for two subsequent years, depending on availability of funding.

_____ _Ellie Bennett for Doug Bagley_ _____ 12/5/12
Department Head Signature   **Date**

Purchasing Department Comments:

(Approve)   Approve with Condition/s   Disapprove

Not to exceed: $ __72,233__   One time   ✓Annual   6-30-2015
Amount through_____

Mark R. Lail 1-3-13   13-281
Purchasing Agent   **Date**   **Approval Number**
                                        (Reference on Purchasing Documents)

RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM
To be completed for all departmental purchases of IT systems, services or renewals

25091
TRACKING NUMBER FOR INTERNAL USE Only

12/19

REQUESTED PURCHASE:	HARDWARE & SOFTWARE FOR THE TAGNOS PROJECT
DEPARTMENT/AGENCY:	HOSPITAL ADMINISTRATION - RCRMC
CONTACT NAME/PHONE:	MARYGRACE HEDGE — EXT. 64747

PURCHASE REQUEST: ☒ NEW EQUIPMENT/SERVICES ☐ UPGRADE ☐ REPLACEMENT

PURCHASE TYPE: ☐ PROFESSIONAL SERVICES ☒ SOFTWARE ☒ HARDWARE ☐ RENEWAL

DESCRIBE REQUESTED PURCHASE	1) Purchase of automated software for a new Patient Throughput System to track and manage a patients' experience (Real Time Location Services). ($87,233.00) 2) Purchase of the software MS licensing necessary for the automation. ($704.31) 3) Purchase of the hardware; (1) HP ProLiant DL360p Gen8 Server. ($4,792.60)
BUSINESS NEEDS ADDRESSED	Yes – Submitted to the Board of Supervisors for approval, along with Sole Source documentation. See the attached documentation.

ARE THERE ANY OTHER COUNTY SYSTEMS THAT PROVIDE THE SAME FUNCTIONALITY?	☒ NO ☐ YES ☐ UNKNOWN

BUSINESS CRITICALITY	BUSINESS IMPACT (SELECT ALL THAT APPLY)
☐ Run the business ☒ Grow the business ☐ Transform the business	☐ Support current operations ☐ Reduce Expenses ☒ Improve Customer Service ☒ Improve Operational Efficiencies

BUSINESS RISKS	Financial: Operational: Customer:
ALTERNATIVE SOLUTIONS	1. [Solution] 2. [Solution] 3. [Solution]
TRANSACTION	☒ Cash Purchase ☐ Lease Purchase Lease Years: _____

PURCHASE COST:

AUTOMATED SOFTWARE PROGRAM, SOFTWARE LICENSING AND HARDWARE: **$92,729.91**

COST BENEFIT ANALYSIS

	ALTERNATIVE STATUS QUO	ALTERNATIVE	ALTERNATIVE
Current Annual Cost			
Ongoing Annual Cost			
Annual Cost Savings			
Net Annual Savings			

RCIT

RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM
To be completed for all departmental purchases of IT systems, services or renewals

12/17

| | | Project Implementation Cost | | | |
| | | Project Payback Period? yrs | | | |

Department Head Signature: _[signature]_   Date: 12/17/18

RCIT RECOMMENDATION – for purchases and renewals under $100,000

Recommended: ☐ Yes   ☐ No (Non-recommended requests submit to TSOC)

RCIT - APPROVED   Date: 12/20   RP

By:

Chief Information Officer Signature: Date:

RCIT explanation for non-recommended requests:

TSOC RECOMMENDATION: for purchases and renewals over $100,000 and RCIT non-recommended purchases or renewals

Recommended: ☐ Yes   ☐ No (In no, provide explanation below)

TSOC Chair Signature: Date:

TSOC explanation for denied requests:

County of Riverside

SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Software License and Support Agreement, including the Schedules listed below, (collectively, the "Agreement") is made and entered into as of January 1st, 2013 (the "Effective Date"), by and between Tagnos, Inc, a California corporation with principal offices located at 25283 Cabot Road, Suite #226 ("Licensor"), and Riverside County Regional Medical Center with principal offices at 26520 Cactus Avenue, Moreno Valley, CA 92555 ("Licensee") (each a "Party" and collectively the "Parties").

Schedule A	Statement of Work
Schedule B	Hardware and Software
Schedule C	Maintenance and Support Services
Schedule D	Implementation Plan
Schedule E	Business Associates Agreement

Contact and Notice Information:

If to Licensor:

Michele Graynor
Chief Marketing Officer
25283 Cabot Road, Suite 226
Laguna Hills, CA 92653
(949) 305-0806

If to Licensee:

Ellie Bennett
Chief Operating Officer
26520 Cactus Avenue
Moreno Valley, CA 92555
(951) 486-4000

with a copy to:

Neeraj S. Bhavani
Chief Executive Officer
25283 Cabot Road, Suite 226
Laguna Hills, CA 92653

with a copy to:

Doug Bagley
Chief Executive Officer
26520 Cactus Avenue
Moreno Valley, CA 92555

SOFTWARE LICENSE AND SUPPORT AGREEMENT

1. DEFINITIONS.

The following terms shall have the meanings set forth below.

1.1 **"Affiliate"** means, with respect to any Party, any person or entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. A person or entity shall be deemed to control a corporation (or other entity) if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation (or other entity) whether through the ownership of voting securities, by contract or otherwise.

1.2 **"Agreement"** means this Software License and Support Agreement, including any and all attached Schedules, Exhibits, addenda and amendments hereto.

1.3 **"Licensor Marks"** means any trade name, trademark, trade device, service mark, brand name symbol or any other identification or any abbreviation, contraction or simulation thereof owned or used by Licensor.

1.4 **"Confidential Information"** means this Agreement, and any and all software (whether in object code or source code), Documentation, data, drawings, benchmark tests, specifications, trade secrets, logins, passwords and other access codes, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not); schematics and other technical, business, financial and product development plans, forecasts, strategies and information that is disclosed by one Party to the other and is conspicuously marked "confidential" or "proprietary" if in tangible form, or if orally disclosed is (a) identified as such at the time of disclosure or (b) information that, when taking into consideration the circumstances surrounding disclosure of the same, a reasonable person would determine to be of a confidential or proprietary nature. Each Party recognizes and acknowledges that the other's Confidential Information (and the confidential nature thereof) is critical to the business of the discloser and that the discloser would not enter into this Agreement without assurance that it's Confidential Information and the value thereof shall be protected as provided in this Agreement.

1.5 **"Licensor IP"** shall have the meaning set forth in Section 3.4.

1.6 **"Documentation"** means the installation instructions and user manuals for the Licensed Software as generally provided to other licensees of the Licensed Software.

1.7 **"Implementation Date"** means the date on which a Permitted Application is made publicly available to the Users on the Licensee Service.

1.8 **"Implementation Fees"** shall have the meaning set forth in Section 6.3.

1.9 **"Implementation Plan"** means the implementation plan, together with the detailed specifications for the Permitted Applications, attached to Schedule D hereto for the provision of certain Implementation Services with respect to the Licensee Service.

1.10 **"Implementation Services"** means reasonable and customary technical support and services necessary to assist Licensee in implementing the Licensed Software, as more fully described on Schedule D and the Implementation Plan attached thereto, which Implementation Services may include development of certain Licensed Software customizations and/or other programming necessary for such implementation.

1.11 **"Intellectual Property Rights"** means any and all rights, titles and interests, whether foreign or domestic, in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how or similar intellectual property rights, as well as any and all moral rights, rights of privacy, publicity and similar rights of any type under the laws or regulations of any governmental, regulatory or judicial authority, foreign or domestic.

1.12 "**Internet**" means the worldwide collection of computers, networks, infrastructure, connections and devices, whether now known or later developed, that can access, connect to, communicate with, or transfer data to, from, through or by way of the worldwide collection of networks (including without limitation, telephone, wireless and third party networks) that is commonly referred to as the "Internet."

1.13 "**License Fee**" shall have the meaning set forth in Section 6.1 hereto.

1.14 "**Licensed Software**" means collectively (a) the software products designated on Schedule A, in executable form (object code), including the APIs described thereon; (b) Documentation; (c) any other object code provided to Licensee by Licensor hereunder; and (d) Updates to the foregoing. Any components, features or functionality that are included in the Licensed Software at any time will continue to be deemed Licensed Software, regardless of whether such components, features or functionality may be incorporated into a product sold by Licensor separately from the Licensed Software. All Licensed Software shall be delivered to Licensee electronically.

1.15 "**Licensee Look and Feel**" means the elements of graphics, organization, presentation, layout, user interface, navigation, trade dress and stylistic convention (including the digital implementations thereof) that are generally associated with interactive sites within the Licensee Service, or any other Licensee interactive site or service.

1.16 "**Licensee Marks**" means any trade name, trademark, trade device, service mark, brand name, symbol or any other identification or any abbreviation, contraction or simulation thereof owned or used by Licensee.

1.17 "**Licensee Service**" means any or all of Licensee's or its Affiliates' U.S. properties, software, products, services, sites and pages, including without limitation, those accessible in whole or in part through the Internet, whether presently existing or later developed, that are developed in whole or in part by or for Licensee or its Affiliates' network of websites, products and services, including without limitation, co-branded websites, products or services.

1.18 "**Maintenance and Support**" shall have the meaning set forth in Section 7.

1.19 "**Maintenance Fee**" shall have the meaning set forth in Section 6.2.

1.20 "**Permitted Application(s)**" means the software applications that are permitted to operate with, access, incorporate or otherwise utilize the Licensed Software specified by the Parties in a detailed specification to be attached to Schedule E. The Permitted Applications (or modified Permitted Applications which do not provide any significant additional functionality versus the Permitted Applications detailed in the specification to be attached to Schedule E) are the only software applications that are permitted to be operated with, access or otherwise utilize in any manner the Licensed Software by Licensee.

1.21 "**Specifications**" means the Specifications for the Licensed Software set forth on Schedule A and the API Specifications set forth on Schedule F.

1.22 "**Statement of Work**" means one or more statements of work executed by both Parties hereto setting forth Implementation Services in excess of what is provided for in the Implementation Plan to be performed by Licensor pursuant to Schedule D hereto.

1.23 "**Update**" means a subsequent version or release of a Licensed Software product that is generally made available by or on behalf of Licensor to Licensed Software licensees as part of a maintenance plan. Updates typically include upgrades and bug fixes and tools to manage backwards incompatibility with respect to the Licensed Software that Licensor makes generally available to Licensed Software licensees as part of a maintenance plan. Provided Licensee is then receiving Maintenance and Support, Licensee may transfer Licensed Software from one operating system platform to any other then currently available operating system platform. Updates do not include enhancements that (a) embody functionality that is substantially different from the functionality of the Licensed Software (e.g., spam filtering or digital fingerprinting), (b) add new functionality that has separate and

distinct applications from the Licensed Software (e.g., specialized benchmarking or data mining tools), or (c) add new subject matter content that was not previously available from Licensor (e.g., travel, apparel or online behavior).

1.24 **"User"** means a user of the Licensee Service.

1.25 **"User Data"** means any elicitation information, User ratings or User activity information collected by or generated or elicited through or used by the Licensed Software, including information elicited during the course of registering for the personalization services powered by the Licensed Software or during the course of solicitation of feedback from Users relating to the personalization services powered by the Licensed Software.

2. DELIVERY; IMPLEMENTATION AND DEVELOPMENT.

2.1 **Licensed Software Delivery.** Licensor will deliver all versions of the Licensed Software in electronic format to Licensee in accordance with the Implementation Plan set forth on Schedule D. The Licensed Software will be based on the most current version of the Licensed Software made generally available by Licensor.

2.2 **Acceptance.** Within ten (10) business days of its delivery by Licensor, Licensee will test the Licensed Software to reasonably determine whether it meets the Specifications in all material respects ("Acceptance Test Period"). Licensee will notify Licensor within five (5) business days after the end of the Acceptance Test Period of its decision either to accept or reject the Licensed Software due to a failure to meet the Specifications in all material respects. If Licensee does not so notify Licensor within such time period, the Licensed Software shall be deemed accepted. In the event that Licensee rejects the Licensed Software, Licensee shall describe in writing in reasonable detail and with specificity, how the Licensed Software failed to meet the Specifications in any material respect, and Licensor will have five (5) business days after receipt of written notice from Licensee of such failure to deliver a revised version of the Licensed Software to Licensee. Licensee will have another ten (10) business days after receipt of the revised version of the Licensed Software to test it against the Specifications. If Licensee reasonably determines that the revised version of the Licensed Software fails to meet the Specifications in all material respects, then Licensee may elect, at its discretion: (a) to terminate this Agreement and require Licensor to refund the full amount of any money paid to it by Licensee; or (b) to require Licensor to modify the Licensed Software until such time as Licensee determines that it meets the Specifications.

2.3 **Standard Implementation Services.** Licensor shall provide reasonable and customary Implementation Services with respect to the Licensee Service as described in the Implementation Plan attached to Schedule D hereto.

2.4 **Additional Implementation Services.** If Licensee desires to obtain additional Implementation Services beyond what is provided for in the Implementation Plan, Licensee and Licensor shall mutually agree to the scope of such services and manpower requirements. Fees for such work shall be at the rate set forth on Schedule B and shall be billed monthly and due and payable thirty (30) calendar days after Licensee's receipt of an invoice therefor. Prior to performing any such additional work, Licensee shall authorize and approve such projects in advance. Specific milestones and deliverables with respect to such additional Implementation Services shall be detailed in one or more Statements of Work.

3. LICENSE AND INTELLECTUAL PROPERTY RIGHTS.

3.1 **License.** Licensor grants to Licensee a non-exclusive, non-transferable, non-assignable, non-sublicenseable license, solely for use with the Permitted Applications to (a) install and execute the Licensed Software on one or more servers owned and operated by or on behalf of Licensee, which servers enable Users to access the Licensee Service via the Internet, and to use any Documentation related to the Licensed Software; and (b) use, distribute, reproduce, perform and display the Licensed Software as a part of the Licensee Service to generate recommendations for Users solely with respect to the Permitted Applications (subsections (a) and (b) being collectively defined as "Use").

3.2 **User Data.** The User Data shall be owned by Licensee. The User Data shall be hosted by Licensee on servers owned and operated by Licensee, and made available by Licensee to Licensor for retrieval and

storage by Licensor at any times by a means to be mutually determined by the Parties. Licensee hereby grants to Licensor a non-transferable, non-exclusive, perpetual and irrevocable license to access, retrieve, store, copy and use User Data for the purpose of improving and enhancing Licensor's models, software, technology, the Licensed Software and related user and content databases (including for use outside the Licensee Service). Licensor's right to use such improved models, software, technology, the Licensed Software and related user and content databases shall survive the termination of this Agreement. User Data shall be anonymized using procedures and specifications that are mutually agreed upon by the Parties prior to its use by Licensor as described above (except for the purpose of performing its obligations under this Agreement, in which case Licensor may utilize non-anonymized User Data. Anonymized User Data shall nonetheless include data that will enable Licensor to determine, analyze and process various characteristics and preferences of individuals (at the individual level, as opposed to merely aggregated group data).

3.3   Licensor Ownership. Notwithstanding the foregoing, all right, title and interest in and to the following materials, works, inventions and properties, including any and all copyrights, patents, and other intellectual property and proprietary rights therein, shall reside in and/or remain in Licensor: (a) the Licensed Software; (b) the Licensor Marks; (c) the Licensor platform and domains, including all elicitation designs, APIs and algorithms (the materials, works, inventions and properties described in subsections (a), (b) and (c) being the "Separate IP"); (d) any and all new or improved ideas, designs, concepts, inventions or other materials or programming made or developed during the course of rendering the Implementation Services, regardless of authorship; (e) any and all new or improved ideas, designs, concepts, inventions or other materials or programming made or developed by Licensor during the course of rendering all other services under this Agreement, which incorporate any of Licensor's intellectual property embodied in the Separate IP or which relate to the Licensed Software; and (f) all derivative works of and improvements to any of the foregoing, regardless of authorship (collectively, the materials, works, inventions and properties described in subsections (a), (b), (c), (d) (e) and (f) are the "Licensor IP").

4.   LICENSE RESTRICTIONS.

4.1   No Resale or Sublicensing.   Except as otherwise expressly permitted by this Agreement, Licensee will not sell, lease, license, sublicense or encumber the Licensed Software or any part thereof.

4.2   No Reverse Engineering. Except to the minimum extent necessary to comply with applicable law, Licensee will not itself, or through any parent, subsidiary, affiliate, agent or other third party decompile, disassemble, or reverse engineer any portion of the Licensed Software or attempt to discover any source code or underlying ideas or algorithms of any Licensed Software.

4.3   Disclosure. Licensee will not provide, disclose or divulge the Licensed Software, or permit use of the Licensed Software by, or make the Licensed Software available to, persons other than employees, contractors and agents of Licensee who are under a legally binding obligation of confidentiality consistent with the confidentiality provisions of this Agreement.

4.4   Export. Licensee will not transport, export or re-export the Licensed Software, in whole or in part, in violation of the import or export control laws or regulations of the United States or any other applicable country.

5.   BRANDING AND PUBLICITY

5.1   Branding.   The Permitted Applications, and any and all personalization features and/or recommendations that may be generated by the Licensed Software on the Licensee Service, shall include "Powered by Licensor" or substantially similar ingredient branding, which shall include a hotlink to Licensor's website (www.tagnos.com). Licensee and Licensor shall mutually agree upon the size and placement of the branding.

5.2   Publicity. Each Party agrees that it will not, without prior written consent of the other, use in advertising, publicity or otherwise the name or any trade name, trademark, trade device, service mark, brand name, symbol or any other identification or any abbreviation, contraction or simulation thereof of the other (or of their

business partners with respect to subject matter substantially similar to the subject matter of this Agreement), including Licensor Marks or Licensee Marks, as the case may be, or refer to the existence of this Agreement in press releases, advertising, or materials distributed to prospective customers. Licensor and Licensee shall issue a joint press release announcing the launch of the Permitted Applications and the Licensed Software on or shortly after the Implementation Date of a Permitted Application. The content and form of the joint press release shall be mutually agreed to by the Parties. In addition, Licensor expects to prepare and make available for marketing purposes a case study regarding the implementation of the Licensed Software on the Licensee Service. Licensor shall submit any such materials for approval as required herein. In the event that a Party wishes to use the other's name or any mark or brand name of such Party in any type of advertising, publicity or otherwise, it shall submit such request in writing to the other, and if such Party does not respond within ten (10) days, the request shall be deemed to have been approved.

6. FEES, PAYMENTS AND TAXES.

6.1 License Fee. Licensee shall pay Licensor the license fees as set forth on <u>Schedule B</u> (the "<u>License Fees</u>").

6.2 Maintenance Fee. Licensee shall pay Licensor the maintenance fees as set forth on <u>Schedule B</u> (the "<u>Maintenance Fees</u>").

6.3 Implementation Fees. If Licensee has elected to receive additional Implementation Services pursuant to a Statement of Work agreed to by the parties, Licensee shall pay Licensor the fees for such additional Implementation Services under that Statement of Work as set forth on <u>Schedule B</u> (the "<u>Additional Implementation Fees</u>").

6.4 Payment Terms. Licensee's obligation to make the payments for each amount due under this Agreement shall accrue on the date set forth on <u>Schedule B</u>, and unless otherwise set forth on <u>Schedule B</u>, shall be due and payable thirty (30) calendar days after Licensee's receipt of an invoice therefor. All payments due under this Agreement shall be made in U.S. dollars.

6.5 Taxes. All amounts to be paid by Licensee to Licensor herein, including, without limitation, with respect to the Licensed Software, Maintenance and Support and Implementation Services, are inclusive of any federal, state, local, municipal or other governmental taxes, including, without limitation, taxes based on, imposed on or measured by net or gross income or receipts, franchise taxes, taxes on doing business, capital stock taxes (including any minimum taxes and taxes measured by any item of tax preference), sales, use, excise, property, withholding or similar taxes, duties, levies, fees, excises or tariffs (all such taxes and other charges collectively "<u>Taxes</u>") now or hereafter imposed on Licensor under applicable law. Licensee is not liable to Licensor for any Taxes incurred in connection with this Agreement. All Taxes that are imposed directly on Licensee under applicable law shall be the responsibility of Licensee and may not be passed on to Licensor.

7. MAINTENANCE AND TECHNICAL SUPPORT SERVICES.
Licensor shall provide technical support, assistance, and Updates (collectively, "<u>Maintenance and Support</u>") to Licensee for the Licensed Software pursuant to the support and maintenance terms and conditions, as set forth on <u>Schedule C</u> hereto.

8. ADDITIONAL OBLIGATIONS OF THE PARTIES.

8.1 Hosting. Licensee shall host, co-locate and maintain services relating to the operation of the Licensed Software. Notwithstanding the foregoing, Licensor shall host and maintain services relating to the operation of the Licensed Software for testing and product staging/migration. In the event that Licensee desires Licensor to host, co-locate or maintain services relating to the operation of the Licensed Software, Licensee shall pay Licensor 110% of its fully-burdened costs (exclusive of overhead costs, such as research and development, marketing, personnel, etc.) for such services, such payments to be due within thirty (30) days of the receipt of an invoice therefor, which shall not be issued until the end of the month in which such services were rendered.

8.2   Licensor Access to Content Feeds. Licensee shall be responsible for obtaining and maintaining the Licensee and third party content/data feeds referenced on Schedule D, at Licensee's expense, to the extent that such content and/or data feeds will be used by the Licensed Software to generate recommendations.

8.3   Access to Log Files and Databases. Subject to Section 3.2, Licensee shall provide Licensor with ongoing access to the Licensed Software User profile and Licensed Software content databases that are provided by Licensor and included with the Licensed Software, and to such related databases and all application/web server log files. Licensee shall secure all rights necessary to comply with the obligations of this section with respect to the Licensee Service.

9.   TERM & TERMINATION.

9.1   Term. The initial term of this Agreement shall commence on the Effective Date and end twelve (12) months thereafter (the "Initial Term"). Licensee shall have the right to renew this Agreement on substantially the same terms and conditions as set forth in this Agreement (other than the License Fees and the Maintenance Fees) for up to two (2) additional twelve (12) month terms (each, a "Renewal Term"), subject to the Parties' mutual agreement upon the License Fees and Maintenance Fees (the Initial Term, together with all Renewal Terms shall collectively be the "Term"). At least ninety (90) days prior to the expiration of each Renewal Term, the Parties shall enter into good faith negotiations regarding renewal of this Agreement for subsequent Renewal Terms.

9.2   Termination for Breach. Either Party may terminate this Agreement in the event that the other Party materially breaches any term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach.

9.3   Pre-Termination Escalation. In the event of a dispute under this Agreement, neither Party shall issue a notice of termination or notice of suspension of Maintenance and Support services hereunder until after the Parties have made reasonable efforts to amicably resolve the dispute, including without limitation, escalating the matter to each Party's respective senior management authorized to resolve the dispute. Such escalation procedure shall entail each Party providing the other with a written description of its position with regard to the dispute within three (3) business days of either Party giving notice of the dispute to the other and a representative of each Party's senior management (of at least Vice President level) will meet (in person or by telephone) for the purpose of attempting to resolve the dispute in good faith.

9.4   Effect of Termination; Wind-Down. On termination of this Agreement, for any termination that is not the result of an uncured material breach of this Agreement by Licensee, all licenses granted under this Agreement shall terminate and Licensee shall cease all Use of the Licensed Software and Documentation within sixty (60) days of any termination (the "Wind Down Period"), after which Licensee shall certify in writing to Licensor that all copies (in any form or media) have been destroyed or returned to Licensor. Termination of the Agreement shall not relieve Licensee from paying all fees accruing prior to termination (including a pro-rated portion of any License Fees as set forth on Schedule B hereto, earned through such date of termination), regardless of the reason for such termination, and shall not limit either Party from pursuing any other available remedies. Notwithstanding the foregoing, if Licensor has terminated the Agreement due to a material breach by Licensee, then all licenses granted under this Agreement shall immediately terminate and Licensee shall immediately cease all Use of the Licensed Software and Documentation.

9.5   Survival. The provisions of Sections 3.2, 3.3, 3.4, 4, 6, and 9 through 16, as well as any obligations of either Party that have accrued prior to expiration or termination of this Agreement, shall survive termination of this Agreement. Notwithstanding whether any particular Section is listed in the foregoing sentence, it is the intent of the Parties that each Section of this Agreement which, by its nature and to effectuate the purposes of this Agreement, should survive any termination or expiration hereof, shall survive such termination or expiration.

10.   INDEMNITY.

10.1   By Licensor. Licensor at its own expense shall (a) defend (and at its option settle) any third party claim or suit against Licensee on the basis of infringement of any U.S. copyright or U.S. patent by the Licensed

Software when used in accordance with the terms of this Agreement; and (b) pay any final judgment entered against Licensee on such issue or any settlement thereof, provided (i) Licensee notifies Licensor promptly in writing of each such claim or suit and gives Licensor reasonable access to information known to Licensee relating thereto, and (ii) Licensee cooperates with Licensor in the settlement and/or defense. Any compromise or settlement of any claim or suit shall require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed, provided that, in any compromise or settlement in which Licensor obtains a complete and unconditional release of Licensee, no prior written consent shall be required. If all or any portion of the Licensed Software is, or in the opinion of Licensor may become, the subject for any claim or suit for infringement of any copyright or patent, Licensor may, and in the event of any adjudication that the Licensed Software or any part thereof does infringe or if the permitted use of the Licensed Software or any part thereof is enjoined, Licensor shall, at its expense do one of the following things: (1) procure for Licensee the right to use the Licensed Software or the affected part thereof; (2) replace the Licensed Software or affected part with other suitable programs of comparable functionality and performance and install such alternative programs; (3) modify the Licensed Software or affected part to make it non-infringing, but of comparable functionality and performance; or (4) if Licensor reasonably determines that none of the foregoing remedies are commercially feasible, refund to Licensee the remaining Amortized Value of the Licensed Software. "Amortized Value" shall mean the aggregate payments made by Licensee for the Licensed Software, amortized on a straight-line basis over a one year period beginning on the date such amounts are paid. Licensor shall have no obligations under this Section 10.1 to the extent a claim is based upon the combination, operation or use of the Licensed Software with software and/or hardware not delivered by Licensor if such infringement could have been avoided by combination, operation or use of the Licensed Software with other software and/or hardware without diminishing the scope of permissible use of the Licensed Software hereunder. This section states the entire liability of Licensor and the exclusive remedy of Licensee with respect to any alleged infringement by the Licensed Software or any part thereof.

10.2   By Licensee. Licensee at its own expense shall (a) defend (and at its option settle) any third party claim or suit against Licensor on the basis of any third party claim or suit against Licensor arising from the Licensee Service or any User's use thereof; infringement of any copyright, patent, trademark, trade secret or other intellectual property, proprietary or privacy right by Licensee, the Licensee Service or any User; and (b) pay any final judgment entered against Licensor on such issue or any settlement thereof, provided (i) Licensor notifies Licensee promptly in writing of each such claim or suit and gives Licensee reasonable access to information known to Licensor relating thereto, and (ii) Licensor reasonably cooperates with Licensee in the settlement and/or defense.

11.   WARRANTY.

11.1   No Viruses. Licensor warrants that the Licensed Software shall not include, software traps, viruses, worms, trap doors, back doors or other means or functions which will detrimentally interfere with or otherwise adversely affect Licensee's use of the Licensed Software or which will damage or destroy data or other property of Licensee, and Licensor has no knowledge of and has taken reasonable steps to scan and test Licensed Software using commercially available virus checking software to determine whether such things are present.

11.2   Licensed Software Warranty. During the period of three (3) months from implementation of the Licensed Software, Licensor warrants that the Licensed Software when properly used will operate in all material respects in accordance with its Documentation.

11.3   Services Warranty. Licensor warrants that any Implementation Services and/or Maintenance and Support performed under this Agreement shall be performed in a professional workmanlike manner consistent with industry practices.

11.4   Mutual Warranties. Each Party warrants to the other that it is in good corporate standing and that it has obtained any and all registrations, filings, certificates and licenses necessary to conduct and maintain its business, and that it has the right to enter into this Agreement and to grant the other the rights and the licenses described herein, free of all liens, claims, encumbrances and other restrictions as of the Effective Date.

12. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH IN SECTION 11 ABOVE, LICENSOR MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE LICENSED SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT. SPECIFICALLY, LICENSOR DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL BE ERROR FREE OR WILL PERFORM IN AN UNINTERRUPTED MANNER. TO THE MAXIMUM EXTENT ALLOWED BY LAW, LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF LICENSOR HAD BEEN INFORMED OF SUCH PURPOSE) WITH RESPECT TO THE LICENSED SOFTWARE, DOCUMENTATION AND SUPPORT AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

13. **LIMITATION OF LIABILITY.**

   13.1   Mutual Waiver of Consequential Damages. EXCEPT FOR ANY ACTION, CLAIM, SUIT, OR DAMAGES RELATED TO OR ARISING FROM LICENSOR'S USE OF THE USER DATA OTHER THAN AS SPECIFICALLY AUTHORIZED UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

   13.2   Licensor's Maximum Liability to Licensee. Except in the case of damages arising from death or personal injury, costs related to Licensor's indemnity obligations set forth in Section 10.1, or violations of Licensor's confidentiality obligations set forth hereunder, the total cumulative liability of Licensor and its Affiliates to Licensee under this Agreement for any damages shall not exceed an amount equal to the fees paid to Licensor under this Agreement by Licensee.

   13.3   Licensee's Maximum Liability to Licensor. Except in the case of damages arising from death or personal injury, costs related to Licensee's indemnity obligations set forth in Section 10.2, violation of Licensee's confidentiality obligations set forth hereunder, or the negligent use of the Licensed Software other than in a manner expressly permitted by this Agreement, Licensee's total cumulative liability under this Agreement for any damages shall not exceed an amount equal to the fees paid (or owed if unpaid) to Licensor under this Agreement.

14. **ASSIGNMENT/BINDING AGREEMENT.** Neither Party hereto may assign or otherwise transfer this Agreement (by operation of law or otherwise), in whole or in part, without the other Party's prior written consent. Notwithstanding the foregoing, either Party may, without the other's prior written consent, assign or transfer this Agreement by way of merger, acquisition or sale of all or substantially all of the assets or securities of such Party to any third party. In the event of a permitted transfer or assignment of this Agreement in its entirety, the obligations and rights hereunder shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

15. **CONFIDENTIALITY.**

   15.1   No Disclosure. Each Party acknowledges that the Confidential Information constitutes valuable trade secrets and each Party agrees that it shall use the Confidential Information of the other Party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other Party's prior written consent.

   15.2   Permitted Disclosure. Notwithstanding any provision of this Agreement, either Party may disclose this Agreement, in whole or in part (a) to its employees, officers, directors, attorneys, auditors, financial advisors and/or subcontractors who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and (b) as reasonably deemed by a Party to be required by securities law (in which case each Party shall provide the other with prior written notification thereof, shall provide such Party with the opportunity to contest such disclosure, and shall use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Unless otherwise agreed in writing by Licensor, Licensee shall be permitted to grant access to the Licensed Software to its contractors that will be

implementing, operating and maintaining the Licensed Software on Licensee's behalf. Licensee shall be responsible for ensuring that all such contractors become bound to and comply with all of the restrictions applicable to Licensee under this Agreement. Each Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure.

15.3   Compliance with HIPAA. Tagnos shall comply with the HIPAA Obligations as defined and set forth in **Schedule E.** The HIPAA Obligations shall survive the expiration or termination for any reason of this Agreement.

15.4   Injunctive Relief. In the event of actual or threatened breach of the provisions of this Section 15, the non-breaching Party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each Party shall promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

16.   MISCELLANEOUS.

16.1   Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person; (b) sent by registered mail, return receipt requested; (c) sent by overnight air courier; or (d) transmitted by facsimile, in each case forwarded to the appropriate address set on the cover page hereto. Either Party may change its address for notice by giving written notice to the other Party. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after posting, one day after delivery to an overnight air courier service or the moment of transmission by facsimile.

16.2   No Waiver. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed to be deemed a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action.

16.3   Severability. If any term, condition or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, the invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

16.4   Entire Agreement; Amendment. This Agreement (including the Schedules hereto) contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supercedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by both Parties.

16.5   Headings. The captions and headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

16.6   Authority. Each of the individuals signing this Agreement on behalf of his/her respective company represents and warrants that he/she is authorized to do so, and that such company shall be bound thereby.

16.7   Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same Agreement.

16.8   Relationship; Subcontractors. Licensor is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability on behalf of, or to otherwise bind, the other Party. Licensor may utilize subcontractors, independent contractors, consultants, volunteer assistants or other persons or entities (collectively, "Assistants") to provide

certain Implementation Services. Licensor shall be fully and solely responsible for the supervision and payment of such Assistants and for all work performed by such Assistants.

16.9   Choice of Law; Arbitration. This Agreement will be interpreted and construed pursuant to the laws of the State of California and the United States without regard to conflict of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Except for the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator(s), all disputes, controversies or differences which may arise between the Parties, out of, in relation to, or in connection with this Agreement, or the breach thereof, shall be finally settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect as of the date the dispute arises to be held in Irvine, California. The arbitrator(s) shall enforce the express terms of this Agreement, shall follow the applicable law where the Agreement is silent on a matter in dispute, and shall have no authority to award punitive damages nor any damages expressly excluded by the terms of this Agreement. All proceedings in any arbitration shall be conducted in the English language. The arbitrator's award may be enforced in any court of competent jurisdiction.

16.10   Force Majeure. If and to the extent a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereby bind the Parties by signing below:

_____

By:_____

Name:_____

Title:_____

Date:_____

_____

By:_____

Name:_____

Title:_____

Date:_____

FORM APPROVED COUNTY COUNSEL

BY: _____ _____
NEAL R. KIPNIS   DATE

Statement of Work

This Attachment contains the detailed process and procedures for the evaluation of the Products.

RCRMC and Tagnos will jointly and cooperatively work towards creating a RTLS enabled hospital starting with Outpatient Clinics area.

Tagnos will provide dashboard to track patients from check-in, registration, consulting room.

The key value Tagnos could bring is to eliminate numerous phone calls in getting the patient status information. Tagnos provides a communication dashboard to track the status of Outpatient Clinics for improved procedure room utilization and staff productivity. The end result is improvement in overall productivity of the Outpatient Clinics and improvement in patient (and family) service and experience.

I. Description of Work
In order to enhance productivity and room utilization in the Family Care Clinic and Internal Medicine Clinic at Riverside County Regional Medical Center (RCRMC), Tagnos is proposing a solution to track the movement, metrics and location of all patients visiting these clinics.

By providing real-time visibility to the process of care from registration to exam, hospital management will understand exact patient arrival times, waiting times to be seen, total time spent in the exam rooms, and total elapsed times. This will allow for more effective staffing, smoother patient flow in these areas, and a potential reduction in labor expenses. Additionally, patient satisfaction will be increased due to shorter wait times.

The Tagnos solution includes the hardware (tags and monitors), software (dashboards and reporting functionality), implementation, and training needed for the solution. Data analytics can also be produced.

A. Hardware
Why Gen2IR/RFID Technology is the Smarter RTLS Technology
Smarter means 100% accuracy – The Hybrid RTLS Technology (Gen2IR/RFID) combines two technologies working together to maximize power efficiency and accuracy. 100% accuracy delivers "certainty-based" data that can be used by healthcare facilities to make important workflow decisions. This certainty-based information can also be used to automate decisions, such as determining if a patient requires a clinician visit if they have not been attended to in a given period of time. Most healthcare workflow improvement can only be realized when the location data is certainty-based. This also means that it has the capacity to do "room level and bay level" tracking; whereas, some RTLS technologies only allow for "zonal" tracking.

How it works

The Hybrid RTLS Technology™ outperforms legacy technologies using a combination of a patented new generation infrared - Gen2IR™ and active-RFID. Battery powered monitors (up to 5 years battery life) transmit a unique room number using Gen2IR, which is received by any tag in that room. The tag communicates the room number and its own unique ID via RF to the Location Server using existing wired or Wi-Fi network.

From there it can be accessed in real-time by hospital personnel. Monitors can be positioned wherever location data is needed including rooms, hallways, even bays.   Similar to light, Gen2IR will not pass through walls and it does not suffer from traditional infrared line-of-sight limitations. Therefore, when a tag reads a room number, there are no errors. This is certainty-based RTLS.

RTLS Products (included in this proposal)
* 500 patient tags
* 8 data hubs
* 103 location monitors

B. Software

Tagnos offers a patented workflow management solution that leverages the Gen2IR technology to gather real time data and information on the movement of your patients, assets, and staff. Our software receives this real time information along with data from your ADT HL7 feed in order to provide management with concurrent decision making reports and dashboards.   These real time dashboards allow hospitals to improve and sustain the patient experience as well to operate more efficiently while maximizing resources.

C. Implementation and Training

The standard implementation takes between 30-45 days post contract. The requirements from the hospital include:

Technical Components
* Floor Plan of Hospital
* ADT HL7 Data Feed
* Access to Hospital for Location Monitor Placement
    * Implementation will take approximately one full day

Staff
* Department Directors' assistance with placement of monitors
* Training sessions (dedicate 1-2 days in total)
    * Staff training of tags and software (1-2 hours per staff)

SCHEDULE B

HARDWARE AND SOFTWARE

1. The rights and deliverables provided by Tagnos to RCRMC under the terms and conditions of this Agreement are for following specific Software modules and RCRMC locations only:

Description	Location	Department
Tagnos Software v1.0	Riverside County Regional Medical Center 26520 Cactus Avenue Moreno Valley, CA 92555	Outpatient Clinics: Family Medicine and Internal Medicine Wings

2. RCRMC agrees to pay Tagnos $42,233 to pay for install and setup costs of Real-time Location System (RTLS) hardware and application software at RCRMC Outpatient Clinics area. This install and setup costs will be invoiced and paid within 30 days of the effective date of this contract. RCRMC will provide a server to host Tagnos' application within the hospital intranet, such server to remain the property of the hospital.

3. Tagnos will provide professional services for implementation, integration and training of RCRMC staff. RCRMC will pay recurring discounted fees of $5,000 per month for Tagnos' solution, such payments would be made on a quarterly basis. The initial contract shall be for 12 months.

4. RCRMC will provide the following:

   A. Network
      - Riverside County Regional Medical Center (RCRMC) will provide the intranet backbone support.
   B. Hardware
      - RCRMC will provide a server, workstations, flat-panel display devices, tablet PCs, PDAs as required.

   C. Access to Data
      - RCRMC will provide a suitable patient census data feed in HL-7 format from the scheduling or admissions system so that Tagnos may accurately populate its Workflow module.

   D. Access to Server

SCHEDULE C

MAINTENANCE AND SUPPORT SERVICES

Provided that Licensee is current with respect to the License Fees, Implementation Fees and Maintenance Fees in accordance with Schedule B, Licensee shall be entitled to Maintenance and Support as specified below.

1.   DEFINITIONS.

1.1   **"Error"** means any verifiable or reproducible failure, mistake, or defect in the Licensed Software that prevents it from performing in accordance with the Documentation supplied by Licensor and the Specifications. The term "Error" will not include any failure, mistake, problem, defect or discrepancy that results from Licensee's improper use of the Licensed Software.

1.2   **"Error Correction"** means either a modification or addition to, or deletion from, the Licensed Software that, when made to such Licensed Software, (a) corrects any Errors without negatively altering the performance or functionality of the Licensed Software, and (b) results in the Licensed Software conforming substantially to the specifications set forth in the Documentation and the Specifications.

1.3   **"Severity 1 Error"** means any Error in the Licensed Software that: (a) affects any subset of Users for which a solution, work-around, Error Correction or other remedy has not been made available; and (b) causes any of the following: (i) an important component of the Licensed Software to be unusable; (ii) a system or product malfunction due to deficiency or non-usability resulting in frequent or major negative impact on Users; (iii) frequent or repeated failure of the Licensed Software; and/or (iv) significant data loss or corruption.

1.4   **"Severity 2 Error"** means any Error in the Licensed Software that constitutes a major failure of a component that causes significant inconvenience to any subset of Users for which a solution, work-around, Error Correction or other remedy has not been made available, but which Error does not rise to the level of a Severity 1 Error.

1.5   **"Severity 3 Error"** means any Error in the Licensed Software that impacts marginally any subset of Users for which a solution, work-around, Error Correction or other remedy has not been made available.

2.   LICENSED SOFTWARE FUNCTIONALITY/RELIABILITY. Licensor shall make commercially reasonable efforts to ensure the proper functioning of the Licensed Software during the Initial Term and any subsequent Renewal Term if applicable. Specifically, Licensor shall: (a) ensure an uptime of its Licensed Software of 99.9%, measured on a monthly basis, exclusive of (i) Licensor maintenance scheduled upon mutual agreement with Licensee, and (ii) unavailability not attributable to the Licensed Software ("Guaranteed Uptime") and a response time of 20 requests per second per server; and (b) ensure consistent performance of the Licensed Software on dynamic modules of the minimum number of recommendation pages set forth in the relevant acceptance criteria. All scheduled maintenance by Licensor must be done between the hours of 2:00 and 4:00 EST).

3.   MAINTENANCE. Licensor shall provide to Licensee during the Initial Term and any subsequent Renewal Term if applicable any and all Updates at or before the time they are made generally available to third-parties.

4.   SUPPORT. Licensor shall provide to Licensee the following support services:

4.1   Access to Information. Licensor shall provide (a) general usage, general maintenance and installation (including answering questions and issues related to how the Licensed Software functions as detailed in engineering release notes, corresponding email and associated documentation.); and (b) assistance with respect to the Licensed Software both online and via telephone as set forth below. Such assistance will include: () clarification of functions and features of the Licensed Software; (ii) clarification of Documentation pertaining to the Licensed

Software; (iii) guidance in the operation of the Licensed Software; and (iv) Error verification, analysis and Error Corrections by online remote access, telephone or other means.

4.2   Email and Telephone Support. Licensor shall provide, with respect solely to Errors, email and telephone support for Licensee technical contacts. Licensor's designated support resources shall be accessible 24 hours a day, 7 days a week. Licensor shall provide a response to any telephone call as soon as possible and in all cases within thirty (30) minutes. Such response will be provided by a technical representative of Licensor having sufficient expertise and familiarity with the Licensed Software and the Licensee products to be capable of diagnosing and resolving issues raised by the Licensee technical contacts.

4.3   Resolution of Support Inquiries. Licensor shall resolve new support inquiries according to the Severity Level in the manner described below; provided that Licensor shall treat all Errors identified by Licensee with no less urgency, effort or commitment of resources than Licensor assigns to resolve any other Errors of a similar severity level. Errors may be reclassified upon mutual agreement of the parties.

4.3.1   Severity 1 Errors. Licensor will use its best efforts to investigate the problem and provide a solution, work-around, Error Correction or other remedy as soon as possible. In the event that a solution, work-around, Error Correction or other remedy cannot be implemented within twenty-four (24) hours, Licensor will provide a plan of action within such twenty-four (24) hour period that explains why the problem has not been resolved within the target time frame and a best estimate of the expected time for resolving the Error(s). Licensor will provide updates to the Licensee technical contact who reported the Error(s) (or such other contact as designated by Licensee) on progress in resolving such Errors regularly, at least once every thirty (30) minutes, until such Error(s) are resolved.

4.3.2   Severity 2 Errors. Licensor will use its best efforts to investigate the problem, and provide a solution, work-around, Error Correction or other remedy within forty-eight (48) hours, provided that, in the event that a solution, work-around, or other remedy cannot be determined within this time frame, Licensor will provide a plan of action within such forty-eight (48) hour period that explains why the problem has not been resolved within the target time frame and a best estimate of the expected time for resolving the Error(s). Licensor will provide updates to the Licensee technical contact who reported the Error(s) (or such other contact as designated by Licensee) on progress in resolving such Error(s) regularly, and at least once every three (3) hours, until such Error(s) are resolved.

4.3.3   Severity 3 Errors. Licensor will investigate the problem, and provide a solution, work-around, Error Correction or other remedy as soon as commercially practicable. Licensor will provide updates to the Licensee technical contact who reported the Error(s) (or such other contact as designated by Licensee) on progress in resolving such Error(s) regularly, and at least once per day until such Error(s) are resolved.

4.4   Escalation. Licensee shall be permitted to contact Licensor's Chief Technology Officer if Licensee reasonably determines that Licensor is not adequately addressing a Maintenance and Support issue or problem.

5.   LICENSEE RESPONSIBILITIES. Licensor's provision of Maintenance and Support to Licensee is subject to the following:

(a)   Licensee shall document and promptly report all Errors or malfunctions of the Licensed Software to Licensor.

(b)   Licensee shall take all steps necessary to carry out procedures for the rectification of Errors or malfunctions within a reasonable time after such procedures have been received from Licensor.

(c)   Licensee will reasonably cooperate with Licensor in the resolution of support issues. For that purpose, upon Licensor's request and during normal business hours, and if deemed necessary by Licensee and Licensor, Licensee will provide Licensor with electronic access to one port of the equipment on which the Licensed Software is installed and/or operating. Licensor will only use such access to provide Maintenance and Support for

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the Licensed Software and will comply with Licensee's security measures. Failure to provide Licensor with such access may result in delayed resolution of Maintenance and Support issues. Licensor shall not be responsible for such delays or resulting damages to the extent they are due to Licensee's failure to provide Licensor with the above-described access.

(d)   Licensee shall provide Licensor with secure remote access to the Licensed Software, in a manner mutually agreed by the parties.

(e)   Licensor shall, at its expense, provide a maintenance and integration platform on which to test Errors, run beta testing and perform QA testing.

6.   LIMITATION OF COVERAGE. Maintenance and Support will not include services requested as a result of, or with respect to, the following, and any services performed as a result thereof will be billed to Licensee at Licensor's then current consulting rates:

(a)   Accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media; operation of the Licensed Software with other media not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use;

(b)   Use of the Licensed Software that deviates from any operating procedures established by Licensor in the applicable Documentation;

(c)   Modification, alteration or addition or attempted modification, alteration or addition of the Licensed Software undertaken by persons other than Licensor or Licensor' authorized representatives or by Licensee at the direction and with the written authorization of Licensor; or

(d)   Third-party software or software developed by Licensee, other than as contemplated for use in conjunction with the Licensed Software as set forth in <u>Schedule A</u> hereto.

7.   CONTACTS. Licensee and Licensor shall each designate technical support liaisons for the purpose of coordinating the provision of Maintenance and Support. Either party may change its designated technical support liaison upon prior written notice to the other party. In the meantime, the following shall be the contact information of the parties unless modified in writing:

<div align="center">Licensee Contacts:</div>

Hours of Operation	24 hours a day, 7 days a week, 365 days a year (7/24/365)
Contact Phone Number	
Email Address	

<div align="center">Licensor Contacts:</div>

Hours of Operation	24 hours a day, 7 days a week, 365 days a year (7/24/365)
Contact Phone Number	949-305-0806 (All critical or outage information will be communicated verbally first, with an immediate E-mail confirmation to follow).
Email Address	Support@tagnos.com

Licensee and Licensor will refer to the above-described escalation process to aid in problem resolution should any outstanding incidents warrant, either because a party has not responded to an incident within the parameters set forth herein, or the length or severity of the Error warrant such escalation.

<center>SCHEDULE D</center>

<center>IMPLEMENTATION PLAN</center>

1. IMPLEMENTATION PLAN AND IMPLEMENTATION SERVICES

1.1 Implementation Plan. Licensor agrees to provide to Licensee the Implementation Services set forth in the Implementation Plan attached to hereto. All such Implementation Services shall be provided in accordance with the provisions of the Agreement and this Schedule D.

1.2 Performance of Services. Except as otherwise agreed to by the Parties in writing, in this Agreement, Licensor shall furnish all equipment and materials used to perform the Implementation Services, including but not limited to telephone lines, personal computers and modems.

1.3 Licensee Deliveries. Licensee agrees to provide to Licensor those Licensee and third party services and materials that are necessary to enable Licensor to perform the Implementation Services, including but not limited to, those services, materials, content licenses (and access) and Tools (as hereinafter defined) as specified in the Implementation Plan.

2. PROJECT MANAGEMENT.

2.1 Project Managers. Licensor shall appoint a qualified member of its staff to act as project manager (the "Licensor Project Manager"), whose duties shall be to act as liaison between Licensee and Licensor and to provide overall oversight and management of the Implementation Services. Licensee shall designate a project manager (the "Licensee Project Manager") who shall act as a liaison between Licensee and Licensor.

2.2 Progress Reports and Meetings. Licensee and Licensor shall hold regular status meetings (at least on a quarterly basis) to review the status of the Implementation Services.

2.3 Change Requests. Licensee may from time to time request modifications to the final Implementation Plan mutually agreed upon by the Parties by providing notice to Licensor and indicating the nature of the change request. Licensor agrees to cooperate with Licensee to make reasonable changes to the Implementation Plan; provided, however, that if any such changes or alternative or additional deliverables require Licensor to invest additional resources (including personnel resources) beyond what is contemplated by the then-current Implementation Plan, or will result in additional costs to Licensor, and Licensor has obtained prior written approval from Licensee, then Licensee will pay Licensor for its services in effecting such change request pursuant to Section 2.4 of the Agreement. If any Licensee change request will impact a milestone or delivery schedule previously agreed upon by the parties, Licensor shall notify Licensee and the parties shall make reasonable and appropriate adjustments to such milestone or delivery schedules.
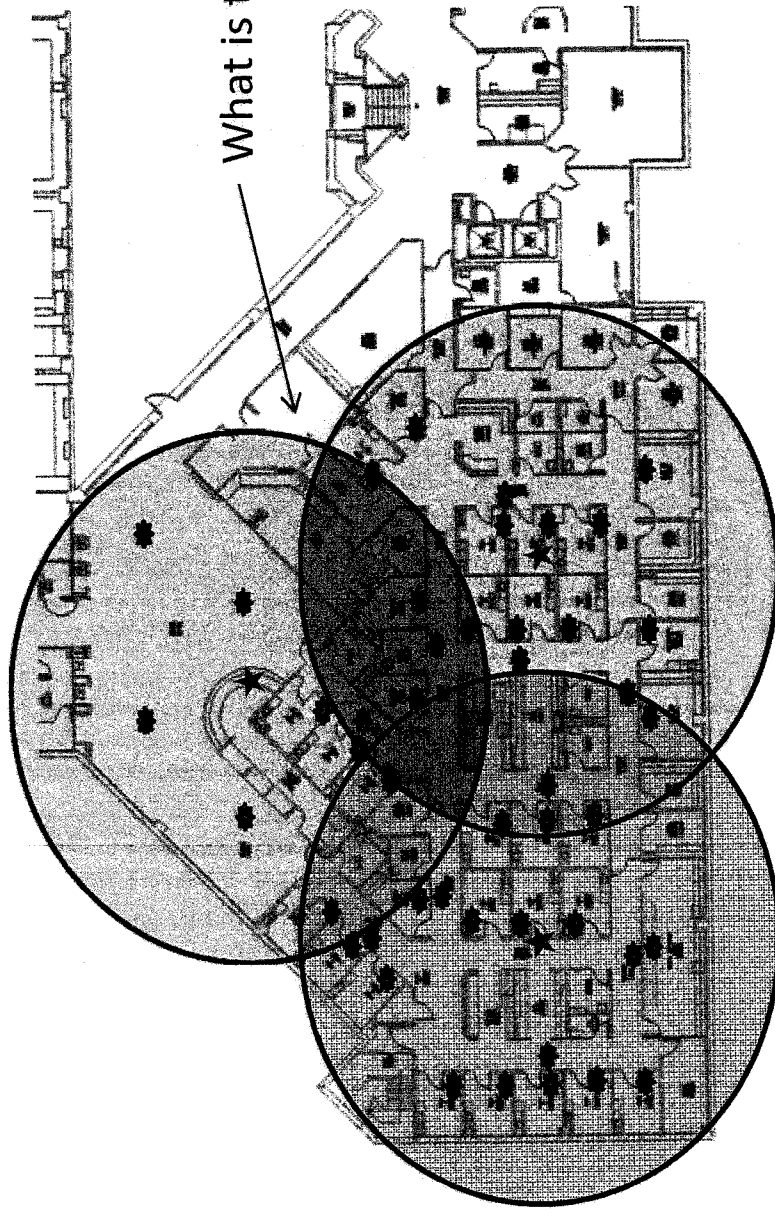
2.6 Implementation Plan. See attached.

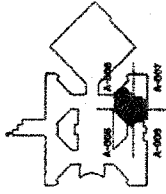# RCRMC

RTLS Layouts

Sharon Reichwein

September 23, 2012

What is this area?

RCRMC – Internal Meds RTLS Layout

COUNTY OF RIVERSIDE

RIVERSIDE COUNTY REGIONAL MEDICAL CENTER

1st. FLOOR OUTPATIENT CLINIC REMODEL

LEGEND
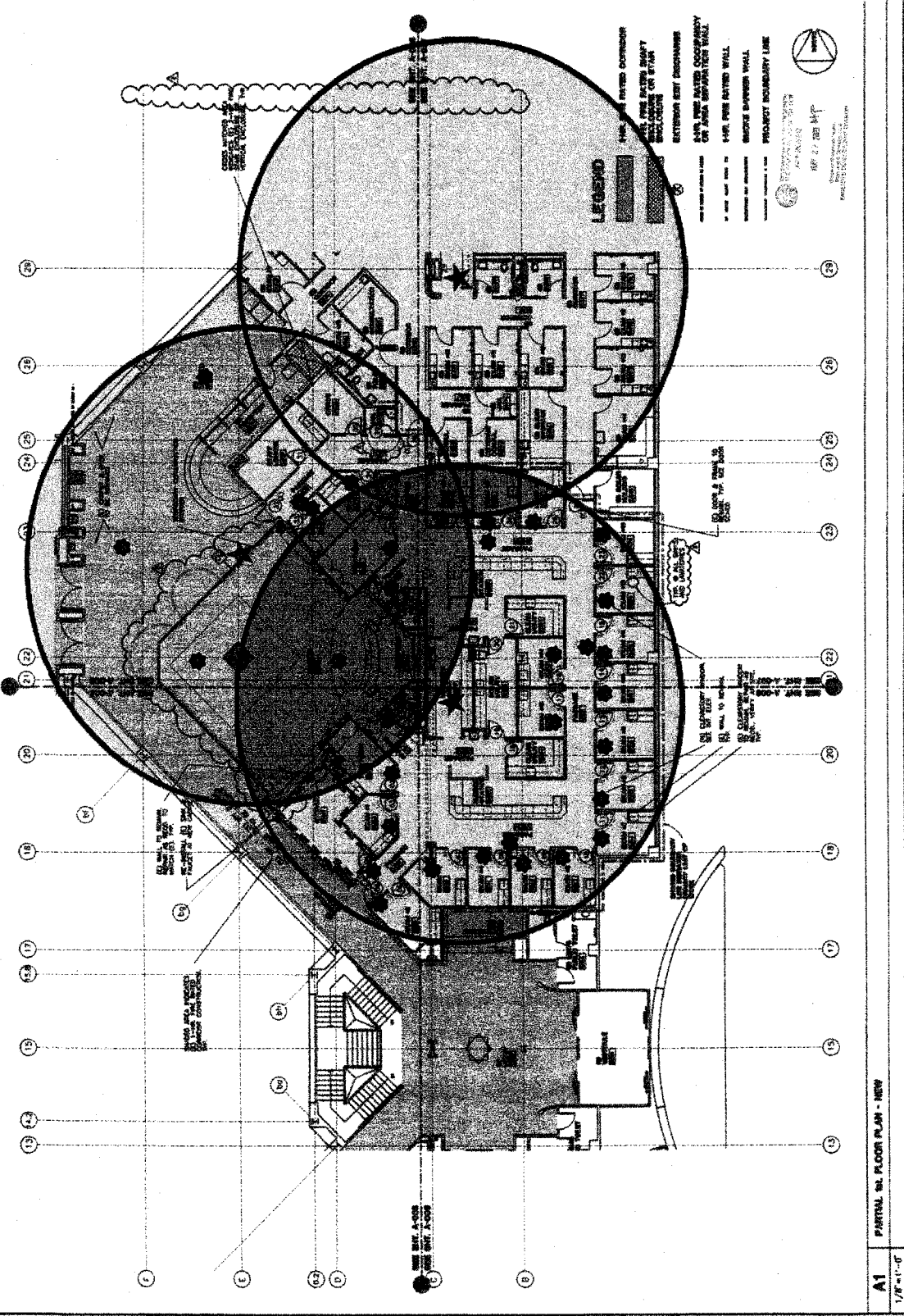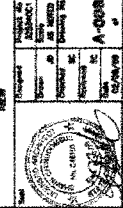
A1 PARTIAL 1st. FLOOR PLAN - NEW
1/8" = 1'-0"

SCHEDULE E

BUSINESS ASSOCIATES AGREEMENT
(to be provided by RCRMC)

HIPAA Business Associate Agreement

Addendum to Contract

Between the County of Riverside and **TAGNOS, Inc.**

1   This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the

2   **Software License and Support Agreement** (the "Underlying Agreement") between the County of

3   Riverside ("County") and **TAGNOS, Inc.** ("Contractor") and shall be effective as of the date the

4   Underlying Agreement is approved by both Parties (the "Effective Date").

5   RECITALS

6   WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which

7   the Contractor provides services to County, and in conjunction with the provision of such services

8   certain protected health information ("PHI") and/or certain electronic protected health information

9   ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its

10   obligations under the Underlying Agreement; and,

11   WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996

12   ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for

13   Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of

14   2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated

15   subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or

16   disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

17   WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

18   WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or

19   ePHI of County, is a business associate as defined in the Privacy Rule; and,

20   WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule

21   and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to

22   the covered entity, the additional security and privacy requirements of HITECH are applicable to

23   business associates and must be incorporated into the business associate agreement, and a business

24   associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy

25   provisions; and,

26   WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in

27   compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

HIPAA Business Associate Agreement

Addendum to Contract

Between the County of Riverside and **TAGNOS, Inc.**

1   WHEREAS, the parties intend to enter into this Addendum to address the requirements and

2   obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to

3   Contractor as a business associate of County, including the establishment of permitted and required uses

4   and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing

5   services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

6   NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein,

7   the parties agree as follows:

8   1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning

9   as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from

10   time to time.

11   A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of

12   PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of

13   the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this

14   definition, "compromises the security or privacy of PHI" means poses a significant risk of

15   financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not

16   include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach

17   excludes:

18   (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting

19   under the authority of a covered entity or business associate, if such acquisition, access or use

20   was made in good faith and within the scope of authority and does not result in further use or

21   disclosure in a manner not permitted under subpart E of the Privacy Rule.

22   (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or

23   business associate to another person authorized to access PHI at the same covered entity,

24   business associate, or organized health care arrangement in which County participates, and the

25   information received as a result of such disclosure is not further used or disclosed in a

26   manner not permitted by subpart E of the Privacy Rule.

1   (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that
2   an unauthorized person to whom the disclosure was made would not reasonably have been
3   able to retain such information.

4   B. "Data aggregation" has meaning given such term in 45 CFR §164.501.

5   C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by
6   or for a covered entity that may include: the medical records and billing records about
7   individuals maintained by or for a covered health care provider; the enrollment, payment, claims
8   adjudication, and case or medical management record systems maintained by or for a health
9   plan; or, used, in whole or in part, by or for the covered entity to make decisions about
10   individuals.

11   D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means
12   protected health information transmitted by or maintained in electronic media.

13   E. "Electronic health record" means an electronic record of health-related information on an
14   individual that is created, gathered, managed, and consulted by authorized health care clinicians
15   and staff, and shall have the meaning given such term in 42 USC §17921(5).

16   F. "Health care operations" has the meaning given such term in 45 CFR §164.501.

17   G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health
18   information.

19   H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation,
20   professional association or corporation, or other entity, public or private.

21   I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.

22   J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which
23   includes ePHI.

24   K. "Required by law" has the meaning given such term in 45 CFR §164.103.

25   L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").

26   M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.

1   N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means

2   PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a

3   technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2)

4   on the HHS web site.

5   2. **Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

6   A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI

7   and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying

8   Agreement or to perform functions, activities or services for, or on behalf of, County as specified

9   in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule

10   and/or Security Rule.

11   B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or

12   authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2),

13   Contractor may:

14   (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration

15   and to carry out its legal responsibilities; and,

16   (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and

17   administration or to carry out its legal responsibilities, only if:

18   (a) The disclosure is required by law; or,

19   (b) Contractor obtains reasonable assurances, in writing, from the person to whom

20   Contractor will disclose such PHI and/or ePHI that the person will:

21   (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose

22   for which Contractor disclosed it to the person, or as required by law; and,

23   (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of

24   the information has been breached; and,

25   (3) Use PHI to provide data aggregation services relating to the health care operations of County

26   pursuant to the Underlying Agreement or as requested by County; and,

1   (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum

2   provided that the de-identification conforms to the requirements of the Privacy Rule and/or

3   Security Rule and does not preclude timely payment and/or claims processing and receipt.

4   C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or

5   regulations are more stringent in their requirements than the provisions of HIPAA, including, but

6   not limited to, prohibiting disclosure of mental health and/or substance abuse records, the

7   applicable state and/or federal laws and/or regulations shall control the disclosure of records.

8   3.   **Prohibited Uses and Disclosures.**

9   A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by

10   the Underlying Agreement or this Addendum without patient authorization or de-identification of

11   the PHI and/or ePHI and as authorized in writing from County.

12   B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or

13   from another business associate of County, except as permitted or required by this Addendum, or

14   as required by law.

15   C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be

16   prohibited from making.

17   D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security

18   Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936.

19   Contractor agrees:

20   (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the

21   Underlying Agreement and as permitted by and consistent with the requirements of 42 USC

22   §17936;

23   (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of

24   carrying out payment or health care operations, if the individual has requested this restriction

25   pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for

26   the health care item or service to which the PHI solely relates; and,

1   (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by

2   42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall

3   not apply to payment by County to Contractor for services provided pursuant to the

4   Underlying Agreement.

5   4. **Obligations of County.**

6   A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions

7   on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's

8   ability to perform its obligations under the Underlying Agreement, or this Addendum.

9   B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in,

10   or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes

11   or revocation may affect Contractor's ability to perform its obligations under the Underlying

12   Agreement, or this Addendum.

13   C. County agrees to make its best efforts to promptly notify Contractor in writing of any known

14   limitation(s) in its notice of privacy practices to the extent that such limitation may affect

15   Contractor's use or disclosure of PHI and/or ePHI.

16   D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that

17   would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.

18   E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or

19   ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying

20   Agreement.

21   5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI,

22   Contractor agrees to:

23   A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of

24   45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that

25   are applicable to covered entities in HITECH, as may be amended from time to time.

B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.

C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.

E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.

F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.

G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.

H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).

I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.

J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.

K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.

1   L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as
2   may be amended from time to time.

3   6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

4   A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set
5   to County or an individual as directed by County, within five (5) days of request from County, to
6   satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health
7   records, Contractor shall, at the request of County, provide electronic health records in electronic
8   format to enable County to fulfill its obligations under 42 USC §17935(e).

9   B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI
10   in a designated record set County directs or agrees to at the request of an individual, within
11   fifteen (15) days of receiving a written request from County, in accordance with 45 CFR
12   §164.526.

13   C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its
14   obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where
15   applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains
16   electronic health records. Contractor shall:

17   (1) Document such disclosures of PHI and/or electronic health records, and information related to such
18   disclosures, as would be required for County to respond to a request by an individual for an
19   accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR
20   §164.528.

21   (2) Within fifteen (15) days of receiving a written request from County, provide to County or any
22   individual as directed by County information collected in accordance with this section to permit
23   County to respond to a request by an individual for an accounting of disclosures of PHI and/or
24   electronic health record.

25   (3) Make available for County information required by this section for six (6) years preceding the
26   individual's request for accounting of disclosures of PHI, and for three (3) years preceding the
27   individual's request for accounting of disclosures of electronic health record.

1 7. <u>**Security of ePHI.**</u> In the event Contractor needs to create, receive, or have access to County ePHI,

2   in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:

3   A. Implement the administrative, physical, and technical safeguards that reasonably and

4   appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor

5   creates, receives, maintains, or transmits on behalf of County as required by the Security Rule,

6   including without limitations, each of the requirements of the Security Rule at 45 CFR

7   §§164.308, 164.310, and 164.312;

8   B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of

9   policies, procedures and documentation requirements with respect to ePHI;

10   C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

11   D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or

12   required under the Privacy Rule;

13   E. Ensure compliance by Contractor's workforce;

14   F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement

15   reasonable appropriate safeguards to protect it;

16   G. Report to County any security incident of which Contractor becomes aware; and,

17   H. Comply with any additional security requirements that are applicable to covered entities in Title

18   42 (Public Health and Welfare) of the United States Code, as may be amended from time to time,

19   including but not limited to HITECH.

20 8. <u>**Breach of Unsecured PHI.**</u> In the case of breach of unsecured PHI, Contractor shall comply with

21   the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not

22   limited to 45 CFR §164.410.

23   A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor

24   shall notify County in writing of such breach without unreasonable delay and in no case later

25   than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

26   (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the

27   first day on which such breach is known to Contractor or, by exercising reasonable diligence,

1   would have been known to Contractor, which includes any person, other than the person

2   committing the breach, who is an employee, officer, or other agent of Contractor (determined

3   in accordance with the federal common law of agency).

4   (2) **Content of notification.** The written notification to County relating to breach of unsecured

5   PHI shall include, to the extent possible, the following information if known (or can be

6   reasonably obtained) by Contractor:

7   (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by

8   Contractor to have been accessed, acquired, used or disclosed during the breach;

9   (b) A brief description of what happened, including the date of the breach and the date of the

10   discovery of the breach, if known;

11   (c) A description of the types of unsecured PHI involved in the breach, such as whether full name,

12   social security number, date of birth, home address, account number, diagnosis, disability code,

13   or other types of information were involved;

14   (d) Any steps individuals should take to protect themselves from potential harm resulting from the

15   breach;

16   (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to

17   individuals, and to protect against any further breaches; and,

18   (f) Contact procedures for individuals to ask questions or learn additional information, which shall

19   include a toll-free telephone number, an e-mail address, web site, or postal address.

20   B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall

21   cooperate with County and shall provide County with any information requested by County to enable

22   County to fulfill in a timely manner its own reporting and notification obligations, including but not

23   limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC

24   §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.

25   C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals,

26   Contractor shall maintain a log or other documentation of such breaches and provide such log or

27   other documentation on an annual basis to County not later than fifteen (15) days after the end of

28   each calendar year for submission to the Secretary.

1   D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of

2   unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or

3   posting would impede a criminal investigation or cause damage to national security, Contractor shall

4   maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR

5   §164.412.

6   E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure

7   to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH,

8   HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with

9   providing all legally required notifications to individuals, media outlets, and the Secretary. This provision

10   shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold

11   harmless County under Section 9 of this Addendum.

12   F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of

13   PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to

14   demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164,

15   Subpart D, or that such use or disclosure did not constitute a breach.

16   9. **Hold Harmless/Indemnification.**

17   A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special

18   Districts and Departments of County, their respective directors, officers, Board of Supervisors,

19   elected and appointed officials, employees, agents and representatives from any liability

20   whatsoever, based or asserted upon any services of Contractor, its officers, employees,

21   subcontractors, agents or representatives arising out of or in any way relating to this Addendum,

22   including but not limited to property damage, bodily injury, death, or any other element of any

23   kind or nature whatsoever arising from the performance of Contractor, its officers, agents,

24   employees, subcontractors, agents or representatives from this Addendum. Contractor shall

25   defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of

26   investigation, defense and settlements or awards, of County, all Agencies, Districts, Special

27   Districts and Departments of County, their respective directors, officers, Board of Supervisors,

28   elected and appointed officials, employees, agents or representatives in any claim or action based

29   upon such alleged acts or omissions.

11

1   B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor

2   shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of

3   County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or

4   compromise any such action or claim without the prior consent of County; provided, however,

5   that any such adjustment, settlement or compromise in no manner whatsoever limits or

6   circumscribes Contractor's indemnification to County as set forth herein. Contractor's

7   obligation to defend, indemnify and hold harmless County shall be subject to County having

8   given Contractor written notice within a reasonable period of time of the claim or of the

9   commencement of the related action, as the case may be, and information and reasonable

10   assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation

11   hereunder shall be satisfied when Contractor has provided to County the appropriate form of

12   dismissal relieving County from any liability for the action or claim involved.

13   C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in

14   no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County

15   herein from third party claims arising from issues of this Addendum.

16   D. In the event there is conflict between this clause and California Civil Code §2782, this clause

17   shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the

18   Contractor from indemnifying County to the fullest extent allowed by law.

19   E. In the event there is a conflict between this indemnification clause and an indemnification clause

20   contained in the Underlying Agreement of this Addendum, this indemnification shall only apply

21   to the subject issues included within this Addendum.

22 10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI

23   and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of

24   County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI,

25   protections are extended to such information, in accordance with section 11.B of this Addendum.

26 11. **Termination.**

27   A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either

28   party shall constitute a material breach of the Underlying Agreement and will provide grounds

1 for terminating this Addendum and the Underlying Agreement with or without an opportunity to

2 cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary.

3 Either party, upon written notice to the other party describing the breach, may take any of the

4 following actions:

5 (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other

6 party breaches a material provision of this Addendum.

7 (2) Provide the other party with an opportunity to cure the alleged material breach and in the

8 event the other party fails to cure the breach to the satisfaction of the non-breaching party in

9 a timely manner, the non-breaching party has the right to immediately terminate the

10 Underlying Agreement and this Addendum.

11 (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may

12 report the problem to the Secretary, and upon the non-breaching party's request, the

13 breaching party at its own expense shall implement a plan to cure the breach and report

14 regularly on its compliance with such plan to the non-breaching party.

15 B. **Effect of Termination.**

16 (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all

17 PHI and/or ePHI received from County, or created or received by the Contractor on behalf of

18 County, and, in the event of destruction, Contractor shall certify such destruction, in writing,

19 to County. This provision shall apply to all PHI and/or ePHI which are in the possession of

20 subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI,

21 except as provided below in paragraph (2) of this section.

22 (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is

23 not feasible, Contractor shall provide written notification to County of the conditions that

24 make such return or destruction not feasible. Upon determination by Contractor that return

25 or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of

26 this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI

27 and/or ePHI to those purposes which make the return or destruction not feasible, for so long

28 as Contractor maintains such PHI and/or ePHI.

1   12. **General Provisions.**

2   A. **Retention Period.** Whenever Contractor is required to document or maintain documentation

3   pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years

4   from the date of its creation or as otherwise prescribed by law, whichever is later.

5   B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum

6   from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security

7   Rule, and HIPAA generally.

8   C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this

9   Addendum shall survive the termination or expiration of this Addendum.

10   D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH,

11   HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.

12   E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying

13   Agreement that conflict or appear inconsistent with any provision in this Addendum.

14   F. **Interpretation of Addendum.**

15   (1) This Addendum shall be construed to be part of the Underlying Agreement as one document.

16   The purpose is to supplement the Underlying Agreement to include the requirements of the

17   Privacy Rule, Security Rule, HIPAA and HITECH.

18   (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to

19   permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH

20   generally.

21   G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of

22   this Addendum shall be in writing and delivered to the County by either registered or certified

23   mail return receipt requested or guaranteed overnight mail with tracing capability at the address

24   listed below, or at such other address as County may hereafter designate. All notices provided

25   by Contractor pursuant to this Section shall be deemed given or made when received by County.

26   Name: <u>Riverside County Regional Medical Center, Compliance Department</u>

27   Title: <u>Compliance and Privacy Officer</u>

HIPAA Business Associate Agreement

Addendum to Contract

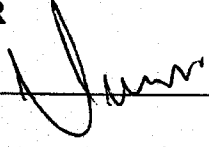### Between the County of Riverside and **TAGNOS, Inc.**

1   Address: <u>26520 Cactus Avenue, Moreno Valley, CA 92555</u>

2

3   **CONTRACTOR**   **COUNTY**

4   By: _____   By: _____

5

6   NEERAJ S. BHAVANI
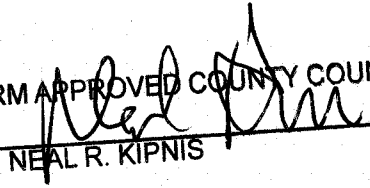
7   Type or Print Name   Type or Print Name

8

9   CEO

10   Type or Print Title   Type or Print Title

11

12   Date: ___12/7/12___   Date: _____

FORM APPROVED COUNTY COUNSEL

BY: NEAL R. KIPNIS   DATE

15